

The Law of Software Contracts – a Transatlantic Perspective

Research project

Investigator:

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Abstract:

As a result of the omnipresent worldwide use of computers and of computer software products in practically all business sectors as well as in many (either off or on-line) social or private activities of individuals (consumers), it is clear that software contracts have become an integral part of the life of millions of companies and people. It may even be argued that software contracts constitute the most widely used type of contract in our information economy. However, in spite of the pervasiveness of the use of software products (and of software contracts) in today's world, the law of software contracts has remained a relatively intricate and unsettled legal field which has not been harmonized at the national level (and even less internationally). In view of this situation, the American Law Institute (ALI) very wisely decided to launch in 2004 a project – which is still underway as of today - under the title “Principles of the Law of Software Contracts” (“the ALI Principles”) the main purpose of which was to “draft legal principles to guide courts in deciding disputes involving transactions in software and to guide the drafting of software contracts”, whereby the ALI Principles focus on US law.

Given the global reach of software contracts and, more specifically from a transatlantic perspective, because numerous software contracts are entered into between contracting parties which are located on either side of the Atlantic, it appears interesting to analyze the law of software contracts as developed in the ALI Principles from a European standpoint. On this basis, the goal of the research project to be conducted under the TTLF Fellowship Program is to analyze the ALI Principles in a transatlantic perspective and thus to assess whether and to what extent the ALI Principles are compatible with the regulations and legal principles governing software contracts which are applied in Europe. The research project consequently aims at defining whether the ALI Principles collide with the European approach to software contracts and at contributing to the development of global principles governing the law of software contracts which would be acceptable on both sides of the Atlantic.