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A Common Sales Law for the European Union: Helping Start-Ups to driving Growth, Jobs and Innovation

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

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Ladies and Gentlemen,

We are living in challenging economic times. The old certainties are gone. There is no time for complacency, and certainly not the moment to sit back and relax.

On the contrary, this is the moment for all of us to invest in innovation leading to new jobs and new products making Europe a prosperous and dynamic economic area. A Europe that will grow its way out of the crisis and a Europe that can compete in a world of new economic superpowers.

That means that all of us – policy makers as well as industry leaders as much as government ministers – have to take action to further break down persisting barriers to our Single Market of 500 million consumers. The Single Market is our greatest asset. It is the engine which can help us kick-start economic growth. To realise the full potential of our Single Market and make it run smoothly, we must breakdown the remaining barriers.

I am pleased to see that so many of you are interested in European contract law, especially as it affects all of us in our daily lives. But it affects in particular SMEs. You write in your Lisbon Council Policy Brief "The Rise of the Micro-Multinational" that policy-makers tend to focus on economic incumbents and existing market players – rather than on newcomers. And as you rightly point out, it is exactly these start-ups (often small businesses) that are "today's key engine of growth and jobs".

With the upcoming proposal for an optional Common Sales Law for the European Union we want to focus on exactly these small companies so that they can take advantage of our Single Market by expanding into new market opportunities. We want to create the legal infrastructure that brings them the much-needed legal certainty while keeping the legal costs down.

Contract law is not something abstract. It is not something that only lawyers should care about. Contract law is part of our every-day lives: every economic transaction needs a contract and every contract is governed by a law. Contract law is the tool that allows economic transactions to happen. It is the oil that keeps the economic machinery turning. Contract law is therefore a central element in the establishment of our Single Market.

However, in the daily experience of traders and consumers, the legal diversity of Europe's contract law systems is a very concrete obstacle to cross-border transactions. This is notably the case in transactions between a business and a consumer.

The European Court of Justice has recently decided that the mere fact that a small business operates a website in the language of another EU Member State can be seen as an indication that the business is directing its products and services to consumers in this other Member State. In terms of contract law, this means that the small business must respect not only the rules in its country of establishment, but also the rules that apply in the country where the consumer is resident. For the small business, this means taking new risks. The business will have to obtain costly legal advice on other legal systems in the EU. The small business may even face the risk of being sued abroad.

The questions "Which law applies?", "Can I trust the legal systems of other countries?" and "Where and for which price can I get swift and reliable legal advice?" all become an important factor for businesses and consumers alike. Take for example the simple purchase of a book from Amazon or another similar site; several national contract laws may apply at the same time, leading to a substantial degree of legal uncertainty.

What does this mean in practice? Let us consider this jumping through a number of hoops to make sure a contract is legally correct.

Businesses wishing to carry out cross-border transactions may have to adapt to up to 26 different national contract laws translate them, seek legal advice. This costs time and money: an average of 10,000 euro for each additional export market. Adapting the websites will cost a further 3,000 euro, on average. To make things worse, the costs grow proportionately to the number of European countries a company trades with, and logically these costs have the greatest impact on micro and small companies, as these costs make up a greater share of their turnover.

Money and time are precious commodities these days. A lot of traders (especially those which are small or medium size) do not have the necessary resources to go through the process of adapting to new markets. So they simply abdicate from expanding into a new market. A recent survey revealed that 75% of European traders currently do not sell across a border. And those who do trade cross-border limit their exports to only a few countries, the European average being 1,8 territories per company. What a waste of possibilities!

Our research confirms that the differences between contract laws are one of the principal obstacles in the way of cross border trade: 55% of companies active or interested in selling to consumers outside their national market said they were held back by a range of contract-law related obstacles – rather than by differences in language or culture.

So, the problem is clear: the contract law patchwork across the EU hampers the Single Market and is a barrier to growth. The trade that is presently lost costs the EU economy at least 26 billion euro in intra-EU trade every year.

In today's economic climate this is not smart and it is not sustainable. We must encourage cross-border trade to boost our economies. We must break down the barriers which are stopping us from doing so.

The problem is not just about traders. The differences in national contract laws also impact upon consumers who want to shop cross-border.

Consumers are often uncertain about their rights when confronted with different foreign laws. For example, what rights would they have if they bought a defective good? If they do not know the answer, get assurance, they lose confidence. So they decide not to buy cross-border and see their choices restricted. This means that consumers are put in a lose-lose situation: disadvantaged by a limited choice and often having to pay for higher price in their domestic market.

What about the consumer who nevertheless wants to buy cross-border? He is often refused sales or delivery by the trader. "We regret, but the product you requested is not available for your country". This is a message that European consumers must read far too often when ordering via the Internet. When this happens, consumers feel frustrated and, consequently, are discouraged from shopping cross-border.

This situation is negative for traders and consumers alike. They both cannot draw benefits from Europe's single market. What can we do to solve this problem?

When I took on the mission as EU Justice Commissioner, I decided to tackle this issue head on. I knew we had to deal with contract law barriers. I wanted to find a solution that respects national legal traditions, whilst still propelling our internal market forward.

In July 2010 I put several options on the table, ranging from a binding or non-binding "toolbox" (that EU lawmakers could draw from when they adopt new legislation to ensure a better coherence of rules) to the creation of a full-fledged European Civil Code (replacing all national contracts rules). The Commission publicly consulted during four months on the different options. We received 320 responses, pleading for all kinds of solutions. There were also proponents advocating the idea of the "tool box". Will a tool box is an interesting concept, but do you really think these are times to put the tools in a box? I believe that Europe cannot afford to leave the tools in a box. We need to take the tools in hand and put them to use. These tools have been well thought about. For more than two decades, experts and practitioners have worked on developing the right tools. Now, it is time to take these tools a step further and turn them into an operational system: an easy to use optional Common Sales Law for the European Union, with a high level of consumer protection, to be used in cross-border transactions. It will provide certainty to both consumers and businesses, it will be low-cost and anti red-tape, it will be a useful "tool" for boosting the internal market.

This Common Sales Law will leave national contract law or legal traditions intact. This is a very innovative approach, based on free choice, subsidiarity and competition. The optional EU Common Sales Law will be a set of concise and user-friendly rules, existing in all official EU languages, which parties can choose to use as a contract for their cross-border transactions. I insist on the word "choose", the new rules will only be chosen if they add value to cross-border operations.

This optional nature fits well with the principle of freedom of contract. It means that those traders that feel comforted by the status quo are left free to carry on trading under their own national law. On the other hand, those traders who see the advantage in the common set of rules for their cross-border transactions may opt for that regime.

In short, the optional EU rules will provide an alternative which makes cross-border transactions easier and cheaper. It's a win-win situation for business and consumers.

This new regime will soon become a "mark of quality" for consumers to rely upon. They need the confidence to venture across borders when they shop. They need to know that the optional instrument is a guarantee for high level of consumer protection. For example, the optional Common Sales Law provides the consumers with a free choice between several remedies if faulty goods are delivered to him. He can choose whether he wants the good repaired, replaced, a price reduction or the termination of the contract. Under the majority of national laws the consumer does not have this choice. You might certainly say that these kinds of consumer guarantees are a high price to pay for traders. They are not, considering the win-win situation of extending the market and reaching an important number of potential consumers at low cost!

SMEs are frequently lumped together with all other businesses. But limited resources, in terms of time, personnel and finances, mean that they can sometimes be as vulnerable as consumers. The Common Sales Law provisions acknowledge this fact. In contracts between businesses, it declares non-individually negotiated terms which are unfair, as non-binding. This control makes sure that the party with the stronger bargaining power, a large company for instance, does not take undue advantage of its stronger position by imposing unfair sales conditions. Many national laws do not contain such a safeguard for the weaker party. Our European contract law will!

The EU Common Sales Law will also be useful for online sales because a trader could use one single contract online and one single IT-platform to trade with consumers from multiple Member States.

We all know that the digital economy is becoming increasingly important, that is why we have to ensure that our law is 'future-proof'. Therefore digital content contracts will also fall within its scope. This means that the Common 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 or not on a tangible medium such as a CD or a DVD.

The important decision to propose such an optional Common Sales Law for the EU was not taken on a whim. When we spoke to European businesses, 70% of them said they would look forward to use a single European contract law for cross border sales as an alternative to the national laws, thus starting or increasing their cross border operations.

The European businesses made it clear, that there is appetite for such an instrument. But they also warned against a red-tape solution. This is why we choose a simpler, cheap and efficient way of setting the legal environment for contract law, promoting the Single Market and giving businesses – both new and established – access to 500 million consumers. We also choose this spirit of competitiveness: the optional Common Sales Law will become a success, only if and because it is chosen, freely by businesses and consumers alike, because they find it attractive, not because it is imposed on them.

Ladies and Gentlemen,

Next year we will celebrate the 20th anniversary of Europe's Single Market. A lot has been achieved over the past twenty years. However, we can be more efficient to help complete our Single Market. That means working on smart methods in order to eliminate the remaining obstacles.

Thank you.