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HARMONIZATION OF GOOD FAITH ACQUISITION – THE REASON AND THE METHOD**

Abstract: *The purpose of this paper is to show that the diversity of rules on good faith acquisition among EU Member States may cause legal uncertainty and different treatment of similar cases on internal market. I try to demonstrate this diversity and the said consequences by comparing the French, the German and the Dutch approach to good faith acquisition. Based on this comparison I make a plea for harmonization of the rules on good faith acquisition for cross-border transactions only, which should include rules on transfer of ownership and which should be done via regulation.*

Key words: good faith acquisition, harmonization, transfer of ownership, transfer of movables.

I – Introduction

One cannot transfer the right which one does not have; that is the principle common to all the EU Member States.[1] The principle was developed in Roman law and in Latin reads as follows: *Nemo dat quod non*

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** This paper is based on author's unpublished master thesis "Harmonization of Good Faith Acquisition. The Justification, the Instrument, and the Rule" which he has written in the course of his master studies in Amsterdam Law School, University of Amsterdam under the supervision of professor Arthur F. Salomons. The thesis is available at http://dare.uva.nl/cgi/arno/show.cgi?fid=494214, 17. 04. 2017. The paper at hand is shorter in scope in order to comply with the propositions regarding the size of the articles. It is therefore focused on the first two questions proposed in the master thesis. Since the thesis rests on the comparative analysis of French, German and English law, and given the current political circumstances in the EU, for the purposes of this article the author used the Dutch law for the comparative analysis instead of the English law. However, the main conclusions still stand regardless this particular amendment.

1 Salomons, F. A., Good Faith Acquisition of Movables, in: Hartkamp, A., et. al. (ed.), 2011, *Towards a European Civil Code 4th edition*, Alphen aan den Rijn, Kluwer Law International, p. 1066.

habet. In Portugal they hold to this principle firmly.[2] They fully protect the original owner allowing him to revindicate his object even from the acquirer in good faith. On the other hand Italy opted for 'almost total protection of the good faith acquirer'[3]. The way the vast majority of Member States regulates the good faith acquisition lies somewhere in between these two extremes.[4] The common denominator is that they enable the acquisition of a movable by the acquirer who was in good faith regarding the fact that the transferor was not authorized to transfer the ownership over the acquired movable. Yet they differ, more or less, in details such as burden of proof, standard of good faith, situations in which good faith acquisition is allowed etc.

The rules on good faith acquisition are important because they establish legal certainty on the market.[5] Without them buyers would have to invest too much time and money to investigate the origin of the asset they wish to buy.[6] This would make transactions more expensive and slow down the commerce.[7] They also set the balance between the interests of the owner and the interests of the conscientious buyer.[8]

However in the context of the internal market where we have different rules on good faith acquisition the application of which depends on the conflict of law rules, the legal certainty they normally provide is lost. Although there is no proof that this situation actually hampers the trade on the internal market, we do not see that as a reason not to improve the existing conditions on it. I think that one rule on good faith acquisition applicable to all cross-border cases of unauthorized transfers of ownership would significantly advance the internal market.

In support of this claim, first I will demonstrate the diversity of rules on good faith acquisition, and discuss how such diversity creates the need for a harmonized rule in this area. Afterwards, I will examine what kind of an instrument would be the most suitable tool of harmonization.

The result I hope to achieve with this paper is to show that the harmonization of some areas of private law, especially property law, is possi-

2 Salomons, F. A., 2011, p. 1075.

3 Salomons, F. A., 2011.

4 Salomons, F. A., On the Economics of the Good Faith Acquisition Protection in the DCFR, in: Somma, A. (ed.), 2009, *The Politics of the Draft Common Frame of Reference,* Alphen aan den Rijn, Kluwer Law International, p. 203.

5 Erp, S. van, Akkermans, B. (eds), 2012, *Cases, Materials and Text on Property Law*, Oxford, Hart Publishing, p. 1063.

6 Lurger, B., Faber, W., 2011, *Principles of European Law, Study Group on a European Civil Code, Acquisition and Loss of Ownership of Goods,* Munich, Sellier European Law Publishers, p. 889.

7 Lurger, B., Faber, W., 2011.

8 Lurger, B., Faber, W., 2011.

ble without intrusion into national laws. This could open a door for a view that we should not reach for harmonization only when we need to incite the people to buy or sell more on the internal market. But also to reach for it when we can simply make the market better even when the existing state does not make the market player reluctant to participate in it.

II – The Reason

In this part of the paper I will demonstrate the diversity of rules on good faith acquisition by analyzing the rules on this subject in France, Germany, and the Netherlands. French and German laws were chosen as the heads of two dominant legal families on the continent. The Dutch law is chosen because of some interesting features regarding the good faith acquisition of movables, and because it serves well to show all the nuances lying in between the French and German approach. Subsequently we will discuss how this diversity causes legal uncertainty, and thus justifies the plea for harmonization of the good faith acquisition rules.

II.1 GOOD FAITH ACQUISITION IN FRANCE

The French law provides for a general rule on good faith acquisition.[9] Namely, there are three conditions that have to be fulfilled so the transferee can acquire the ownership from the unauthorized transferor.[10] First, the owner of the movable must have passed the object voluntarily, with the intention to reclaim the object.[11] Second, the transferee must have acquired possession from the transferor, and he must possess as if he is the rightful owner.[12] The delivery in form of *constitutum possessorium* does not suffice.[13] Third, the transferee must be in good faith regarding the fact that the transferor was not authorized to transfer the ownership over the good in question.[14] The good faith is presumed[15], which means that the burden of proof is with the original owner.

There are no additional requirements regarding the specific circumstances of the transfer. Therefore it is not important whether the transferor

9 Lurger, B., Faber, W., 2011.

10 Ritaine, C. E., National Report on the Transfer of Movables in France, in: Faber, W., Lurger, B. (eds.), 2009, *National Reports on the Transfer of Movables in Europe,* vol. 4, Munich, Sellier European Law Publishers, p. 122.

11 Ritaine, C. E., 2009.

12 Ritaine, C. E., 2009.

13 Ritaine, C. E., 2009, p. 123.

14 Ritaine, C. E., 2009, pp. 122–23.

15 Ritaine, C. E., 2009, p. 123.

was a merchant, or the purchaser acquired the good in a public market, or a public auction.[16] These circumstances matter only if the transferee acquired a stolen or lost object. If he acquires such an object in good faith in one of the mentioned situations he will become the owner, but the original owner has right to buy the object back from the good faith transferee.[17] Otherwise good faith acquisition of stolen and lost goods is not possible. However, the owner can revindicate a lost or stolen object from a good faith acquirer only during the period of three years from the loss or theft.[18] After this period his right is extinguished towards the good faith acquirer.

Finally it is important to note that the French law treats good faith acquisition as a form of original acquisition, and not as the transfer of ownership.[19] Thus, in spite of the fact that the French transfer system is causal, validity of the legal basis of the transfer is irrelevant for the good faith acquisition.[20]

II.2 GOOD FAITH ACQUISITION IN GERMANY

In order to transfer the ownership over a movable object under German law the owner has to deliver the object to the transferee and they both have to agree that the ownership is to be transferred.[21] However the transferee will acquire the ownership even if the transferor is not the owner of the object if the object was delivered, unless the transferee knew, or due to gross negligence did not know that the transferor is not the owner of the object.[22]

Good faith acquisition is also possible if the acquirer knew that the transferor is not the owner, if the transferor sells the movable object in the course of his business, and the acquirer was in good faith regarding the transferor's lack of authority to do so.[23]

German law does not allow for the good faith acquisition of lost or stolen goods, or of goods 'of which the owner had otherwise involun-

16 Ritaine, C. E., 2009.

17 Salomons, F. A., 2011, p. 1072.

18 Ritaine, C. E., p. 128.

19 Vliet, L. van, *A Factual Assessment of Book VIII of the Draft Common Frame of Reference (Acquisition and Loss of Ownership of Goods)*, (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1593032, 24.06.2013), p. 11.

20 Vliet, L. van, 2013.

21 BGB, Section 929, (http://www.gesetze-im-internet.de/englisch_bgb, 03.06.2013)

22 BGB, Section 932.

23 Erp, S. van, Akkermans, B., 2012, p. 932.

tarily lost possession'.[24] However, this ban is not applicable to money, barer documents or to the goods acquired on a public auction.[25] Finally, since the German transfer system is abstract, invalidity of the legal act underlying the transfer of ownership does not influence the validity of the transfer.[26]

II.3 GOOD FAITH ACQUISITION IN THE NETHERLANDS

The Dutch law provides for good faith acquisition of a movable object from an unauthorised person under several conditions: the legal basis of the acquisition has to be valid; the transfer has to be onerous, not gratuitous; the alienator has to transfer the possession over the movable to the acquiring party by enabling him to exercise the actual control over the asset in question.[27] Furthermore, the acquirer has to be in good faith regarding the fact that the transferor lacks the authority to transfer the ownership to him.[28] This means that the acquirer did not know about the lack of the authority, or should not have known about it, where it is considered that he should have known about it if he had a good reason to doubt whether transferor was authorized to transfer the ownership over the asset.[29]

On the other hand the original owner may revindicate his property even from the good faith acquirer if the object was stolen from him, within three years from the theft.[30] However, the owner is precluded from such an action if the acquirer is a natural person who was not acting in the course of his business or practice when he acquired the good from an alienator, who regularly sells that kind of things to the public unless the alienator is a public auctioneer.[31] Also, the owner may not claim stolen money, or stolen debt-claim to order or to barer.[32]

Finally, even if the good faith acquirer has met all the conditions for the good faith acquisition he will not be able to rely on these rules, unless he provides all the information he has about the alienator from whom he

24 Salomons, F. A., 2011, p. 1073.
25 Salomons, F. A., 2011.
26 Salomons, F. A., 2011, p. 1072.
27 BW Art. 3:84, 3:86, and 3:90 (http://www.dutchcivillaw.com/civilcodebook033.htm, 14.04.2017).
28 BW Art. 3:86.
29 BW Art. 3:11.
30 BW Art. 3:86.
31 BW Art. 3:86.
32 BW Art. 3:86.

acquired the good to the previous owner who has asked for these information within three years after the acquisition.[33]

II.4 COMPARATIVE CONCLUSIONS

Validity of the *causa traditionis* in French law is not a condition for the good faith acquisition because the good faith acquisition is deemed a specific case of original acquisition. In German law validity of *causa traditionis* is not relevant for the good faith acquisition because of abstract transfer system, whereas in Dutch law it is.

Lack of good faith in Germany means that the transferee knew or due to gross negligence did not know that the transferor is unauthorized to transfer the ownership. The Dutch rule is similar, but we believe not the same since the wording "should have known" may have the wider scope than the "gross negligence" in German law.

French and German legal systems demand that the owner has lost the actual control over the object voluntarily, whereas Dutch legal system does not make such a request explicitly, but allows the original owner to revindicate his object if it was stolen. If the owner has lost the control over the good involuntarily French and German systems do not allow for good faith acquisition of that object. However, in French law involuntarily lost control over the object means theft or loss of the good. In Germany this notion is extended to other ways of involuntary loss of possession as well. German law makes exceptions for money, barer documents, and goods acquired on a public auction. Quite the opposite, Dutch law does not allow good faith acquisition of stolen objects acquired on a public auction, but allows it in a different situation. Unlike German law, French and Dutch law set the time limit in which the original owner may revindicate their property. However, in France revindication means buying the object back from the good faith acquirer, while in the Netherlands it does not.

Finally, all three systems define good faith as a negative fact, the lack of knowledge, which means that the burden of proof lies with the original owner trying to revindicate the object. However, the Dutch Civil Code obligates the acquirer to provide all the information about the transferor to the original owner, or else the acquirer will lose the protection he has as a good faith acquirer. It seems to me that this way the Dutch law sets an irrefutable assumption of the lack of good faith on the part of the non-cooperative acquirer.

33 BW Art. 3:87.

II.5 THE DIVERSITY OF RULES ON GOOD FAITH ACQUISITION AND THE INTERNAL MARKET

As we can see there are noticeable differences between French, German and Dutch law. On top of that, the answers to good faith acquisition issues which these systems offer take the middle place on the scale of solutions between the Italian and Portuguese extremes.[34] So it is fair to assume that such diversity across the EU can create problems for parties on the internal market. Sometimes the same set of facts may lead to the opposite outcomes depending on the applicable law. For instance if a party buys a stolen object in good faith from a person regularly selling that kind of things to the public as a part of their business activities, that party would not acquire the ownership over that good given that German law was applicable. On the contrary, such an acquirer would become the owner under the Dutch law, while in France the owner would have three years to buy the object back from the good faith acquirer.

However, there is no proof that the diversity of rules on good faith acquisition across the EU hampers the trade on the internal market. And it seems that for the time being such proof is a condition for any harmonization in private law.[35] In spite of that I do believe that these rules should be harmonized. Such a harmonization would enhance the quality and functioning of the internal market. The idea is to provide the setting in which the similar cases would be treated similarly, and avoid the arbitrariness that, as we have shown on the example in the previous paragraph, exists now. It would simply create better environment for trade, and raise the level of legal certainty. And legal certainty is very important when it comes to rules with proprietary effects because they do not affect only the persons directly involved, but the third parties as well.[36]

Furthermore harmonization of rules on good faith acquisition should not be intrusive towards the national legal systems and national rules on unauthorized transfer of ownership. For that reason I suggest that the harmonized rules should be applicable only to cross-border cases.[37] They should make a legal regime of good faith acquisition on the internal market without any intrusion into the laws of Member States.

34 Salomons, F. A., 2011, p. 1075.

35 Erp, S. van, Akkermans, B., 2012, p. 1030.

36 Erp, S. van, Akkermans, B., 2012, p. 1062.

37 This is the solution I borrowed from the 'Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law', (European Commission, Brussels, 11.01.2011, 2011/0284 (COD)).

On the other hand one could say that legal certainty already exists since the applicable law in case of good faith acquisition on the internal market would be determined by the principle of *lex rei sitae*. In my humble opinion, however, the principle of *lex rei sitae* does not necessarily provide for high level of legal certainty when it comes to movables. Movable objects can change their place and thus the jurisdiction rather easily. This could cause problems for both the original owners and the good faith acquirers. The original owner would often have to find out the content of the foreign law if he wishes to try to revindicate the good. The situation can get even more complicated for the original owner if the good faith acquirer sells the object to a person from a third Member State. The good faith acquirer could be in the similar situation if he acquires the good on the territory of another Member State and the original owner tries to revindicate the object while the acquirer and the object are still on the territory of that Member State. Then the good faith acquirer could be in a situation that he has to find out the content of the foreign law. As I already mentioned there is no proof that such circumstances hamper the trade on the internal market. People rarely think of the situations in which they would have to invoke the rules on good faith acquisition and of the plurality of those rules in the context of the internal market when they want to buy a good. However if the situation occurs it seems that the application of *lex rei sitae* principle raises the cost of litigation either for the original owner or the good faith acquirer because one of the parties has to find out the content of the foreign law. Also, as we previously showed, similar cases sometimes can be treated differently depending on the applicable law which is not fair, and causes the uncertainty as to the outcome of a particular case. This would not be the issue if we would have one rule on good faith acquisition for cross-border cases. All the parties would know in advance what rule would be applicable and it would be the same rule for everybody. They would have only one rule for cross-border cases instead of potentially twenty seven different rules next to their national rules, and the similar cases would be treated similarly and the different cases differently.

II.6 CONCLUSION

Therefore, even if the diversity of rules on good faith acquisition does not present an impediment to cross-border trade I do believe that they should be harmonized for cross-border use only. Such harmonization would improve the internal market without making any interference into the laws of Member States, and that should be the reason good enough.

III – The Method

Under the question of method we will discuss if the instrument harmonizing the rules on good faith acquisition should also contain the rules on transfer of ownership or not, and what instrument is the most suitable for harmonization of these rules?

III.1 HARMONIZATION WITH THE RULES ON TRANSFER OF OWNERSHIP OR WITHOUT THEM

When it comes to rules on transfer of ownership they can be classified according to two different criterions into two groups. The first group separates consensual systems in which contract itself transfers the ownership[38], from tradition systems in which transfer of possession is needed as well in order to pass the ownership.[39] The second group separates causal systems in which the validity of the transfer depends on the validity of the underlying contract[40] from abstract systems in which the validity of the underlying contract does not influence the validity of the transfer.[41]

The question is how these rules may influence the rules on good faith acquisition. I believe that the rules on good faith acquisition are not influenced by the choice of a consensual or tradition system. Both consensual and tradition systems demand delivery as one of the conditions for good faith acquisition.[42] However it does matter whether the good faith acquisition rules are part of the causal or the abstract system. Namely if the good faith acquisition rules are part of the abstract system then the validity of the underlying contract is not relevant for the good faith acquisition. Contrary to that in causal system invalidity of the underlying contract would make good faith acquisition impossible. Considering this impact that choice of transfer system has on good faith acquisition it seems that the harmonization of the good faith acquisition rules would have to be done together with the harmonization of the rules on transfer of ownership.

This could be a significant hurdle on the road to a harmonized rule on good faith acquisition, because I suspect that harmonization of rules on transfer of ownership would be rather controversial subject. Such con-

38 Erp, S. van, Akkermans, B., 2012, p. 788.

39 Erp, S. van, Akkermans, B., 2012, p. 795.

40 Erp, S. van, Akkermans, B., 2012, p. 823.

41 Erp, S. van, Akkermans, B., 2012, p. 830.

42 One can spot this similarity when one compare French and German laws as typical representatives of consensual and tradition systems respectively. For this see Salomons, F., A., 2011, p. 1074.

troversy would stem out of different transfer system traditions in different Member States. This impediment could be reduced if we leave the choice between consensual and tradition system aside. As we have seen there is a requirement of possession with regard to good faith acquisition in both systems. So it is possible to harmonize the rules on good faith acquisition without choosing between these two systems. However the obstacle still stands because we would have to choose between abstraction and causality principle.

The alternative could be a neutral demand that in cases of acquisition from a person who lacks the right or authority to pass the ownership all the requirements of regular transfer have to be fulfilled. This way it would be left to conflict of law rules to determine which transfer rules would be applicable in a particular case. However the harmonization of good faith acquisition rules would lose a lot of its value by this approach. One important part of the good faith acquisition mechanism would be influenced by collision norms which would diminish predictability of the rules. Given that the legal certainty is the main goal of the harmonization I propose, this would be a rather imperfect solution.

Therefore, there are two paths toward the harmonized rule on good faith acquisition. One path is harder but leads to a complete rule. The other path is easier one, but leads to an incomplete rule. In this paper I wish to pave the path towards a complete rule. Thus the choice between the abstract and the causal transfer system in the event of harmonization of good faith acquisition rules has to be made.

I believe that the main criterion for such a choice is legal certainty. The question is which transfer system provides more legal certainty in the context of internal market. If we choose the causal system another problem arises. We would have to either harmonize the reasons of invalidity, or leave the question of invalidity to the collision norms. The first option opens a discussion whether it is possible to find the common notion of immorality of a legal act, or the common rule on legal capacity etc. The second option, it seems, does not go well with the demand of legal certainty. Alternatively the abstract transfer system does not cause such problems. However it could leave the acquirer vulnerable to unjustified enrichment claims.[43] This does not serve the goal of legal certainty either. The correct solution would have to be reached after a thorough analysis which exceeds the scope of this article. For the purposes of this paper I will be satisfied with the conclusion that the harmonization of good faith acquisition rules should include the rules on the transfer of ownership.

43 Erp, S. van, Akkermans, B., 2012, p. 831.

III.2 DIRECTIVE OR REGULATION

Directives are legislative instruments which bind Member States to achieve a particular goal, but leave them a certain amount of freedom to choose the method of reaching that aim.[44] They have to be incorporated into the national legislation in order to be binding upon individuals.[45] On the other hand regulations are legislative instruments which do not have to be incorporated into the national law of Member States because they are directly applicable.[46] They are legally binding in their entirety.[47] They do not leave any space for legislative intervention by Member States when it comes to their subject matter.

The result of the harmonization I wish to promote in this paper should be creation of one set of rules applicable to all cross-border cases of good faith acquisition of movables. The purpose of such unification, as I have argued in the second part, is to establish legal certainty, and better environment for cross-border exchange. Having that in mind it seems that the regulation would be far better instrument of harmonization in this particular case than the directive.

On the other hand one could argue that the regulation is too intrusive an instrument for harmonization in the field of private law. However, as I already emphasized, the rule on good faith acquisition I have in mind is meant for cross-border cases only. Therefore there is no interference with the national laws.

III.3 CONCLUSION

Considering the above said, I deem that good faith acquisition rules should be harmonized in a regulation. It would be ideal if that regulation contained the rules on the transfer of ownership as well. By this I mean the rules that would reflect either abstract or causal transfer system. It is not necessary to choose between the consensual and tradition system. On the other hand insisting on such joint harmonization might hinder the creation of common rule on good faith acquisition, given that there are different concepts of transfer systems among the Member States. However, including abstract or causal transfer system rules into this harmonization is crucial should we wish to create a complete rule on good faith acquisition.

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44 TFEU, Art. 288 (3), (http://eur-lex.europa.eu, 03.06.2013).

45 Erp, S. van, Akkermans, B., 2012, p. 1026.

46 TFEU, Art. 288 (2).

47 TFEU, Art. 288 (2).

IV – Conclusion

Rules on good faith acquisition provide for legal certainty on the national level. However this certainty is lost on the internal market due to different approach different Member States take regarding the good faith acquisition rules. A regulation harmonizing the rules on good faith acquisition meant for cross-border cases only, together with the rules on the transfer of ownership would provide more legal certainty on the internal market without interfering with the national laws. Even if the current situation does not discourage citizens of the EU to participate on the internal market, such an instrument is desirable because it would raise the quality of the functioning of the internal market.

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HARMONIZACIJA STICANJA OD NEOVLAŠĆENOG – RAZLOG I METOD

Aleksa Radonjić

REZIME

Pravila o sticanju od neovlašćenog imaju ulogu da pruže pravnu sigurnost. Bez njih bi učesnici u pravnom prometu morali da ulože mnogo vremena i novca kako bi bili sigurni da će steći svojinu na pokretnim stvarima koje žele da pribave. Međutim, u kontekstu jedinstvenog tržišta EU ta pravila više ne pružaju pravnu sigurnost kako to čine unutar nacionalnih država. Naime, različite države članice na različit način uređuju sticanje od neovlašćenog. U prekograničnom prometu se postavlja pitanje čija pravila o sticanju od neovlašćenog će se primenjivati. To će zavisiti od kolizionih normi, što stvara pravnu nesigurnost jer se može dogoditi da isti ili slični slučajevi budu rešeni različito u zavisnosti od nacionalnog prava koje će se primenjivati. Na primeru prava Francuske, Nemačke i Holandije demonstrirao sam da u slučaju da lice A kupi od lica B ukradenu pokretnu stvar, pri čemu je lice A savesno u pogledu te činjenice, a lice B je osoba čija je delatnost da tu vrstu stvari stavlja u promet, lice A neće steći svojinu na toj stvari ako se na slučaj primenjuje nemačko pravo. Nasuprot tome, lice A će steći svojinu na stvari ako je merodavno holandsko pravo, dok bi prema francuskom pravu vlasnik mogao da otkupi tu stvar od savesnog sticaoca u roku od tri godine. Ako uzmemo u obzir i druge razlike: na primer stroži standard savesnosti u Holandiji nego u Nemačkoj ili činjenicu da je u Holandiji uslov za sticanje od neovlašćenog punovažnost osnova sticanja, dok u Nemačkoj i Francuskoj nije, kao i to da se ova tri sistema nalaze na sredini skale između italijanskog i portugalskog pravnog sistema kao krajnosti, jasno je da na jedinstvenom tržištu EU postoji pravna nesigurnost kada je reč o sticanju od neovlašćenog. To se do sada nije pokazalo kao prepreka funkcionisanju jedinstvenog tržišta jer će prosečan čovek retko razmišljati o tome šta će biti ako se ispostavi da prodavac nije ovlašćen da mu proda stvar. Ipak, to ne znači da stanje ne treba učiniti boljim nego što jeste.

Kao rešenje ovog problema predložio sam harmonizaciju pravila o sticanju od neovlašćenog. Dakle, kako bi sticanje od neovlašćenog i na jedinstvenom tržištu EU pružilo pravnu sigurnost kakvu pruža i na unutrašnjim tržištima država članica, neophodno je uspostaviti jedno pravilo o sticanju od neovlašćenog koje bi važilo samo za prekogranične slučajeve. Osim toga trebalo bi se opredeliti da li će se na te slučajeve primenjivati apstraktan ili kauzalan sistem prenosa prava svojine. Izbor prvog sistema

bi značio da punovažnost osnova sticanja neće biti uslov sticanja od neovlašćenog, a izbor drugog bi značio da je punovažnost osnova sticanja *conditio sine qua non* za sticanje od neovlašćenog. Ako je cilj harmonizacije ovog instituta otklanjanje pravne nesigurnosti na jedinstvenom tržištu EU, onda bi izbor drugog sistema prenosa zahtevao i jedinstvena značenja onih instituta koji utiču na punovažnost pravnih osnova kakvi su mane volje, poslovna sposobnost, moral i sl. To se može pokazati kao težak zadatak. Alternativa je opredeljenje za apstraktan sistem prenosa, jer takav izbor ne rađa pomenute probleme, mada sticaoca izlaže riziku od tužbe zbog neosnovanog obogaćenja. Bilo kako bilo, izbor valja načiniti, a kriterijum je koje od dva rešenja pruža veću pravnu sigurnost u kontekstu jedinstvenog tržišta EU. To je izbor koji mora biti plod pažljive analize.

Konačno, ova harmonizacija treba da bude izvedena uredbom EU kao pravnim aktom koji je u svojoj celosti obavezujući. Ovo imajući u vidu da je reč o stvarnim pravima i da je cilj uspostavljanje pravila koje će biti isto za sve kad god je u pitanju prekogranični promet. Na taj način bi se postigao veći kvalitet funkcionisanja jedinstvenog tržišta, ali bez zadiranja u pravni poredak država članica jer bi se pomenuto pravilo primenjivalo samo na transakcije na jedinstvenom tržištu.

Ključne reči: sticanje od neovlašćenog, harmonizacija, prenos svojine, prenos pokretnih stvari.

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