



MINISTRY
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European Contract Law – civil law as an instrument of development of internal market

1. Introduction

As the European Union heads towards recovery from the economic downturn, it is imperative that it fully exploits the single market's potential for growth. The European Council¹ has underlined that the single market should play a key role in delivering growth and employment and promoting competitiveness. Particular emphasis should be laid on measures that create growth and jobs and that deliver tangible results for European citizens and businesses. The EU must make sure that consumers and businesses are not precluded from taking advantage of the single market's full potential.

Trade is based on contracts, which express agreements and specify the considerations of contractual parties. When entering into cross-border transactions, consumers and businesses are inevitably faced with different contract law systems. Lack of familiarity with these rules frequently results in the business' refusal to sell products to consumers from other countries, thus depriving consumers of more advantageous offers. The legal costs associated with entering the market of other Member States may prove to be prohibitive, in particular for small businesses, which otherwise would be willing to engage in cross-border trade, in particular e-commerce. Certainly, a combination of obstacles hinders the operation of the single market, for example those stemming from language and cultural differences, or even the geographical distance between the buyer and the seller. While it is true that the European Union may not, and indeed should not, resolve all these differences, for example, the language divergences, it should act where it can make a difference, for example, by

putting at the disposal of market actors the same legal safety net available in all EU languages. As envisaged by the "Stockholm programme for 2010-2014 – An open and secure Europe serving and protecting citizens"², the European judicial area should serve to support economic activity in the single market.

Against this background, further consideration can usefully be given to the existing views on the future of contract law in Europe³, in the light of the serious challenges related to the economic downturn that European citizens and businesses are facing at the moment. In particular, some of the measures considered so far by the Council including the toolbox of the Common Frame of Reference, although helpful for better law making purposes could not alone bring imminent and direct benefits for the European economy and European citizens. A toolbox, whilst useful, should not preclude other, more focussed initiatives specifically oriented towards Europe's businesses and consumers.

At the same time, a pragmatic approach calls for an openness to solutions that do not put at risk the systemic coherence of national contract law systems. Therefore, any regulatory solution that aims at facilitating the life of consumers and businesses should not be overly intrusive from the perspective of national law.

2. Future of the contract law in the EU

The European Commission attaches strategic importance to the need to tackle the remaining barriers hindering the single market, including those posed by the differences in contract laws. This is recognised in a number of strategic documents, such as the Europe 2020 Strategy⁴, the Digital Agenda for Europe⁵, the Communication on the Review of the "Small Business Act"⁶, the Single Market Act⁷ and the Action Plan for Implementing the Stockholm Programme⁸. In its Green Paper on policy options for progress towards a European Contract Law for consumers and businesses, the Commission presented various alternatives (including a toolbox, harmonisation of national contract law provisions, an optional regime and establishment of a European Civil Code).

2 O.J. 04.05.2010, C 115/1.

3 For example the Guidelines on the setting up of a common frame of reference for European contract law adopted by 2946th Justice and Home Affairs Council, Luxembourg 5 June 2009.

4 COM(2010) 2020 final, p. 21, 3.3.2010; Annual Growth Survey, Annex 1, progress report on Europe 2020 (COM(2011) 11 - A1/2) p. 5.

5 Digital Agenda for Europe (COM(2010) 245 final, 26.8.2010, p. 13 and p. 37.

6 Review of the Small Business Act for Europe, COM(2011) 78 final, 23.2.2011, p.11 and p.13.

7 The Single Market Act Twelve levers to boost growth and strengthen confidence (COM(2011) 206 final, 13.4.2011, p. 14 and p. 19.

8 Action Plan Implementing the Stockholm Programme (COM(2010) 171 final, p. 5 and p. 24, 20.4.2010).

Recent negotiations on the Consumer Rights Directive have shown that there are clear limits to how far full harmonisation can be taken in the area of consumer and contract law. At the same time, the example of the existing consumer *acquis* shows that the approximation of national consumer contract laws based on minimum standards has failed to facilitate the smooth functioning of the single market. Therefore, there might be a need to explore alternative measures, which are more proportionate and less intrusive, but which offer the potential for citizens and businesses to benefit from the single market to the fullest extent.

An alternative set out in the Commission's Green Paper is that of an optional contract law regime. This could take the form of a voluntary harmonised contract law regime, based on a high level of protection offered to weaker parties and limited to the situations with the highest single market potential. As such, it might constitute a good approach for the way forward.

In this context, the Polish Presidency is of the opinion that the European contract law initiative deserves careful consideration. The Polish Presidency would therefore like to invite the Ministers to participate in an exchange of views on the following questions:

1. Do you believe that businesses and consumers in your country fully benefit from the potential offered by the single market? In particular, are consumers held back by the businesses' refusal to offer products due to high compliance costs stemming from diverging contract law regimes? Can more be done to encourage businesses to sell to consumers in other Member States in the light of divergences in national contract law systems?
2. Do you agree as to the need to work towards a European law instrument potentially based on an optional and voluntary contract law regime with the aim of facilitating the conclusion of contracts within the single market?
3. What should be the scope of such an instrument? Are you in favour of limiting the scope at the first stage to: a) B2C contracts, b) cross-border contracts c) contracts concluded online?