

Common European Sales Law

2011/0284(COD) - 11/10/2011 - Document attached to the procedure

This Commission communication accompanies the proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (*for details of this proposal, please refer to the summary of the initial legislative documents dated the same day*).

(1) Barriers hindering cross-border trade: despite these impressive successes, barriers between the EU Member States still remain. Many of these barriers result from **differences between national legal systems**. Among the main barriers that hinder cross-border trade are differences between the contract law systems of the EU's 27 Member States.

- **Difficulties for traders** (notably micro and small businesses): overcoming these hurdles means incurring transaction costs. The transaction costs to export to one other Member State could amount up to 7% of a micro retailer's annual turnover. To export to four Member States this cost could rise to 26% of its annual turnover. Traders who are dissuaded from cross-border transactions due to contract law obstacles forgo at least €26 billion in intra-EU trade every year.
- **Difficulties for consumers:** these differences make it more difficult to shop in countries other than their own, a situation which is particularly felt in the context of online purchases. 44% of consumers say that uncertainty about their rights discourages them from buying from other EU countries. While a third of consumers would consider buying online from another EU country if uniform European rules would apply, only 7% currently do. At least 3 million consumers had this experience over a one year period.

(2) The need for action at European Union level: the EU has been working on European contract law for a decade. 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. The Commission subsequently financed the work of an international academic network which carried out the preparatory legal research. This research work was finalised at the end of 2008 and led to the publication of the **Draft Common Frame of Reference** as an academic text.

On 1 July 2010, the Commission launched a public consultation ([Green Paper](#)) on different ways to make contract law more coherent in the EU.

The European Parliament has for many years strongly supported the work on European contract law. In June 2011, in response to the Commission's Green Paper, the Parliament voted a [resolution](#) with a four-fifths majority in support of optional EU-wide contract rules that would ease cross-border transactions (Option 4 of the Green Paper). The European Economic and Social Committee has also adopted an Opinion in favour of an optional advanced new regime on contract law.

Following the extensive consultation with stakeholders, and on the basis of an impact assessment, the Commission has decided to bring forward a **proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law**. This proposal is meant as a contribution to enhancing growth and trade in the internal market on the basis of freedom of contract and a high level of consumer protection. The proposal foresees a comprehensive set of uniform contract law rules covering the **whole life-cycle of a contract**, which would form part of the national law of each Member State as a 'second regime' of contract law. This 'second regime' is carefully targeted to those contracts that are most relevant to cross-border trade, and where the need for a solution to the barriers that have been identified is most apparent.

(3) Effectiveness of the Common European Sales Law: the Commission considers that an **optional** Common European Sales Law will be more effective than soft law solutions, such as a simple ‘toolbox’ (which, as a non-binding instrument, would not be able to give traders or consumers legal certainty for their transactions), because it will create a single and uniform set of contract law rules that will be directly available for businesses and consumers.

Advantages for business:

- when a trader chooses the Common European Sales Law, it would be the only contract law rules that would apply in the area covered by its scope. Therefore, the trader would have to consider only one set of rules – those of the Common European Sales Law;
- the Common European Sales Law will ensure that businesses can substantially cut their transaction costs. In practice, a business seeking to expand into new markets would need to familiarise itself with just one contract law system in addition to the one with which it is already familiar. Once chosen, it represents a saving compared to the 26 national contract laws they would otherwise have to research to trade throughout the EU;
- for B2B contracts, use of the Common European Sales Law would add value by easing negotiations of the applicable law for SMEs. It could be easier to agree on a neutral law that is equally accessible for both parties in their own language.

Advantages for consumers:

- the Common European Sales Law has been designed to provide consumers with a **high level of protection**, and is the same in all Member States so that it can be seen as a mark of quality that can be trusted by consumers when buying across borders;
- the proposal will guarantee that a consumer is always **informed**, and consents to the fact that the contract is concluded on the basis of the Common European Sales Law. This information must be provided by the trader to a consumer alongside a summary of the core rights protected by way of a standardised information notice;
- the greater availability of cross-border offers will benefit consumers as more competition in the internal market will provide **more choice of products and the prospect of lower prices**.

(4) Flanking measures: following suggestions made by the European Parliament, businesses, legal practitioners and consumer organisations, the Commission will work closely with all relevant stakeholders to help develop ‘European model contract terms’ for specialist areas of trade or sectors of activity. A model contract which has standard terms and conditions and is available in all official languages of the European Union could be helpful for traders wishing to conclude cross-border contracts for which the Common European Sales Law is chosen. The Commission will, within 3 months of the entry into force of the Common European Sales Law, start this process by setting up a Group of Experts.

By 2018, the provisions of the Regulation itself will be reviewed taking into account, amongst others, the need to further extend the scope in relation to B2B contracts, market and technological developments in respect of digital content and future developments of Union acquis.