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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**A COMMON EUROPEAN SALES LAW TO FACILITATE CROSS-BORDER  
TRANSACTIONS IN THE SINGLE MARKET**

## 1. CONTEXT

One of the European Union's most significant achievements is the single market of 500 million consumers. Its fundamental freedoms entitle businesses and citizens to move and interact freely in a borderless Union. The steady lowering of barriers between EU Member States has brought numerous benefits to citizens, such as the freedom to travel, study and work abroad. Citizens in their capacity as consumers have enjoyed a number of economic benefits such as lower air fares and mobile telephone roaming charges and the possibility to access a larger variety of products. Traders have been able to expand their activity across borders, by importing or exporting goods, providing services or establishing themselves abroad. Thus they benefit from the economies of scale and the greater business opportunities that the single market offers.

Despite these impressive successes, barriers between the EU Member States still remain. They do not always allow citizens and businesses to take full advantage of the single market and more specifically cross-border trade. 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.

All economic transactions are based on contracts. This is why differences in the rules on how a contract is concluded or terminated, how the delivery of a faulty product has to be remedied or what interest has to be paid in the case of a late payment are felt in the daily life of both traders and consumers. For traders, these differences generate additional complexity and costs, notably when they want to export their products and services to several other EU Member States. 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.

- Difficulties for traders due to the existence of different contract laws

The existence of contract law related barriers may have a negative impact on businesses who are considering trading cross border and may dissuade them from entering new markets. Once a trader decides to sell products to consumers or businesses in other Member States, he becomes exposed to a complex legal environment characterised by the variety of contract laws that exist in the EU. One of the initial steps is to find out which law is applicable to the contract. If a foreign law applies, the trader has to become familiar with its requirements, obtain legal advice and possibly adapt the contract to that foreign law. When trading online, the trader also may have to adapt his web-site to reflect mandatory requirements that apply in the country of destination. Traders rank the difficulty in finding out the provisions of a foreign contract law first among the obstacles to business-to-consumer transactions and third for business-to-business transactions<sup>1</sup>.

Overcoming these hurdles means incurring transaction costs. These have the greatest impact on small and medium-sized enterprises (SMEs), in particular on micro and small enterprises,

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<sup>1</sup> Eurobarometer 321 on European contract law in business-to-consumer transactions, p. 23 and Eurobarometer 320 on European contract law in business-to-business transactions, p. 15. This situation is different in the United States of America. In spite of the existence of different contract law systems in the 50 States a trader established in Maryland, for example, can sell his products easily to a consumer based in Alaska, as under US law in such a situation the trader only needs to take account of the contract law rules applicable in Maryland and does not need to worry about the contract law of Alaska. In addition, the US Uniform Commercial Code has brought about strong convergence between the contract law systems of the different States. For US traders, the economic area of the 50 States is thus much more an internal market in contract law terms than the 27 Member States of the European Union are for EU traders.

because the cost to enter multiple foreign markets is particularly high when compared to their turnover. 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.<sup>2</sup> Traders who are dissuaded from cross-border transactions due to contract law obstacles forgo at least €26 billion in intra-EU trade every year.<sup>3</sup>

- Difficulties for consumers due to the existence of different contract laws

44% of consumers say that uncertainty about their rights discourages them from buying from other EU countries.<sup>4</sup> While a third of consumers would consider buying online from another EU country if uniform European rules would apply<sup>5</sup>, only 7% currently do.<sup>6</sup> Their uncertainty is often linked to concerns about what they can do if something goes wrong and uncertainty about the nature of their rights if they buy from another country. On the other hand, consumers who are confident and proactively search for products across the EU, in particular online, are often refused sales or delivery by the trader. At least 3 million consumers had this experience over a one year period. In practice, attempts to purchase products online more often fail than succeed<sup>7</sup> in a cross-border context and often end-up with a disappointing message such as “this product is not available for your country of residence.”

The Commission's ambition is to remove the remaining barriers to cross-border trade, helping traders in their transactions and making cross-border shopping easier for consumers. It has been demonstrated that bilateral trade between countries which have a legal system based on a common origin, such as common law or the Nordic legal tradition, is 40% higher than trade between two countries without this commonality.<sup>8</sup> With this in mind, the European Commission included a legal instrument on European contract law in its Work Programme 2011,<sup>9</sup> as specifically drawn to the attention of the European Parliament in a letter addressed by President Jose Manuel Barroso to the President of the European Parliament, Jerzy Buzek.<sup>10</sup> The need to tackle barriers posed by differences in contract law is specifically recognised in the *Europe 2020 Strategy*<sup>11</sup> and a number of other strategic documents for the EU. They include the *Action Plan for Implementing the Stockholm Programme*;<sup>12</sup> the *Digital Agenda for Europe*<sup>13</sup> which provides for an optional contract law instrument as one of its key actions to

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<sup>2</sup> Estimate based on business responses to the SME Panel Survey on the Impacts of European contract law, available at: [http://ec.europa.eu/justice/contract/files/report\\_sme\\_panel\\_survey\\_en.pdf](http://ec.europa.eu/justice/contract/files/report_sme_panel_survey_en.pdf) and Eurostat structural business statistics.

<sup>3</sup> Eurobarometer 320, European contract law in business-to-business transactions, pp. 24 and 25.

<sup>4</sup> Eurobarometer 299a, Attitudes towards cross-border trade and consumer protection, p. 10.

<sup>5</sup> Eurobarometer 299a, p. 14.

<sup>6</sup> Eurobarometer 299, Consumer attitudes towards cross-border trade and consumer protection, p. 13.

<sup>7</sup> SEC(2010)385, Third edition of the Consumer Markets Scoreboard, p. 9. A study where mystery shoppers tried to perform almost 11,000 test transactions showed that 61 % of the attempts to purchase cross-border products would have failed. In 50 % of the cases traders refused to serve the consumer's country.

<sup>8</sup> A.Turrini and T. Van Ypersele, *Traders, courts and the border effect puzzle*, Regional Science and Urban Economics, 40, 2010, p. 82.

<sup>9</sup> COM(2010) 623 final, 31.3.2010, p. 7.

<sup>10</sup> See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/393&format=HTML&aged=0&language=EN&guiLanguage=en>.

<sup>11</sup> Communication from the Commission, Europe 2020, A strategy for smart, sustainable and inclusive growth, COM(2010) 2020 final, 3.3.2010, p. 21. See also Annual Growth Survey, Annex I, progress report on Europe 2020, COM(2011) 11 - A1/2, p. 5.

<sup>12</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an area of freedom, security and justice for Europe's citizens, Action Plan Implementing the Stockholm Programme, COM(2010) 171 final, 20.4.2010, p. 5 and p. 24.

<sup>13</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Agenda for Europe, COM(2010) 245 final, 26.8.2010, p. 13 and p. 37.

promote the digital economy; the *Small Business Act Review*<sup>14</sup> which aims to tackle the obstacles, including those related to contract law, that hamper SMEs' potential to grow; and the *Single Market Act*<sup>15</sup> which advances the idea of a legal instrument that would facilitate cross-border transactions. In addition the *Annual Growth Survey* which opened the first European Semester underlined the potential of a legal instrument on European contract law for stimulating growth and trade in the single market.<sup>16</sup> The Polish Presidency of the Council of Ministers has made the further work on European contract law a priority for the second half of 2011<sup>17</sup>.

### 1.1. The current legal framework

The current legal framework in the EU is characterised by differences in contract laws between the Member States. EU legislation contains a number of common rules often tackling specific problems, but as can be seen from Annex I, these harmonised rules do not touch most areas of contract law, and where they apply, more often than not they still leave Member States with substantial flexibility to apply different rules. In Europe's single market, there is no single set of uniform and comprehensive contract law rules which could be used by businesses and consumers in cross-border trade.

- Conflict of law rules

In order to improve legal certainty in cross-border transactions, the EU put in place *uniform conflict of law* rules. The Rome I Regulation on the law applicable to contractual obligations allows contracting parties to choose which law applies to their contract and to determine which law applies in the absence of such a choice.<sup>18</sup> However, due to their nature, conflict of law rules cannot remove the differences between substantive contract law. They only lead to the determination of the substantive national law which applies to a cross-border transaction when several different national laws could potentially apply.

Furthermore, in cross-border business-to-consumer transactions, Article 6(2) of the Rome I Regulation also requires traders which direct their activity to the consumer's country of residence – this could happen, for example by opening a website in the language of this country, by offering to sell in the consumers currency or by using a top level domain name other than the one in the trader's country – to comply with the mandatory level of consumer protection in the consumer's country of residence. The trader may either apply the consumer's national law in its entirety or choose another law, in practice most likely its own law. However, even in the latter case the trader still needs to ensure compliance with the mandatory consumer protection provisions stemming from the consumer's national law, whenever they provide a higher level of protection. As a result, the trader's standard terms and conditions may have to be amended to the requirements of different countries.

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<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Review of the 'Small Business Act' for Europe, COM(2011) 78 final, 23.2.2011, p. 11 and p. 13.

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Single Market Act, Twelve levers to boost growth and strengthen confidence, Working together to create new growth, COM(2011) 206 final, 13.4.2011, p. 14 and p. 19.

<sup>16</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Annual Growth Survey: advancing the EU's comprehensive response to the crisis, COM(2011)11 final, 12.1.2010.

<sup>17</sup> See [http://pl2011.eu/sites/default/files/users/shared/o\\_prezydencja/programme\\_of\\_the\\_polish\\_presidency\\_of\\_the\\_council\\_of\\_the\\_eu.pdf](http://pl2011.eu/sites/default/files/users/shared/o_prezydencja/programme_of_the_polish_presidency_of_the_council_of_the_eu.pdf).

<sup>18</sup> Regulation (EC) of the European Parliament and of the Council No 593/2008 of 17 June 2008 on the law applicable to contractual obligations, OJ L 177/6 4.7.2008.

- Substantive law rules

The EU has taken some important steps to reduce the differences between the substantive laws, in particular in relation to consumer law, through the harmonisation measures that have been adopted. However, these harmonisation measures fall short of covering the whole life-cycle of a contract, and thus do not remove the need for a trader to take account of the contract law systems of his country of destination. In addition, these harmonisation measures are limited mainly to business-to-consumer transactions.

**For business-to-consumer (B2C) contracts**, the EU legal framework has led to a significant increase in protection to the advantage of consumers. However, notwithstanding the progress made in the recently adopted Consumer Rights Directive in aligning national laws, it is clear that in the field of consumer and contract law, there are political limits as to how far the 'full harmonisation' approach can be taken. This is reflected in the fact that the Directives relating to unfair contract terms and sales remedies<sup>19</sup> which allow Member States to build upon the core harmonised rights to various degrees have been retained by the European Parliament and the Council.

**For business-to-business (B2B) contracts**, the substantive rules the EU has adopted are even more limited in scope than for B2C contracts, covering a few specific issues in the area of contract law. For example the Directive on combating late payments<sup>20</sup> harmonises the rules on the default interest rate in cases of late payment, but allows Member States to apply more stringent rules. At the international level, a set of rules of a broader scope for B2B transactions was introduced by the 1980 UN Convention on the International Sales of Goods (the Vienna Convention). However, the Vienna Convention was not ratified by all Member States and is not applicable in the UK, Ireland, Portugal and Malta. It does not cover the whole life-cycle of a contract comprehensively and (in the absence of a compulsory jurisdiction within the UN system comparable to the one offered by the European Court of Justice for the EU's single market) contains no mechanism ensuring its uniform application as different national courts may interpret it differently. Only a relatively small number of traders use the Vienna Convention.<sup>21</sup>

## 1.2. 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,<sup>22</sup> the Commission launched a process of extensive public consultation on the problems arising from differences between Member States' contract laws. As a follow-up, the Commission issued an Action Plan in 2003,<sup>23</sup> proposing to improve the quality and coherence of European contract law by establishing a Common Frame of Reference containing common principles, terminology and model rules to be used by the Union legislator when making or amending legislation.

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<sup>19</sup> Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, O J L 171/12, 7.7.1999.

<sup>20</sup> Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (recast), O J L 48/1, 23.2.2011.

<sup>21</sup> Eurobarometer No 320 on European contract law in business-to-business transactions, p.57: only 9% of respondents said they frequently applied international instruments, including the Vienna Convention and the UNIDROIT Principles.

<sup>22</sup> Communication from the Commission to the Council and the European Parliament on European Contract Law, COM(2001) 398, 11.7.2001.

<sup>23</sup> Communication from the Commission to the European Parliament and the Council, A more coherent European Contract Law: an Action Plan, COM(2003) 68, 12.2.2003.

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<sup>24</sup> as an academic text.<sup>25</sup> In parallel to this, analytical work was also carried out by the Association Henri Capitant des Amis de la Culture Juridique Française and the Société de Legislation Comparée drafting the *Principes Contractuels Communs*.<sup>26</sup>

On 1 July 2010, the Commission launched, for a period of six months, a public consultation (Green Paper) on different ways to make contract law more coherent in the EU. The Green Paper put forward a range of different policy options. They included a ‘toolbox’ setting out coherent definitions, principles and model rules on topics related to contract law, a Regulation which would replace all national contract laws with a single European law, or the idea of an optional instrument in the EU which would be available as an alternative to existing national laws for parties to choose. The Commission received 320 replies<sup>27</sup> to this consultation. Several stakeholders saw value in a ‘toolbox’, while Option 4 (an optional instrument of European contract law) received support either independently or in combination with a ‘toolbox’, provided that it fulfilled certain conditions, namely a high-level of consumer protection and clarity and user-friendliness of the provisions.

Prior to this, by Decision of 26 April 2010,<sup>28</sup> the Commission set up an expert group on European contract law, which comprised of former judges, legal practitioners, and academics from across Europe. On the basis of the research done so far, the Group was tasked with developing a Feasibility Study on a possible future European contract law instrument covering the main aspects which arise in practice in cross-border transactions. To ensure close interaction between the work of the Expert Group and the needs identified by consumers, businesses (notably SMEs) and the legal profession, a key stakeholder group (so-called ‘Sounding Board’) was set up by the Commission which gave practical input to the Expert Group on the user-friendliness of the rules developed for the Feasibility Study. The Feasibility Study was published on 3 May 2011 – as a ‘toolbox’ to inspire the further work of the EU institutions – which led to valuable input from stakeholders and legal experts. Of the 120 contributions received from interested parties, the majority of comments broadly grouped around three main issues concerning the proposal: its user-friendliness, the balance between business and consumer interests and legal certainty. The Commission took on board many of the suggestions which further improved and strengthened the proposal. The Commission also asked stakeholders whether digital content ought to be included in the proposal – the majority of respondents replied positively.

The European Parliament has for many years strongly supported the work on European contract law.<sup>29</sup> In June 2011, in response to the Commission’s Green Paper, the Parliament

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<sup>24</sup> Von Bar, C., Clive, E. and Schulte-Nölke, H. (eds.), *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference*, Munich, Sellier, 2009.

<sup>25</sup> The research work was financed by the Commission’s 6th Research Framework Programme, but is not an official Commission document.

<sup>26</sup> Fauvarque-Cosson, B. and Mazeaud, D. (eds.), *European Contract Law, Materials for a Common Frame of Reference: Terminology, Guiding Principles, Model Rules*, Munich, Sellier, 2008.

<sup>27</sup> The replies were submitted by most Member States, a large number of business organisations, several consumer organisations, many associations of legal practitioners and a considerable number of academics.

<sup>28</sup> O J L 105/109, 27.4.2010.

<sup>29</sup> Resolution of 26 May 1989 on action to bring into line the private law of the Member States, OJ C 158, 26.6.1989, p. 400; resolution of 6 May 1994 on the harmonisation of certain sectors on the private law of the Member States, OJ C 205, 25.7.1994, p. 518; resolution of 15 November 2001 on the approximation of the civil and commercial law of the Member States, OJ C 140 E, 13.6.2002, p. 538; resolution of 2 September 2003 on the Communication from the Commission to the European Parliament and the Council – A more coherent European contract law - An action plan, OJ C 76 E, 25.3.2004, p. 95; resolution of 23 March 2006

voted 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).<sup>30</sup> The European Economic and Social Committee has also adopted an Opinion in favour of an optional advanced new regime on contract law<sup>31</sup>.

## **2. AN OPTIONAL COMMON EUROPEAN SALES LAW**

### **2.1. Functioning of the Common European Sales 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, in line with the principles of subsidiarity and proportionality. The proposal integrates the 'toolbox' developed by the Expert Group on European contract law and the 'Sounding Board' of stakeholders, taking into account the input received on it by stakeholders and experts.

The Commission proposal for a Common European Sales Law 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. It is characterised by the following features:

*A contract law regime common to all Member States:* The Common European Sales Law will be a 'second regime' of contract law that is identical in every Member State. It will be common for the whole of the EU.

*An optional regime:* Choice of the Common European Sales Law will be voluntary. In line with the principle of freedom of contract, a trader is free to choose to offer a contract under this regime (opt-in system) or to remain with the existing national contract law. Neither businesses nor consumers are obliged to conclude a contract on the basis of the Common European Sales Law.

*Focus on 'sales' contracts:* The Common European Sales Law will introduce a self-standing and complete set of rules for sales transactions. This will in particular but not exclusively be useful for the online supply of goods. It could also be used by traders selling goods and directly related services offered by the trader, for instance installation of kitchen equipment. As goods account for the major share of intra-EU trade,<sup>32</sup> tackling the obstacles to sales transactions will have a positive impact on the overall intra-EU trade. In order to take into account the increasing importance of the digital economy, and to ensure that the new regime

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on European contract law and the revision of the acquis: the way forward, OJ C 292 E, 1.12.2006, p. 109-112; resolution of 7 September 2006 on European contract law, OJ C 305 E, 14.12.2006, p. 247-248; resolution of 12 December 2007 on European contract law, OJ C 323E, 18.12.2008, p. 364 -365 and the resolution of 3 September 2008 on the common frame of reference for European contract law, OJ C 295E, 4.12.2009, p. 31-32.

<sup>30</sup> Resolution of June 2011 on policy options for progress towards a European contract law for consumers and businesses, Procedure 2011/2013 (INI).

<sup>31</sup> OJ C 84/1, 17.3.2011.

<sup>32</sup> According to Eurostat Statistics in Focus 37/2010 and the Eurostat External and Intra-EU Trade Yearbook of 2009, the intra-EU trade volume in goods was 4 times the volume of trade in services in 2008.

is 'future-proof', digital content contracts will also fall within the scope of the new rules. This means that the Common European Sales Law could also be used, for example when buying music, films, software or applications that are downloaded from the internet. These products would be covered irrespective of whether they are stored on a tangible medium such as a CD or a DVD.

*Limited to cross-border contracts:* The scope of the Common European Sales Law is focussed on cross-border situations where the problems of additional transactions costs and legal complexity arise. The Common European Sales Law is therefore targeted to where it is needed and is not available as a general substitute to existing national contract law. It is left to the discretion of Member States whether to give the regime a wider application. Member States thus have the choice to make the Common European Sales Law also available for domestic contracts – which could further reduce transaction costs for businesses active on the single market. *Focus on B2C contracts and B2B contracts where at least one party is an SME:* The scope of the Common European Sales Law is focussed on aspects which pose real problems in cross-border transactions, i.e. business-to-consumer relations and business-to-business relations where at least one of the parties is an SME. Contracts concluded between private individuals (C2C) and contracts between traders where neither of the parties is an SME are not included, as there is at the moment no demonstrable need for EU-wide action for these types of cross-border contracts. The Common European Sales Law leaves Member States the option to decide to make the Common European Sales Law also available for contracts concluded between traders neither of which is an SME. The Commission will keep the matter under review in the coming years to see whether additional legislative solutions may be required as regards C2C and B2B contracts.

*Identical set of consumer protection rules:* The Regulation will establish for all the areas of contract law the same common level of consumer protection. As both a political and legal imperative, this harmonisation is carried out on the basis of a high level of consumer protection. It will lead to a harmonised regime that will ensure that a consumer is protected and safe whenever the Common European Sales Law is used.

*A comprehensive set of contract law rules:* The Common European Sales Law includes rules that cover issues of contract law that are of practical relevance during the life-cycle of a cross-border contract. These issues fall within the areas of the rights and obligations of the parties and the remedies for non-performance, pre-contractual information duties, the conclusion of a contract (including formal requirements), the right of withdrawal and its consequences, avoidance resulting from a mistake, fraud or unfair exploitation, interpretation, the contents and effects of a contract, the assessment and consequences of unfairness of contract terms, restitution after avoidance and termination as well as prescription. It settles the sanctions available in case of the breach of the obligations and duties arising under its application. On the other hand, certain topics that are either very important for national laws or less relevant for cross-border contracts – such as rules on legal capacity, illegality/immorality or representation and the plurality of debtors and creditors – will not be addressed by the Common European Sales Law. These topics continue to be governed by the rules of the national law that is applicable under the Rome I Regulation.

*With an international dimension:* The proposal also has an international vocation in that, in order to be applicable, it is sufficient that only one party is established in a Member State of the EU. Traders could use the same set of contract terms when dealing with other traders from within and from outside the EU. European consumers could enjoy more product choice with the guaranteed level of high protection offered by the Common European Sales Law where



traders from third countries are willing to sell their products in the internal market on this basis. This international vocation enables the Common European Sales Law to become a standard setter for international transactions in the area of sales contracts.

## **2.2. Effectiveness of the Common European Sales Law**

The Commission's approach tackles the problems that differences in contract law pose for consumers and traders in the manner most respectful of the principles of proportionality and subsidiarity, when compared to other possible solutions analysed. 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. At the same time, the combination of the characteristics outlined above, in particular, the fact that the Common European Sales Law represents an optional but identical set of rules applying only in cross-border cases means that it can lower barriers to cross-border trade without interfering with deeply embedded national approaches and traditions. For instance, it will allow Member States to maintain different consumer protection levels in their already existing domestic contract law in accordance with the EU acquis. The Common European Sales Law will be an optional addition to existing contract law rules without replacing them. Thus the legislative measure will only go as far as necessary to create further opportunities for traders and consumers in the single market. In addition, there is greater scope to agree on a set of identical rules based on a high level of protection as included in the Common European Sales Law, precisely because of the voluntary nature of the regime. A business can opt for the system, because it wishes to be associated with the high level of protection provided, but there is no obligation for it to do so.

- 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. It would no longer be necessary to consider other national mandatory provisions as they would normally have to when concluding a contract with a consumer from another Member State. It would be sellers who would in practice take the initiative in opting to use the Common European Sales Law. Buyers would then have to give explicit consent before this type of contract could be used.

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. Traders can therefore benefit from this simpler common legal environment and have more confidence to expand into new markets. When selling to consumers in other countries, traders can use their adherence to the Common European Sales Law as a mark of quality.

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. Having familiarised themselves with the Common European Sales Law once, traders would no longer incur costs whenever it applies. As the problem of costs particularly affects SMEs, the Common European Sales Law

is thus targeted at those B2B contracts where at least one of the parties is an SME. To ensure that maximum benefit can be reaped by SMEs the Commission would encourage Member States, via appropriate channels, to inform traders about the Common European Sales Law and its benefits. In addition, every Member State is given the choice to make the Common European Sales Law also available for B2B contracts where neither of the parties is an SME, where a Member State considers this to be appropriate.

- 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. One of the best examples of this is the fact that the Common European Sales Law will offer consumers a free choice of remedies if a faulty product is delivered. It therefore provides consumers with the possibility to terminate the contract immediately. Currently such a free choice does not exist for the large majority of consumers across the EU<sup>33</sup>. This high level of consumer protection will give consumers the confidence and incentive to buy products in other EU countries.

In the interests of transparency, 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. This notice will help consumers understand their core rights and thereby tackle the uncertainty that dissuades many consumers from shopping cross-border. As the information notice will be presented in a clear and concise format, as well as being provided in all official languages of the EU, it will help consumers who do not read the terms and conditions of their contracts, because of their length and complexity.

The greater availability of cross-border offers will benefit consumers in markets which are presently by-passed by traders because of contract law complexities or because, for businesses, the small size of the market does not justify incurring high transaction costs for entry. These consumers will benefit as more competition in the internal market will provide more choice of products and the prospect of lower prices.

### **2.3. Relationship with the acquis**

The proposal represents a complementary approach to that found in the existing acquis in the field of consumer protection. In the first instance, it incorporates and is consistent with those measures, albeit that it is not limited by minimum levels of protection that have been set. Secondly, given its limitation to cross-border contracts, it is not a replacement for the generally applicable acquis. There will therefore be a continuing need to develop consumer protection standards using the traditional harmonisation approach used in this area. In this respect, it can be expected that over time the two approaches will develop in tandem, and inspire one another.

The proposal is in line with other EU policies. For example it envisages that traders consider using alternative dispute resolution as an efficient, quick and inexpensive way of resolving

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A free choice of remedies, as included in the Common Sales Law, does not exist in Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Malta, the Netherlands, Poland, Romania, Slovakia, Spain and Sweden. In fact, only five Member States offer the same result as in the Common Sales Law (France, Greece, Lithuania, Luxembourg, Portugal) whilst a few others adopted an intermediate approach (Ireland, Latvia, Slovenia, U.K).

disputes without going to court. Furthermore, those who do wish to go to court for amounts not exceeding €2000, are able to access the European Small Claims Procedure which has been established to facilitate cross-border recovery of debts.

The proposal also provides support for future initiatives which aim at reducing barriers to trade in the single market, whether through harmonisation Directives or by other appropriate measures. It contains some specific, sales-related rules for contracts for the supply of digital content which could in the future provide a basis for a more comprehensive policy and measures on consumer protection in the digital market. 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*.

The Commission will also continue to examine broader aspects of consumer law, such as whether to update or extend consumer-related rules, for instance when revising the Unfair Commercial Practices Directive and the Misleading Advertising Directive. In addition, the Commission will also continue reflecting on B2B commercial practices, including in their contractual dimension.

#### **2.4. Flanking measures**

In order to ensure the effective application and the uniform interpretation of the Common European Sales Law, the proposal envisages future supporting 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 which represents in particular, the interests of the users of the Common European Sales Law. Stakeholders could contribute the necessary knowledge and expertise about commercial practices and draw up standard terms and conditions in their sector while applying lessons from their first hand practical experiences with the use of the Common European Sales Law.

In order to ensure the uniform interpretation and application of the Common European Sales Law, the proposal also envisages the establishment of a publicly accessible database of European and national judicial decisions which have a bearing on the interpretation of the provisions of this instrument. Member States will be asked to notify such judgments to the Commission without delay.

In order to facilitate a common understanding of the provisions of the Common European Sales Law, the Commission will organise training sessions for legal practitioners who use the Common European Sales Law<sup>34</sup>.

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<sup>34</sup> Commission Communication on Building Trust in EU-wide Justice: a New Dimension to European Judicial Training, COM (2011) 551 final.

### 3. CONCLUSION

The Common European Sales Law is a concrete solution for a tangible problem for businesses and consumers: costs and legal uncertainty when buying or selling cross-border in Europe's internal market. It is also an innovative approach because, in line with the principle of proportionality, it preserves Member States' legal traditions and cultures whilst giving the choice to businesses to use it. Consumers benefit, not only because of the confidence it provides through its high level of protection, but also because its use will lead to lower prices and more product choice. For traders, it cuts red tape and transaction costs, thus contributing to more cross-border trade and growth of the European economy.

The Commission will work closely with the European Parliament and the Council and with national Parliaments to ensure a swift agreement on the Common European Sales Law in time for the 20<sup>th</sup> anniversary of the Single Market. The Commission will also continue to work closely with stakeholders, and notably with the users of the Common European Sales Law (in particular SMEs and consumers) as well as with the legal profession to achieve a broad acceptance of the Common European Sales Law across the European Union because, in view of its optional nature, the success of the Common European Sales Law will in the end depend on whether and to which extent it will be chosen for transactions in the internal market.

**ANNEX I**

**EU Legal Framework in the area of the proposal on a Common European Sales Law**

<b>Business-to-consumer contracts</b>				<b>Business-to-business contracts</b>		
<b>Contract law area</b>	<b>Consumer rights Directive</b>	<b>Other relevant EU consumer legislation</b>	<b>E-commerce Directive</b>	<b>E-commerce Directive</b>	<b>Directive on combating late payments</b>	<b>Vienna Convention on the international sale of goods</b>
Pre-contractual information and negotiation	YES	YES	YES	YES	NO	NO with a few exceptions
Conclusion of contract	NO	NO	YES partially	NO	NO	YES
Rights to withdraw	YES	YES	NO	NO	NO	NO
Defects in consent	NO	NO	NO	NO	NO	NO
Interpretation	NO	NO (with one exception)	NO	NO	NO	YES
Contents and effects	NO	NO	NO	NO	NO	NO with a few exceptions
Unfair contract terms	NO	YES	NO	NO	YES partially	NO
Obligations and remedies of the parties to a sales contract	NO	YES	NO	NO	NO	YES
Delivery and Passing of Risk	YES	NO	NO	NO	NO	YES
Obligations and remedies of the parties to a related service contract	NO	NO	NO	NO	NO	NO
Damages, Stipulated payments for non-performance and interest	NO	NO	NO	NO	YES	YES
Restitution	NO	NO	NO	NO	NO	YES
Prescription	NO	NO	NO	NO	NO	NO