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Regulating Unfair Banking Practices in Europe: The Case of Personal Suretyships

Stephen Weatherill, Aurelia Colombi Ciacchi

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Private persons often stand surety for a business debt incurred by family members, friends, or employers. These suretyships are commonly banking guarantees contracted by means of standard terms. Sometimes the guarantor signs the contract while he/she is not aware of the financial risk related to the guarantee. He or she may not even know what a suretyship is. But in other circumstances the guarantor may be well aware of the risk, but may nonetheless assume it because of strong emotional ties which exist between him/her and the main debtor. How, then, (if at all) does the law address the potential for 'unfairness' in such situations?

Some systems choose to rely on objective criteria, such as identification of a manifest disproportion between the guaranteed amount and the surety's income and assets, while others are more open to subjective inquiry. The key point is variation. Different jurisdictions in Europe operate different models with different priorities.

This book provides a comparative overview of the remedies against unfair obligations of non-professional guarantors available in 22 EU Member States, based on a questionnaire which has been completed by an expert in each particular jurisdiction and covering both legal rules and the economic context of different credit markets and banking practices.

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