



EUROPEAN COMMISSION

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The Common European Sales Law – a useful tool for business

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

CCBE debate on the proposed Common European Sales Law / Brussels
17 December 2012

Ladies and gentlemen,

Thank you very much for inviting me to speak to you today. I am delighted that you have organised this useful debate on the Common European Sales Law under the banner "lawyers buying into the process".

I have read the CCBE's Position Paper. I know how engaged your body, representing 1 million lawyers across Europe, has been in this project over the past years. I am thus very grateful for the general support that you give to it as a useful optional instrument of contract law. And I am glad Europe's lawyers are 'buying into the process', because I know just how important the role you play is. In addition to the vast experience your members bring, it is clear that Europe's lawyers will have a crucial role in advising clients on this common contract law and in drawing up standard terms and conditions based on it.

The Common European Sales Law is a measure inspired by the Single Market. It will give consumers and businesses the option of using a single sales law for cross-border contracts, and will give those three quarters of European companies who currently do not sell across borders an incentive to expand.

It will help traders and consumers to better exploit Europe's goldmine – our single market. It will ensure that Europe does not miss out on the billions of euros worth of cross-border trade it could be making. In today's economic situation we cannot afford to squander the asset that is our single market.

The aim of my proposal is to provide a single cross-border sales law that can be used with one IT platform and one set of model contract terms. Traders would simply have to fill in the deal-specific details.

Of course, one of the guiding principles I stuck by in designing the proposal was the need to respect Europe's different national legal traditions. Europe's diversity is its biggest source of strength and this must be preserved. The optional Common Sales law will thus co-exist with national contract laws and not replace them. Instead, the new proposal will provide an alternative harmonised set of rules available in each national legal order, which make cross-border transactions easier and cheaper for those that are interested. The scope of the proposal has also been carefully targeted to deal with areas where we have identified problems.

This optional approach is the right fit for contract law. It fits well with the principle of freedom of contract. Nobody will be forced to use the Common European Sales Law. Both parties to a contract have to agree on its application and nobody will be obliged to use it. Companies that decide to use the optional instrument would only do so if the economic advantages outweigh the costs. Those who do not want to use it will continue to conclude contracts under existing national contract laws.

I know that there is an appetite out there for such an instrument. I welcome your position paper and am pleased to see that in it you call upon the EU institutions to adopt the proposal.

As you correctly stress in your paper, we have indeed taken on board a number of your earlier suggestions in making the proposal.

I understand very well your view that the Common European Sales Law should maximise legal certainty for contractors. Let me assure you that this is my objective too. That is why, taking account of your earlier comments, the proposal reduced wherever it could "open" wording. For example, we chose not to use the term "reasonable period" where we could identify a more specific period of time, such as 30 days. However, we also needed to leave some flexibility in the text to allow a fair and balanced decision in a specific case.

Your Position Paper flagged that there is still more that can be done to clarify the text. For example, we are taking very careful note of your points that some of the proposed terminology is unclear and could give rise to inconsistencies – in all language versions. This kind of input is very valuable so I would therefore like to invite you to communicate any specific other points you have to my services.

But I am well aware that our work will not end with the adoption of the text. As is the case for all new legislation, there will be a period of adjustment to the new rules.

We have to ensure that standard terms and conditions based on the new rules can quickly be put in place. The Commission will actively support this process, working closely with stakeholders. That also means drawing on the experience of your members in the CCBE. These standard terms and conditions can then easily be translated into the different languages, making life much simpler for businesses, especially SMEs.

I will also make resources available for the training of judges. And I know that others have expressed an interest in this, so I am reviewing how to ease this period of learning for other users too. Your further input in this would be most welcome.

I also envisage a database that enables courts to draw on existing case-law from all Member States. This database - accessible to everybody, but in particular to all legal practitioners, would ensure transparency and a de-facto convergence of relevant case-law. The database would contain national rulings applying Common European Sales Law provisions as well as translated summaries. This would ensure the consistency of application. In time, this database would also remove the necessity for judges to investigate foreign law and compare several laws. This in turn will help to lower litigation costs and shorten the length of proceedings.

With this in mind, it is reasonable to expect that the vast majority of issues would be resolved by Member States' courts without problematic inconsistencies. And that only a small number of questions would have to be taken to the Court of Justice in Luxembourg. We should also bear in mind that the Common European Sales Law builds on the biggest common denominator of contract law traditions in Member States. Even though the details are new, it would be a rare occurrence that the concepts and approaches underlying the instrument are alien to the courts that will have to apply them. This will limit the risk of fundamentally differing interpretations.

To support us on this journey we also have excellent work by way of commentaries like that edited by Professor Schulze. I thank you for your tremendous efforts in producing this commentary - which can be seen as a very helpful tool in showing others how the Common European Sales Law will work.

This is only one tool but nevertheless an important pre-cursor of what is taking place: There will be many others including – as mentioned in your position paper – comments which explain the Common European Sales Law article by article as well as suggestions for a digest to be created linking different court cases to each other.

Concluding remark

I am convinced the Common European Sales Law will play an important part in improving the position of European consumers and businesses, and I know that both the European Parliament and the Council will want to make sure that the final text strikes the very best balance between opportunities for businesses and consumers – for legal certainty and the necessary flexibility.

One year after the adoption of the proposal, where are we? There is now a good understanding of how this innovative approach will work, and how it will help make the internal market work for our businesses and our consumers. In both the European Parliament and the Council useful progress is being made in looking at the substance of the text. The Commission stands ready to help both to make the changes they consider necessary. Whatever we need to do to make the text better suited to achieve its objective we will do.

In this process, I will continue to listen very carefully to the viewpoints brought forward by stakeholders. That is why I am so pleased that the CCBE has taken the time to formulate its Position Paper and organise this debate.

I want us to be ambitious and deliver a tool which will help our economies to get out of the economic downturn. That means making it useful. That means making it work in practice. Thank you for helping us achieve this important goal!