

I would like to look at three issues. The first of these is whether the CESL is a legally watertight text. The second concerns the stance adopted by the Spanish Delegation to the CCBE in relation to the CESL. The third is whether the CESL will prove successful when put into practice. Allow me to try to respond to these three questions.

1) The first question I raised was whether the CESL is a legally watertight text. The answer is no; or rather, to put it another way, my answer is no. Personally I harbor certain doubts regarding terminology, methodology and even certain specific aspects of the sales regulations set in place by the CESL. However, I hasten to add to all those present that, in all honesty, this is an issue I have with each and every one of the EU and domestic legal provisions. This is only to be expected. I have my own personal take on how legal provisions should be drafted, as well as on their methodology and content.

My discrepancies regarding the CESL are nevertheless not major. Moreover, it should be borne in mind that, as I see it, the wording of the CESL is conditioned by certain circumstances that, one way or another, determine its contents. To take a few examples: the EU legal heritage has a bearing on the content of the CESL; the need to reach a compromise among an array of legal concepts; and the impossibility of identifying, in every circumstance, the most appropriate solution in the difficult balancing act between consumer law and company law, between contractual freedom and the need to protect certain groups.

I had the privilege of sitting on the key Stakeholders' Roundtable on European Contract Law organized by the Commission, and, as a member, I listened in on and took part in lengthy, complex debates on the solution best suited to each particular case. Nothing is straightforward. In my own case, for example, at times I had a fixed idea or viewpoint and, following the debate, it struck me that my idea or viewpoint was not the most appropriate and that other Roundtable members had put forward better arguments. At other times, the arguments of other Roundtable members didn't ring true, although other people were convinced.

In short, while the CESL is not a perfect legal text, it does represent a major step forward in legal terms and one that, taken as a whole, merits a positive technical assessment and should therefore be supported and defended.

None of which means, now that the European Parliament is scrutinizing the Commission's Proposal, that certain amendments cannot and should not be made to the Proposal. These amendments should not be seen as a criticism of the very worthwhile work performed by the Commission, but rather as a chance to improve on what has already been done.

2) The second issue I raised at the start of my speech concerns the stance taken by the Spanish Delegation to the CCBE with respect to the CESL. In keeping with my highly positive overall assessment of the CESL, the Spanish delegation has backed the CESL and continues to do so. Aside from a positive technical appraisal, there are other reasons to support the CESL. Speaking from my experience as a lawyer, I have observed how

companies have had to invest considerable sums of money on legal advice not only to ensure that they comply with the various requirements established under the legislations of the various member states, but also to ascertain the potential legal consequences of certain actions that, ultimately, are governed by domestic laws. We must face facts. The progress made thus far under a range of directives in terms of harmonization is not enough. A company looking to operate in all 27 EU member states will need 27 different legal advisers. This discourages companies from taking the decision to open for business across the whole of the EU. Consumers and businesses alike therefore miss out on the fabulous opportunities on offer in the common market.

Even so, occasionally companies are willing to pay 27 lawyers in order to find out which legal regime applies to which country. However, from an internal standpoint, the need to sell something under 27 different contracts is a highly inefficient way of going about things. This explains why, in the end, some companies opt to draw up a single contract in the knowledge that this one-size-fits-all approach may give rise to problems of validity, efficacy and enforcement in one or more Member States. This may also pose a problem for consumers, who may reach the conclusion that, given the wording of the contract, they are not well placed to claim certain rights to which they are in fact entitled.

Aside from this particular advantage offered by the CESL, there is another that should not be underestimated. I truly believe that the CESL will serve as a stimulus to encourage a considerable number of member states to update their domestic sales-related legislation. As things stand, many of the

current national legal systems are a legacy of Roman Law. But the fall of the Roman Empire is now a thing of the distant past and the world and, above all, economic trade, has changed. The need has become clear to update many solutions that may have proven efficient back in Roman times but this may no longer hold true.

3) The last question I wish to raise is whether the CESL will prove successful when put into practice. We can but hope, but I am by no means sure. As I explained last week at a Public Hearing at the European Parliament, the specific problem of the CESL is not going to be enforcement, but rather its effective implementation in practice.

We need to be realistic. All court proceedings are, to a greater or lesser extent, slow, time consuming and expensive. This state of affairs, together with the fact that, at least at the outset, a huge number of transactions covered by the CESL are likely to be small claims, may lead to practical implementation-related problems. Such considerable legal expenses are hard to justify when the amount in dispute, or the price of the item, is low.

We should welcome with open arms any initiatives aimed at helping consumers enforce their rights across borders. From the consumer's point of view, such initiatives would be very useful and might encourage people to make use of the CESL, even though it is a new legal regime.

In this regard, EU institutions should support and approve the current legislative initiatives on Alternative Dispute Resolution (ADR) and Online

Dispute Resolution (ODR) as soon as possible, including any changes necessary for the effective implementation of the CESL.

It is also very important to ensure that the Commission follows through on its commitment to organising training sessions for legal practitioners on using the CESL. When organizing such training sessions, the Commission should seek assistance not only from Law Schools, but also from the national Council of Bars and the CCBE. The CCBE, as a stakeholder, has played and should continue to play a key role in the future of the CESL.

There are other initiatives that may be of use when it comes to effectively implementing the CESL, but perhaps it is best to put them to debate, if indeed the issue arises.

Many thanks