

Company law

European contract law to be limited to cross-border situations

By Sophie Petitjean | Tuesday 04 October 2011

The future European contract law instrument will be limited to cross-border transactions, according to the proposal seen by *Europolitics*. After a number of consultations and impact assessments, the European Commission seems to have opted for an optional instrument limited to cross-border business-to-business (B2B) and business-to-consumer (B2C) contracts for the sale of goods and the provision of digital content and related services.

The instrument will probably be a draft regulation, although the executive initially considered a draft directive ("on a common sales law for the European Union").

The Commission will adopt the text on 12 October, simultaneously with the publication of two Eurobarometers.

The EU executive's aim is to address the heterogeneous nature of contract law in the European Union. At least €26 billion worth of business is lost annually by operators who choose not to go through with cross-border transactions due to contract law barriers, estimates the Commission. It wishes to propose an optional instrument that would be identical across Europe and limited to B2B and B2C cross-border contracts.

In practice, this means that the two parties will be able to choose to use the instrument or not as an alternative to national legislation or international law. For a B2C contract, use of the tool must reflect a "conscious and informed" choice by the consumer, who will have to complete a specific statement attesting to this choice and may terminate the contract without cost if the seller fails to transmit the necessary information.

The new proposal will supplement the recent directive on consumers' rights, which does not cover digital content or B2B contracts. European contract law may therefore apply to the provision of music, video games, software, etc (whether or not they are offered on a tangible medium or involve a financial transaction). Services directly related to the provision of specific goods or digital content (repair, maintenance and installation) may also be covered if they are combined or related to the contract at the same time.

The Commission also introduces a provision that encourages the parties concluding a contract based on the common instrument to use alternative dispute resolution for any disputes that may result from the contract.

Stages

The proposal suggests the establishment, three months after the new rules enter into force, of an expert group charged with developing a standard European contract. It would complement the EU contract law instrument and strengthen its practical application, particularly by taking account of specific sectoral features.

The Commission has the European Parliament's support on this optional contract law instrument (see box), but nothing could be less certain in the Council. According to informed sources, Poland is the only state that has expressed enthusiasm over this initiative so far.

Background

On 8 June, members of the EP backed the idea of presenting a European contract law instrument and expressed a preference for an optional instrument (own-initiative report by Diana Wallis on the Commission's green paper on options for progress towards a European contract law for consumers and businesses). This optional instrument, they said, should take the form of an EU regulation that could be matched with a tool box that would cover a wider range than contract law alone. MEPs also recommended different arrangements for business-to-business contracts and business-to-consumer contracts, with special attention paid to protection of the weakest party to the contract, namely the consumer. Against the rapporteur's opinion, they chose to limit the optional instrument to cross-border situations.

The European Consumers' Organisation BEUC, the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME) and the notaries' association Notaires d'Europe have already blasted this optional legal instrument. In a joint letter to MEPs ahead of the plenary vote, these organisations denounced its uselessness, saying such an instrument would simply create complexity and confusion.