

Common European Sales Law

2011/0284(COD) - 11/10/2011 - Legislative proposal

PURPOSE: to improve the establishment and the functioning of the internal market by facilitating the expansion of cross-border trade for business and cross-border purchases for consumers.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: **differences in contract law between Member States** and the additional transaction costs and complexity that they generate in cross-border transactions dissuade a considerable number of traders, in particular SME, from expanding into markets of other Member States. These differences also have the effect of limiting competition in the internal market. Currently, **only one in ten traders in the Union exports goods within the Union** and the majority of those who do, only export to a small number of Member States. The value of the trade foregone each year between Member States due to differences in contract law alone amounts to **tens of billions of Euros**.

With its [2001 Communication](#) on European contract law, the Commission launched a process of extensive public consultation on the problems arising from differences between Member States' contract laws. In July 2010, the Commission launched a public consultation by publishing a '[Green Paper](#) on policy options for progress towards a European contract law for consumers and businesses', which set out different policy options on how to strengthen the internal market by making progress in the area of European contract law.

In response to the Green Paper, the European Parliament issued a [Resolution](#) on 8 June 2011 in which it expressed its strong support for an instrument which would improve the establishment and the functioning of the internal market and bring benefits to traders, consumers and Member States' judicial systems.

The [Commission Communication](#) 'Europe 2020' recognises the need to make it easier and less costly for traders and consumers to conclude contracts with partners in other Member States, notably by making progress towards an optional European contract law. The [Digital Agenda for Europe](#) envisages an optional instrument in European contract law to overcome the fragmentation of contract law and boost consumer confidence in e-commerce.

IMPACT ASSESSMENT: the Impact Assessment analysed the **seven policy** options set out in the Green Paper. These options were: (1) the baseline scenario (no policy change); (2) a toolbox for the legislator; (3) a Recommendation on a Common European Sales Law; (4) a Regulation setting up an optional Common European Sales Law; (5) a Directive (full or minimum harmonisation) on a mandatory Common European Sales Law; (6i) a Regulation establishing a European contract law; (7) a Regulation establishing a European Civil Code.

The **establishment of an optional uniform contract law regime** (Option 4) was therefore reasoned to be the most proportionate action as it would reduce transaction costs experienced by traders exporting to several Member States and give consumers more product choice at a lower price

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the Proposal provides for the **establishment of a Common European Sales Law**. It harmonises the national contract laws of the Member States not by requiring amendments to the pre-

existing national contract law, but by creating within each Member State's national law a **second contract law regime** for contracts covered by its scope that is identical throughout the European Union and will exist alongside the pre-existing rules of national contract law.

This 'second regime' is characterised by the following features:

- **A contract law regime common to all Member States:** the Common European Sales Law will be a 'second regime' of contract law that is identical in every Member State. It will be common for the whole of the EU.
- **An optional regime:** the choice of the Common European Sales Law will be voluntary. In line with the principle of freedom of contract, a trader is free to choose to offer a contract under this regime (opt-in system) or to remain with the existing national contract law.
- **Focus on 'sales' contracts:** the Common European Sales Law will introduce a self-standing and complete set of rules for sales transactions. This will in particular but not exclusively be useful for the online supply of goods. The Common European Sales Law could also be used, for example when buying music, films, software or applications that are downloaded from the internet. These products would be covered irrespective of whether they are stored on a tangible medium such as a CD or a DVD.
- **Limited to cross-border contracts:** the scope of the Common European Sales Law is focussed on cross-border situations where the problems of additional transactions costs and legal complexity arise. The Common European Sales Law is therefore targeted to where it is needed and is not available as a general substitute to existing national contract law. It is left to the discretion of Member States whether to give the regime a wider application. Member States thus have the choice to make the Common European Sales Law also available for domestic contracts – which could further reduce transaction costs for businesses active on the single market.
- **Focus on B2C contracts and B2B contracts where at least one party is an SME:** the scope of the Common European Sales Law is focussed on aspects which pose real problems in cross-border transactions, i.e. business-to-consumer relations and business-to-business relations where at least one of the parties is an SME. Contracts concluded between private individuals (C2C) and contracts between traders where neither of the parties is an SME are not included.
- **Identical set of consumer protection rules:** the Regulation will establish for all the areas of contract law the same common level of consumer protection.
- **A comprehensive set of contract law rules:** the Common European Sales Law includes rules that cover issues of contract law that are of practical relevance during the life-cycle of a cross-border contract. These issues fall within the areas of the rights and obligations of the parties and the remedies for non-performance, pre-contractual information duties, the conclusion of a contract (including formal requirements), the right of withdrawal and its consequences, avoidance resulting from a mistake, fraud or unfair exploitation, interpretation, the contents and effects of a contract, the assessment and consequences of unfairness of contract terms, restitution after avoidance and termination as well as prescription. It settles the sanctions available in case of the breach of the obligations and duties arising under its application. On the other hand, certain topics that are either very important for national laws or less relevant for cross-border contracts – such as rules on legal capacity, illegality/immorality or representation and the plurality of debtors and creditors – will not be addressed by the Common European Sales Law. These topics continue to be governed by the rules of the national law that is applicable under the Rome I Regulation.
- **With an international dimension:** the proposal also has an international vocation in that, in order to be applicable, it is sufficient that only one party is established in a Member State of the EU. This international vocation enables the Common European Sales Law to become a standard setter for international transactions in the area of sales contracts.

BUDGETARY IMPLICATION: after the adoption of the proposal, the Commission will set up a database for the exchange of information concerning final judgments referring to the Common European Sales Law or any other provision of the Regulation, as well as relevant judgements of the Court of Justice of the

European Union. The costs associated with this data-base are likely to grow as more final judgments become available. At the same time, the Commission will organise **training sessions for legal practitioners using the Common European Sales Law**. These costs are likely to decrease with time, as knowledge about how the Common European Sales Law works spreads.