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COOPERATION – SIDE’S OBLIGATION OF INTERNATIONAL PRIVATE CONTRACT

The performance of contracts often depends on the extent of good faith in cooperation between the contractual parties. The parties’ obligation to cooperate has been regulated by international uniform acts. The need to respect this obligation derives from certain provisions of current Ukrainian legislation.

Draft Common Frame of Reference (DCFR) and the UNIDROIT Principles of International Commercial Contracts understand cooperation as one that «may reasonably be expected for the performance of the other party’s obligations». Under the DCFR breach of obligation to cooperate attracts the various remedies prescribed for non-performance of a contractual obligation.

Cooperation includes the proper performance of parties’ contractual obligations, any other actions necessary for contract performance, which may or may not be

stipulated by the contract (obtaining permits, licenses, etc.), giving the other party the information necessary for contract performance, the information concerning the possible the risk of harm to persons or property by the performance of contract, giving the notice to the other party about the obstacles in contract performance and taking measures to reduce loss.

The contractual party suffered by the breach of the contract has to take measures to mitigate loss. In order to do this it has to take «reasonable steps». The compliance of steps with «reasonableness» criterion is evaluated in each case taking into account all relative circumstances. However, in general, it can be concluded that such steps may include entering into replacement transactions, taking measures to prevent destruction of the goods, the suspension of using a facility after finding its defects and others.