Basic information

2011/2013(INI) INI - Own-initiative procedure	Procedure completed
Policy options for progress towards a European contract law for consumers and businesses **Subject** 3.45 Enterprise policy, inter-company cooperation 3.45.08 Business environment, reduction of the administrative burdens 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
JURI Legal Affairs	WALLIS Diana (ALDE)	27/10/2010

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	PIETIKÄINEN Sirpa (PPE)	19/10/2010
IMCO Internal Market and Consumer Protection (Associated committee)	MAYER Hans-Peter (PPE)	06/12/2010

European Commission

Commission DG	Commissioner
Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

Key events

Date	Event	Reference	Summary
01/07/2010	Non-legislative basic document published	COM(2010)0348	Summary
20/01/2011	Committee referral announced in Parliament		
20/01/2011	Referral to associated committees announced in Parliament		
12/04/2011	Vote in committee		Summary
18/04/2011	Committee report tabled for plenary	A7-0164/2011	
06/06/2011	Debate in Parliament		
08/06/2011	Decision by Parliament	T7-0262/2011	Summary

08/06/2011	Results of vote in Parliament		
08/06/2011	End of procedure in Parliament		

Technical information	
Procedure reference	2011/2013(INI)
Procedure type	INI - Own-initiative procedure
Procedure subtype	Initiative
Legal basis	Rules of Procedure EP 55
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	JURI/7/04633

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE456.886	25/01/2011	
Amendments tabled in committee		PE460.697	04/03/2011	
Committee opinion	IMCO	PE456.844	22/03/2011	
Committee opinion	ECON	PE456.822	23/03/2011	
Committee report tabled for plenary, single reading		A7-0164/2011	18/04/2011	
Text adopted by Parliament, single reading		T7-0262/2011	08/06/2011	Summary

European Commission

Document type	Reference	Date	Summary
Non-legislative basic document	COM(2010)0348	01/07/2010	Summary

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_CHAMBER	COM(2010)0348	08/12/2010	
Contribution	CZ_SENATE	COM(2010)0348	14/12/2010	
Contribution	RO_SENATE	COM(2010)0348	15/12/2010	
Contribution	DE_BUNDESRAT	COM(2010)0348	20/12/2010	
Contribution	PT_PARLIAMENT	COM(2010)0348	21/01/2011	

Contribution	SE_PARLIAMENT	COM(2010)0348	21/01/2011	
Contribution	DE_BUNDESTAG	COM(2010)0348	31/01/2011	
Contribution	DK_PARLIAMENT	COM(2010)0348	31/01/2011	
Contribution	LU_CHAMBER	COM(2010)0348	13/05/2011	

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

2011/2013(INI) - 08/06/2011 - Text adopted by Parliament, single reading

The European Parliament adopted, by 521 votes to 145 with 8 abstentions a resolution welcoming the open debate on Green Paper from the Commission 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 resolution 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; and 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 resolution 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: Parliament believes that both business-to-business and business-to-consumer contracts should be covered. 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. It believes that the level of consumer protection should be higher than the minimum protection provided by the Consumer Acquis and cover national mandatory rules 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 they 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.

Parliament believes that the OI should be available as an opt-in in cross-border situations in the first instance and that guarantees are needed that Member States will be able to prevent any misuse of the OI in non-genuine cross-border scenarios. It further considers that the effects of a domestic opt-in on national bodies of contract law merit specific analysis.

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: Parliament 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. Parliament 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 recalls 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 acquisand on national legal systems. Members insist 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.

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

2011/2013(INI) - 01/07/2010 - Non-legislative basic document

PURPOSE: to launch a public consultation on policy options for progress towards a European Contract Law for consumers and businesses (Green Paper).

BACKGROUND: the internal market is built on a multitude of contracts governed by different national contract laws. Differences between national contract laws may entail additional transaction costs and legal uncertainty for businesses and lead to a lack of consumer confidence in the internal market. Divergences in contract law rules may require businesses to adapt their contractual terms. Partly for these reasons, consumers and businesses, in particular small and medium enterprises (SMEs) having limited resources may be reluctant to engage in cross-border transactions.

The Europe 2020 strategy recognises the need to make it easier and less costly for businesses and consumers to conclude contracts with partners in other EU countries, notably by offering harmonised solutions for consumer contracts, EU model contract clauses and by making progress towards an optional European Contract Law. The Digital Agenda for Europe refers to an optional contract law instrument to overcome the fragmentation of contract law, in particular as regards the on-line environment.

The idea of a European Contract Law has also received the support of the European Parliament, expressed in its resolution of 25 November on the Commission’s Communication regarding the Stockholm Programme.

The Commission has set up an Expert Group to study the feasibility of a user-friendly instrument of European Contract Law, capable of benefiting consumers and businesses which, at the same time, would provide for legal certainty. The Group will assist the Commission in selecting those parts of the **Draft Common Frame of Reference** (DCFR) which are directly or indirectly related to contract law, and in restructuring, revising and supplementing the selected provisions. The DCFR covers principles, definitions and model rules of civil law, including contract and tort law. It contains provisions for both commercial and consumer contracts.

CONTENT: the purpose of this Green Paper is to set out the options on how to strengthen the internal market by making progress in the area of European Contract Law, and launch a public consultation on them. Depending on the evaluation of the results of the consultation, the Commission could propose further action by 2012. Any legislative proposal will be accompanied by an appropriate impact assessment.

An **instrument of European Contract Law** should respond to the problems of diverging contract laws, without introducing additional burdens or complications for consumers or businesses. In addition it should ensure a high level of consumer protection. It should be comprehensive and self-standing, in the sense that references to national laws or international instruments should be reduced as much as possible. An instrument of European Contract Law could range from a non-binding instrument, aiming at improving the consistency and quality of EU legislation, to a binding instrument which would set out an alternative to the existing plurality of national contract law regimes, by providing a single set of contract law rules. As a general observation, a Union instrument would be made available in all official languages. This would benefit all stakeholders involved, legislators seeking guidance, judges applying rules and parties negotiating the terms of their contract.

The Green Paper proposes **different options**:

Option 1: publication of the results of the Expert Group: the outcome of the work of the Expert Group could be made easily available, by immediate publication on the website of the Commission, without any endorsement at Union level. This could be used by European and national legislators as a source of inspiration when drafting legislation and by contractual parties when drafting their standard terms and conditions.

However, divergences in contract law would not be significantly reduced by a text which has no formal authority or status for courts and legislators.

Option 2: an official "toolbox" for the legislator: the Commission could adopt an act (e.g. a Communication or Commission Decision) on European Contract Law to be used as a reference tool by the Commission to ensure the coherence and quality of legislation. A "toolbox" in European Contract Law could also be the object of an interinstitutional agreement between the Commission, Parliament and Council to make consistent reference to its provisions when drafting and negotiating legislative proposals bearing on European Contract Law.

The disadvantage of any "toolbox" is that it would not remove divergences in law and could not ensure a convergent application and interpretation of Union contract law by the courts.

Option 3: Commission Recommendation on European Contract Law: an instrument of European Contract Law could be attached to a Commission Recommendation addressed to the Member States, encouraging them to incorporate the instrument into their national laws. Such a Recommendation would allow the Member States to gradually adopt the instrument into their national laws on a voluntary basis. Furthermore, the Court of Justice of the EU would have jurisdiction to interpret the provisions of the Recommendation.

Such a solution bears the risk of an incoherent and incomplete approach between the Member States.

Option 4: Regulation setting up an optional instrument of European Contract Law: this would be conceived as a "2nd Regime" in each Member State, thus providing parties with an option between two regimes of domestic contract law.

It would provide parties, primarily those wishing to operate in the internal market, with an alternative set of rules. The instrument could be applicable in cross-border contracts only, or in both cross-border and domestic contracts. An optional instrument could constitute an alternative to full harmonisation of national laws, by offering a proportionate solution to internal market barriers stemming from diverging national contract laws.

On the other hand, a European optional instrument might be criticised for complicating the legal environment.

Option 5: Directive on European Contract Law: this could harmonise national contract law on the basis of minimum common standards. Member States would be able to retain more protective rules, subject to compliance with the Treaty. Such a Directive could decrease legal divergences, by achieving a degree of convergence between national contract laws. However, harmonisation through directives based on minimum harmonisation would not necessarily lead to uniform implementation and interpretation of the rules.

Option 6: Regulation establishing a European Contract Law: such a Regulation could replace the diversity of national laws with a uniform European set of rules, including mandatory rules affording a high level of protection for the weaker party. The Regulation could replace national laws in cross-border transactions only, or it could replace national laws in both cross-border and domestic contracts.

This solution would remove legal fragmentation in the field of contract law and lead to a uniform application and interpretation of the Regulation's provisions. However, it could raise sensitive issues of subsidiarity and proportionality.

Option 7: Regulation establishing a European Civil Code: this solution goes one step further than the Regulation establishing a European Contract Law, in the sense that it would cover not only contract law, but also other types of obligations (e.g. tort law and benevolent intervention). Such an instrument would reduce even further the need to fall back onto national provisions.

However, it is yet to be established to what extent an extensive instrument such as a European Civil Code could be justified on grounds of subsidiarity.