

Editorial

A World of Payment Problems

Most of the contributions in this first issue of 2022 have something to do with payments, either the law of payments in a narrower sense, or problems of payment and non-payment in a broader sense, dealing with non-performance or insolvency. The latter are related – what would you have expected – to major events in the most recent years: Brexit and the coronavirus pandemic.

And indeed, we are very happy to publish – after the first and the second – the third Ole Lando memorial lecture given by Hector MacQueen on European contract law in the Post-Brexit and (Post?)-Pandemic United Kingdom. It is to a large part dealing with changed circumstances, circumstances in which payment may have become excessively difficult, and the various devices the law may use to respond – especially English and Scots law, but discussed in a European perspective, albeit a post-Brexit one. The legal effects of Brexit are more specifically addressed from the other side of the Channel by Louise Castin in her contribution on the effects on the continent of post-Brexit UK insolvency proceedings, no longer governed by EU law, but again by the residual national conflict of law rules. It studies more in detail recognition and enforcement of UK decisions in Germany, Belgium and the Netherlands.

Payment services are the theme of three further contributions, all taking stock and detecting problems in the aftermath of the reform of the rules on payment services, especially by the PSD2, the new Directive on Payment Services from 2015, meanwhile transposed in Member State law, but accompanied by other rules and non-legislative acts in a multilevel regulatory framework. Maria Cecilia Paglietti deals specifically with the effect of the various sources and the fragmentation of governance in the payments market on the allocation of liability in the event of unauthorized payments, and concludes that the Directive implies a full harmonization, excluding the application of national contract law in matters of liability for unauthorized payments regulated by the Directive. Nevertheless, it is demonstrated in another contribution by Maria Raquel Guimarães and Reinhard Steennot, there are some important differences in case of payment fraud, either because of the options given by the Directive to the Member States, or by the divergent application of identical rules. The authors address important flaws of the actual regulation in light of growing and more sophisticated payment fraud. Another critical contribution deals with the intersection with the payment services regulation and regulation of the data economy, especially the use of personal data: Federico Ferretti's article on 'Open Banking' sees poor coordination between rules, discusses the effects of these inconsistencies and recommends corrections.

Finally, Piotr Machnikowski is dealing with the question of product liability for information products, starting from the ECJ decision in Krone, rejecting the idea that an incorrect (paramedical) advice in a newspaper may constitute a defective product, but giving us a broad perspective on problems of defective information.

All these matters are more fascinating than they may appear at first sight. We are now used to the expression that data are the new gold, but it is still payments and non-payment that make the world of law go round. Enjoy reading!

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