Policy options for progress towards a European contract law for consumers and businesses

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The Committee on Legal Affairs adopted the own-initiative report by Diana WALLIS (ALDE, UK) welcoming the open debate on Green Paper from the Commission of 1 July 2010 on policy options for progress towards a European Contract Law for consumers and businesses.Members note that in the wake of the global financial crisis, it appears more important than ever to provide a coherent European contract law regime in order to realise the full potential of the internal market, and thus help meet our Europe 2020 goals. Accordingly, the report supports action to address the range of barriers faced by those who wish to enter into cross-border transactions in the Internal Market and considers that, along with other measures, the European Contract Law project could be useful for realising the full potential of the internal market, entailing substantial economic and employment benefits. It highlights the economic importance of SMEs and craft manufacturing businesses in the European economy, noting that it is clear that the application of foreign (consumer) law to cross-border transactions under the Rome-I Regulation has been seen to entail considerable transaction costs particularly for SMEs, which, in the UK alone have been estimated at EUR 15 000 per business and per Member State. Members insist on the need to ensure that the 'think small first' principle promoted by the 'Small Business Act' is well implemented and considered as a priority in the debate over EU initiatives related to contract law.

Legal nature of the instrument of European Contract Law: Members favour the option of setting up an optional instrument (OI) by means of a regulation. After clarification of the legal basis, they believe that such an OI could be complemented by a ‘toolbox’ that could be endorsed by means of an interinstitutional agreement. They look forward to the publication of the results of the Expert Group on a Common Frame of Reference in the area of European contract law, in order to clarify the scope and the content of the OI. They call for the creation of "European standard contracts models", translated in all EU languages, linked to an Alternative Dispute Resolution (ADR) system, carried out on line, which would have the advantages of being a cost-effective and simpler solution for both contractual parties and the Commission. The report makes the following points:

- only by using the legal form of a Regulation can the necessary clarity and legal certainty be provided;
- a ‘toolbox’ could possibly be put into practice step-by-step, starting as a Commission tool, and being converted, once agreed between the institutions, into a tool for the Union legislator;
- all parties, be it in B2B or B2C transactions, should be free to choose or not to choose the OI as an alternative to national or international law (opt-in) and therefore the Commission needs to clarify the intended relationship of an OI with the Rome -I-Regulation and international conventions including the United Nations Convention on Contracts for the International Sale of Goods (CISG);
- an OI would generate European added value, in particular by ensuring legal certainty through the jurisdiction of the Court of Justice, providing at a stroke the potential to surmount both legal and linguistic barriers, as an OI would naturally be available in all EU languages;
- the Commission must clarify the advantages of an OI for both consumers and businesses and also clarify which contracting party will have the choice between the OI and the "normally" applicable law and how the Commission intends to reduce transaction costs.

Scope of application of the instrument: the committee believes that both business-to-business and business-to-consumer contracts should be covered. Furthermore, the OI must offer a very high level of consumer protection, in order to compensate consumers for the protection that they would normally enjoy under their national law. The level of consumer protection should be higher than the minimum protection

provided by the Consumer Acquis and cover as many national mandatory rules as possible as satisfactory solutions must be found to problems of private international law. This high level of consumer protection is also in the interests of businesses as the latter will only be able to reap the benefits of the OI if consumers of all Member States are confident that choosing the OI will not deprive them of protection.

Members state that they see benefits in an OI containing specific provisions for the most frequent types of contract, in particular for the sale of goods and provision of services. Insurance contracts should also be included within the scope of the OI. However, Members urge caution with regards to the inclusion of financial services from any contract law instrument proposed at this stage and call on the Commission to establish a dedicated intra-service expert group for any future preparatory work on financial services to ensure that any future instrument takes into account the possible specific characteristics of the financial services sector and any related initiatives led by other parts of the Commission, and to involve the European Parliament at an early stage.

Application of a European contract law instrument in practice: the report considers that the consumers and SMEs must be granted real benefits from an OI, and that it should be drawn up in a simple, clear and balanced manner which makes it simple and attractive to use for all parties. It recalls that further work on cross-border ADR remains a priority, but emphasises that, if the parties use one body of law provided by an OI, ADR will be further facilitated. The commission is asked to consider synergies when putting forward a proposal. The committee also a direct linkage between the OI and the European Order for Payment Procedure and the European Small Claims Procedure. It urges the Commission to carry out, in collaboration with Member States, quality testing and checks to ascertain whether the proposed instruments of European Contract Law are user-friendly, fully integrating citizens' concerns, providing added value for consumers and business, strengthening the Single Market and facilitating cross-border commerce.

Stakeholder involvement, impact assessment: Members emphasise the vital importance of involving stakeholders from throughout the Union and from different sectors of activity, including legal practitioners and recall the Commission to undertake a wide and transparent consultation with all the stakeholders before it takes a decision based on the results of the Expert Group. They also recall the need for a comprehensive and broad impact assessment, analysing different policy options, including that of not taking Union action, and focusing on practical issues, such as the potential consequences for SMEs and consumers, possible effects on unfair competition in the Internal Market and pinpointing the impact of each of those solutions on both the Community acquis and on national legal systems. The committee insists that Parliament should be fully consulted and involved in the framework of the ordinary legislative procedure with regard to any future OI to be submitted by the European Commission and that any OI proposed be subject to scrutiny and amendment under that procedure.