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The optional Common European Sales Law – Seizing the opportunity!

Check Against Delivery
Seul le texte prononcé fait foi
Es gilt das gesprochene Wort

Conference on European Contract Law

Warsaw, 10 November 2011

Dear guests, dear colleagues,

I am glad to see so many of you at this very timely conference on the future of European contract law. I would like to thank our Polish colleagues for the warm welcome they have given us in Warsaw and for the excellent organisation of this conference.

It is almost one month to the day since the Commission adopted the proposal for a Regulation on an optional Common European Sales Law. This initiative aims to energise cross-border trade in the Union and contribute to economic growth.

More than ever in these times, we must not forget that Europe's strongest asset is our internal market of 500 million consumers. We have worked hard and with determination to achieve what we have. But let's be clear, there are still obstacles which stifle its full potential.

To make this market run smoothly, the Commission is committed to tackle the outstanding barriers – those that prevent traders who want to offer their products and services to customers in other EU Member States, or consumers who want to shop across borders in the EU.

Each year Europe loses out on cross-border trade by an estimated 26 billion euros a year because of legal differences in national sales laws.

Businesses have to investigate the various national consumer laws, hire specialised lawyers, and amend their contracts accordingly. It costs traders on average 10,000 euros to expand into the market of just one other Member State. When you look at this from the perspective of a micro enterprise – that means from the perspective of 92% of all SMEs in the EU – these costs could amount to up to 7% of its annual turnover.

This is hardly an incentive to expand your business into new markets. No wonder that as many as three quarters of European companies currently do not sell across borders!

This is a lost opportunity we cannot afford, most of all in challenging economic times.

Consumers are also losing out: consumers who try to take advantage of better deals in other countries are often refused sale or delivery by the trader. Furthermore, 44% of consumers say that uncertainty about their rights discourages them from buying from other EU countries. The result: only 7% of consumers buy from another Member State on the internet although many would like to do so if the conditions were changed.

Of course, these are challenges that the Commission has had in its sights for some while. They explain why the Commission brought forward in 2008 an ambitious proposal for a Consumer Rights Directive. This was based on a traditional harmonisation approach, replacing 27 different national rules with a single fully harmonised solution. The logic was sound, but the long and difficult political negotiations – and notably the opposition of consumer organisations across Europe to the full harmonisation method – showed that there are limits to how far we could go with the traditional approach. It would be an illusion, in particular in the field of contract law, to believe that we can scrap the national legal traditions.

So the Commission has taken an innovative approach in proposing an optional Common European Sales Law. It has above all listened. It has listened to the stakeholders and legal practitioners. It has listened of course to the European Parliament, and also, here I turn to Krzysztof, it has listened to the views expressed by the Justice Ministers of all 27 Member States at the very useful conference organised by the Polish Presidency in Sopot in July.

The result is a proposal which is a new form of harmonisation. The Common European Sales Law does not seek to substitute itself for the national Civil Codes or to interfere with the coherence of these codes. Instead, it is an additional set of uniform contract law rules which can be freely chosen by traders and consumers selling and buying across borders. A single set of rules - easy to understand, easy to use. The proposal fits with the existing *acquis* of Union law, but because of its voluntary nature, it can go that extra distance in completing the single market.

I would like to run through its main characteristics, because they underline how the proposal respects both the proportionality and subsidiarity principles.

Choice is the key: nobody will be forced to use the Common European Sales Law; the optional EU rules will not replace existing national contract laws. Instead, they provide an alternative identical set of rules available in each national legal order, which make cross-border transactions easier and cheaper.

The proposal is restricted to cross-border contracts, thereby following the call from most Ministers at the Sopot Informal Council. This approach also reflects our economic analysis, by targeting the cross-border situations where the problems of additional transaction costs and legal complexity arise. But I don't want to be restrictive either. If national governments want to make these rules available for domestic contracts – as some Ministers indicated this in Sopot –, then they will be free to do so. The Commission proposal has explicitly left the door open for such a national choice.

The proposal covers both business-to-consumer and business-to-business contracts. This is in line with the preferences expressed by many stakeholders and with what most Ministers of Justice advocated in Sopot. But again, our proposal is targeted to where it is needed: in B2B contracts at least one party needs to be a micro, small or medium sized enterprise. Because it is SMEs that disproportionately feel the burden of additional transaction costs caused by divergent national contract law systems. Again, if national governments wish to go beyond this limitation to cover all B2B contracts, they are free to do so. The Commission proposal explicitly allows this for those governments who want to go further, as a few of them already indicated in Sopot.

The proposal is deliberately targeted at "sales" contracts, as goods account for the majority of intra-EU trade. But, in our increasingly digital world, it makes sense to cover also digital content products. Consumers today buy much more than tangible goods such as books, clothes or cameras. They also use contracts to download music, films or smart-phone applications. Indeed, I see a particular use for the optional regime in the on-line world, where the potential for cross-border trade is so much stronger than we see today.

The proposal for an optional instrument in contract law is thus a key initiative in the effort of the European Union to boost e-commerce! The optional Common European Sales Law will provide traders with a uniform set of contract law rules which they could use in all internet transactions. It will also allow traders to use the same internet platform for all Member States, without having to customise it to comply with the legal requirements in each Member State where they wish to sell their products. As a consequence, EU traders will be able to become more efficient, competitive and innovative. Consumers on the other hand will have wider access to better and cheaper offers across borders.

Understandably, many of you have made a high level of consumer protection a condition for your support for an optional instrument. This is certainly the message I took from the Sopot conference in July. I made a specific trip to Finland to inform myself about the high level of consumer protection in this country to make sure that the Commission's proposal takes this fully into account. Now that the Commission proposal is on the table, most experts tell us that it achieves a level of protection that is laudable. This is also said in the European consumer body BEUC's press release.

I am firmly committed to maintain this high level of protection during the forthcoming negotiations, as it is a core part of the overall equation.

Consumers need to have the confidence that their core rights are guaranteed and that they do not take risks when shopping abroad under the Common European Sales Law. And the more consumers use the Common European Sales Law, the better knowledge they will have of their rights. This is also the best way to make sure that the Common European Sales Law will develop into a mark of quality in our internal market and the use of it will become a competitive advantage for traders.

By now, you have seen and gauged the potential of the Commission proposal. You would understand therefore why the Commission has identified, in our "Roadmap for stability and growth" of 12 October, this proposal as one of eight strategic growth-enhancing initiatives whose adoption should be accelerated by all EU institutions in 2012.

The European Council's Conclusions on 23 October have also widely recognised the need to do more in order to tap into the potential of the single market. Moreover, our Heads of State and Government explicitly support the digital agenda in order to encourage e-commerce.

I applaud the Polish Presidency who has continuously advocated the need for boosting online trade and the optional Common European Sales Law at the highest political levels.

I also wish to congratulate the Polish Presidency on making progress in the Justice Ministers Council on this file one of its priorities.

I want us to be ambitious and deliver a legislative tool which will help our economies to come out of the current economic downturn. This new approach to completing the internal market can play an important part in helping our economies on the road to stability, recovery and new growth.

The optional Common European Sales Law will provide companies with an easy and cheap way to expand their business to new markets. It will bring more choice, security and a better deal to consumers. In the Commission's analysis, it's a win-win situation: for businesses and consumers who want to take advantage of our Single Market. Europe needs to develop and exploit such win-win situations. Because we have no time to lose in our fight for stability, growth and competitiveness of this marvellous continent. Some say in these days that Europe is in danger. I do not share this negative view. I believe Europe is full of opportunities and of potential that we just need to unlock with determination. And the optional Common Sales Law is one of these opportunities.