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REPORT

on policy options for progress towards a European Contract Law for consumers and businesses
(2011/2013(INI))

Committee on Legal Affairs

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(*) Associated committee - Rule 50 of the Rules of Procedure

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on policy options for progress towards a European Contract Law for consumers and businesses
(2011/2013(INI))

The European Parliament,

– having regard to the Green Paper from the Commission of 1 July 2010 on policy options for progress towards a European Contract Law for consumers and businesses (COM(2010)0348),

– having regard to Commission Decision 2010/233/EU of 26 April 2010 setting up the Expert Group on a Common Frame of Reference in the area of European contract law[1],

– having regard to the Communication from the Commission of 11 July 2001 on European Contract Law (COM(2001)0398),

– having regard to the Communication from the Commission of 12 February 2003 entitled 'A more coherent European Contract Law – An Action Plan' (COM(2003)0068),

– having regard to the Communication from the Commission of 11 October 2004 entitled 'European Contract Law and the revision of the *acquis*: the way forward' (COM(2004)0651),

– having regard to the report from the Commission of 23 September 2005 entitled 'First Annual Progress Report on European Contract Law and the Acquis Review' (COM(2005)0456) and to the report from the Commission of 25 July 2007 entitled 'Second Progress Report on the Common Frame of Reference' (COM(2007)0447),

– having regard to the Communication from the Commission of 22 October 2009 on Cross-Border Business to Consumer e-Commerce in the EU (COM(2009)0557),

– having regard to its resolution of 3 September 2008 on the common frame of reference for European contract law[2],

– having regard to its resolution of 12 December 2007 on European contract law[3],

– having regard to its resolution of 7 September 2006 on European contract law[4],

– having regard to its resolution of 23 March 2006 on European contract law and the revision of the *acquis*: the way forward[5],

[1] OJ L 105, 27.4.2010, p. 109.
[2] OJ C 295 E, 4.12.2009, p. 31.
[3] OJ C 323 E, 18.12.2008, p. 364.
[4] OJ C 305 E, 14.12.2006, p. 247.
[5] OJ C 292 E, 1.12.2006, p. 109.

– having regard to its resolutions of 26 May 1989[1], 6 May 1994[2], 15 November 2001[3] and 2 September 2003[4] on the issue,

– having regard to Rule 48 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Internal Market and Consumer Protection and the Committee on Economic and Monetary Affairs (A7-0164/2011),

A. whereas the initiative on European contract law, which seeks to address Single Market problems created, inter alia, by divergent bodies of contract law, has been under discussion for many years,

B. whereas, in the wake of the global financial crisis, it appears more important than ever to provide a coherent European contract law regime in order to realise the full potential of the internal market, and thus help meet our Europe 2020 goals,

C. whereas the Single Market remains fragmented, owing to many factors, including failure to implement existing Single Market legislation,

D. whereas greater study is needed to further understand why the internal market remains fragmented and how best to address these problems, including how to ensure implementation of existing legislation,

E. whereas in the above-mentioned Green Paper the Commission sets out a range of options for a European Contract Law instrument which could help develop entrepreneurship and strengthen public confidence in the Single Market,

F. whereas the Expert Group set up to assist the Commission in preparing a proposal for a Common Frame of Reference (CFR) has started work, together with a stakeholders' round table,

G. whereas the divergence of contract law at national level does not constitute the only obstacle for SMEs and consumers in respect of cross border activities since they face other problems including language barriers, different taxation systems, the question of the reliability of online traders, limited access to broadband, digital literacy, security problems, demographic composition of the population of individual Member States; privacy concerns; complaint handling, and intellectual property rights etc.,

H. whereas, according to a Commission survey of 2008, three-quarters of retailers sell only domestically, and cross-border selling often takes place in a few Member States only[5],

I. whereas it is necessary to distinguish between conventional cross-border transactions and e-commerce, where specific problems exist and the transaction costs are different; whereas

[1] OJ C 158, 26.6.1989, p. 400.
[2] OJ C 205, 25.7.1994, p. 518.
[3] OJ 140 E, 13.6.2002, p. 538.
[4] OJ C 76 E, 25.3.2004, p. 95.
[5] Eurobarometer 224, 2008, p. 4.

it is also necessary for the purposes of future impact assessments, to carefully and precisely define how transaction costs are made up,

J. whereas it is clear that the application of foreign (consumer) law to cross-border transactions under the Rome-I Regulation[1] has been seen to entail considerable transaction costs for businesses, in particular for SMEs, which, in the UK alone have been estimated at €15 000 per business and per Member State[2],

K. whereas more information is required concerning the transaction costs resulting from the application of Article 6(2) and Article 4(1), point (a) of the Rome-I Regulation, bearing in mind that Rome I has only been applied since December 2009,

L. whereas such transaction costs are perceived as being one of the important obstacles to cross-border trade, as confirmed by 50 % of European retailers already trading cross-border interviewed in 2011 who stated that harmonisation of the applicable laws in cross border transactions across the EU would increase their level of cross-border sales, and 41 % said that their sales would not increase; whereas, in comparison, among retailers not selling across border, 60 % said that their level of cross-border sales would not increase in a more harmonised regulatory environment, and 25 % said it would increase[3],

M. whereas some of the most evident impediments that consumers and SMEs face with regard to the Single Market are complexity in contractual relations, unfair terms and conditions of contracts, inadequate and insufficient information and inefficient and time-consuming procedure,

N. whereas it is of paramount importance that any initiative from the EU will have to answer real needs and concerns of both businesses and consumers; whereas these concerns also extend to legal/linguistic problems (provisions of standard terms and conditions for small businesses in all EU languages) and the difficulties in enforcing contracts across borders (provisions of autonomous EU measures in the field of procedural law),

O. whereas a Commission study estimated that the online market remains fragmented: in a survey, 61 % of 10 964 test cross-border orders failed, and that cross-border shopping appears to increase consumers' chances of finding a cheaper offer[4] and of finding products not available domestically online[5], whereas the figure of 61% seems to be very high and to warrant further study, verification and assessment,

P. whereas gradual harmonisation does not effectively overcome obstacles in the internal market resulting from diverging national contract laws, any measures in this field must be based on clear evidence that such an initiative would make a real difference which cannot be achieved through other less intrusive means,

Q. whereas a common European Contract Law would benefit consumers and in particular

[1] OJ L 177, 4.7.2008, p. 6.
[2] UK Federation of Small Businesses, Position paper on Rome I (2007).
[3] Flash Eurobarometer 300, 2011
http://ec.europa.eu/consumers/strategy/docs/retailers_eurobarometer_2011_en.pdf
[4] COM(2009)0557, p.3.
[5] Ibid, p. 5.

contribute to more and easily accessible cross-border trade within the internal market,

R. whereas the negotiations on the Consumer Rights Directive[2] illustrated just how difficult it is to harmonise consumer law applied to contracts without undermining the common commitment to a high level of consumer protection in Europe and what limits this imposes on the process,

S. whereas any steps taken in the area of European contract law must take into account mandatory national rules, and must be coherent with the expected Consumer Rights Directive, which will have a significant impact on the content and on the level of harmonisation of a possible future instrument in the field of European Contract Law; whereas it would be necessary to constantly and carefully monitor its implementation in the next months in order to define which should be the scope of the optional instrument (OI),

T. whereas any end product in the field of European Contract Law must be realistic, feasible, proportionate and properly thought through prior to being amended, if necessary, and formally adopted by the European co-legislators,

1. Supports action to address the range of barriers faced by those who wish to enter into cross-border transactions in the Internal Market and considers that, along with other measures, the European Contract Law project could be useful for realising the full potential of the internal market, entailing substantial economic and employment benefits;

2. Welcomes the open debate on the Green Paper and urges the relevant Commission departments to carry out a thorough analysis of the outcome of this consultation process;

3. Highlights the economic importance of SMEs and craft manufacturing businesses in the European economy; insists, therefore, on the need to ensure that the 'think small first' principle promoted by the 'Small Business Act' is well implemented and considered as a priority in the debate over EU initiatives related to contract law;

Legal nature of the instrument of European Contract Law

4. Looks forward to the publication of the Expert Group's results in order to clarify the scope and the content of the OI and in order to engage in an open and transparent discussion with all stakeholders as to how these results should be used and as the Commission would consider additional options for facilitating cross-border activities; calls for the creation of "European standard contracts models", translated in all EU languages, linked to an ADR system, carried out on line, which would have the advantages of being a cost-effective and simpler solution for both contractual parties and the Commission;

5. Favours the option 4 of setting up an optional instrument (OI) by means of a regulation; after clarification of the legal basis; believes that such an OI could be complemented by a 'toolbox' that could be endorsed by means of an interinstitutional agreement;

6. Believes that only by using the legal form of a Regulation can the necessary clarity and

[2] COM(2008)0614.

legal certainty be provided;

7. Stresses that a Regulation setting up an OI of European Contract Law would improve the functioning of the internal market because of the direct effect, with benefits for businesses (reduction in costs as a result of obviating the need for conflict-of-law rules), consumers (legal certainty, confidence, high level of consumer protection) and Member States' judicial systems (no longer necessary to examine foreign laws);

8. Welcomes the fact that the chosen option takes appropriate account of the subsidiarity principle and is without prejudice to the legislative powers of the Member States in the area of contract and civil law;

9. Believes that a 'toolbox' could possibly be put into practice step-by-step, starting as a Commission tool, and being converted, once agreed between the institutions, into a tool for the Union legislator; points out that a 'toolbox' would provide the necessary legal backdrop and underpinning against which an OI and standard terms and conditions could operate and should be based on an assessment of the national mandatory rules of consumer protection within but also outside the existing consumer law acquis;

10. Takes the view that by complementing an OI with a 'toolbox', clearer information will be available on that EU instrument, helping the parties concerned to better understand their rights and to make informed choices when entering into contracts on the basis of that system, and that the legal framework will be more comprehensible and not overburdensome;

11. Believes that all parties, be it in B2B or B2C transactions, should be free to choose or not to choose the OI as an alternative to national or international law (opt-in) and therefore calls on the Commission to clarify the intended relationship of an OI with the Rome -I- Regulation and international conventions including the United Nations Convention on Contracts for the International Sale of Goods (CISG); considers however that further attention is required for ensuring that the OI offers protection to consumers and small businesses given their position as the weaker commercial partner and that any confusion is avoided when making a choice of law; therefore calls on the Commission to complement the OI with the additional information which will explain in a clear, precise and comprehensible language which are the consumer's rights and that they will not be compromised, in order to increase their confidence in the OI and to put them in a position to make an informed choice as to whether they wish to conclude a contract on this alternative basis;

12. Considers that an OI would generate European added value, in particular by ensuring legal certainty through the jurisdiction of the Court of Justice, providing at a stroke the potential to surmount both legal and linguistic barriers, as an OI would naturally be available in all EU languages; emphasises that, in order to create a better understanding of the way in which European institutions function, European citizens should have the opportunity to have all kinds of information connected with the optional instrument translated via accessible, easy-to-use online translation tools, so that they can read the desired information in their own language;

13. Sees a possible practical advantage in the flexible and voluntary nature of an opt-in

instrument; however calls on the Commission to clarify the advantages of such an instrument for both consumers and businesses and to better clarify which contracting party will have the choice between the OI and the "normally" applicable law and how the Commission intends to reduce transaction costs; calls on the Commission to include in any proposal for an OI a mechanism for regular monitoring and review, with the close involvement of all parties concerned in order to ensure that the OI keeps up with the existing acquis in contract law, particularly Rome I, with market needs and with legal and economic developments;

Scope of application of the instrument

14. Believes that both business-to-business and business-to-consumer contracts should be covered; emphasises that the OI must offer a very high level of consumer protection, in order to compensate consumers for the protection that they would normally enjoy under their national law; wishes for further explanation on how this could be achieved; believes therefore the level of consumer protection should be higher than the minimum protection provided by the Consumer Acquis and cover as many national mandatory rules as possible as satisfactory solutions must be found to problems of private international law; considers that this high level of consumer protection is also in the interests of businesses as they will only be able to reap the benefits of the OI if consumers of all Member States are confident that choosing the OI will not deprive them of protection;

15. Points out that the benefits of a uniform European Contract Law must be communicated in a positive way to citizens, if it is to enjoy political legitimacy and support;

16. Notes that the contract law provisions governing B2B and B2C contracts respectively should be framed differently, out of respect for the shared traditions of national legal systems and in order to place special emphasis on the protection of the weaker contractual party, namely consumers;

17. Points out that essential components of consumer law applied to contracts are already spread across various sets of European rules, and that important parts of the consumer acquis are likely to be consolidated in the Consumer Rights Directive (CRD); points out that the aforementioned Directive would provide a uniform body of law which consumers and businesses can readily identify; therefore, stresses the importance of waiting until the outcome of the CRD negotiations before any final decision is made;

18. Further believes, taking into account the special nature of the different contracts, especially B2C and B2B contracts, leading national and international principles of contract law, and the fundamental principle of a high degree of consumer protection, that existing branch practices and the principle of contractual freedom have to be preserved regarding B2B contracts;

19. Takes the view that an optional common European Contract Law could make the internal market more efficient without affecting Member States' national systems of contract law;

20. Believes that the OI should be available as an opt-in in cross-border situations in the first instance and that guarantees are needed that Member States will be able to prevent any

misuse of the OI in non-genuine cross-border scenarios, notes that it may also bring benefits in domestic situations, in particular through advantages via simplicity and cost-saving, especially for the SME sector; strongly believes, however, that it should be for Member States to choose whether to make the OI available on a domestic basis; further considers that the effects of a domestic opt-in on national bodies of contract law merit specific analysis;

21. Acknowledges that e-commerce or distance-selling contracts account for an important share of cross-border transactions; believes, that, whilst an OI should not be limited to these types of transaction, there could be merit in introducing other limits when applying the OI in the first instance, and until sufficient experience of its application has been gathered;

22. Emphasises the particular importance of facilitating e-commerce in the EU, given that this sector is underdeveloped, and considers it necessary to assess whether differences between national contract law systems could represent an obstacle to the development of that sector, which has rightly been identified by businesses and consumers as a potential motor for future growth;

23. Believes that the scope of a 'toolbox' could be quite broad, whereas any OI should be limited to the core contractual law issues; believes that a 'toolbox' should remain coherent with the OI and include among its 'tools' concepts from across the diverse range of legal traditions within the EU, including rules derived from, inter alia, the academic Draft Common Frame of Reference (DCFR)[1] and the 'Principes contractuels communs' and 'Terminologie contractuelle commune'[2]; and that its recommendations on consumer contract law should be based on a genuinely high level of protection;

24. Calls on the Commission and the Expert Group to clarify what is to be considered as 'core contractual law issues';

25. Sees benefits in an OI containing specific provisions for the most frequent types of contract, in particular for the sale of goods and provision of services; reiterates its earlier call to include insurance contracts within the scope of the OI, believing that such an instrument could be particularly useful for small-scale insurance contracts; stresses that, in the field of insurance contract law, preliminary work has already been performed with the Principles of European Insurance Contract Law (PEICL), which should be integrated into a body of European contract law and should be revised and pursued further; however, urges caution with regards to the inclusion of financial services from any contract law instrument proposed at this stage and calls on the Commission to establish a dedicated intra-service expert group for any future preparatory work on financial services to ensure that any future instrument takes into account the possible specific characteristics of the financial services sector and any related initiatives led by other parts of the Commission, and to involve the European Parliament at an early stage;

26. Points out that some specific issues in connection with which an OI might be beneficial

[1] Von Bar, Clive, Schulte-Nölke et al. (eds.), Principles, Definitions and Model Rules of European Private Law – Draft Common Frame of Reference (DCFR), 2008.
[2] B. Fauvarque-Cosson, D. Mazeaud (dir.), collection 'Droit privé comparé et européen' , Volumes 6 and 7, 2008.

have been raised, such as digital rights and beneficial ownership; considers that, on the other hand, there might be a need to exclude certain types of complex public law contracts; calls for the Expert Group to explore the possibility to include contracts in the field of authors' rights with the aim of improving the position of authors who are often the weaker party in the contractual relation;

27. Believes that the OI should be coherent with the existing acquis in contract law;

28. Recalls that there are still many questions to be answered and many problems to be resolved regarding a European Contract Law; calls on the Commission to take into account case law, international conventions on sales of good such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the impact of the Consumer Rights Directive; emphasises the importance of harmonising contract law within the EU while taking into account relevant national regulations providing high-level protection in B2C contracts;

Application of a European contract law instrument in practice

29. Considers that the consumers and SMEs must be granted real benefits from an OI, and that it should be drawn up in a simple, clear and balanced manner which makes it simple and attractive to use for all parties;

30. Believes that whilst an OI will have the effect of providing a single body of law, there will still be a need to seek provision of standard terms and conditions of trade which can be produced in a simple and comprehensible form, available off-the-shelf for businesses, and in particular SMEs and with some form of endorsement to ensure consumer confidence; notes that standard contract terms and conditions based upon an OI would offer greater legal certainty than EU-wide standard terms based upon national laws which would increase the possibility for differing national interpretations;

31. Recalls that further work on cross-border alternative dispute resolution (ADR), which is speedy and cost-effective in particular for SMEs and consumers, remains a priority, but emphasises that, if the parties use one body of law provided by an OI, ADR will be further facilitated; calls on the Commission to consider synergies when putting forward a proposal; notes that the UNCITRAL Working Group on Online Dispute Resolution has also shown interest in an OI as a means to facilitate ADR[1] and therefore recommends that the Commission follows developments within the other international bodies;

32. Suggests that improvements to the functioning and effectiveness of cross-border redress systems could be facilitated by a direct linkage between the OI and the European Order for Payment Procedure and the European Small Claims Procedure; takes the view that an electronic letter before action should be created to assist companies in protecting their rights, in particular in the field of intellectual property and the European Small Claims procedure;

33. Notes concerns that consumers seldom feel they have a choice with regard to contract

[1] United Nations Commission on International Trade Law Report of Working Group III (Online Dispute Resolution)on the work of its twenty-second session (Vienna, 13-17 December 2010), p. 8, 10.

terms and are confronted with a ‘take it or leave it’ situation; strongly believes that complementing an OI with a ‘toolbox’ and a set of standard terms and conditions, translated into all languages, will encourage new entrants to markets across the European Union, thereby strengthening competition, and broadening the overall choice available to consumers;

34. Emphasises that although the supreme test of the effectiveness of any final instrument is the internal market itself, it must be established beforehand that the initiative represents an added value to consumers and will not complicate cross-border transactions for both consumers and businesses; emphasises the need to include rules on the provision of appropriate information concerning its existence and the way it works to all potential interested parties and stakeholders (including national courts);

35. Notes that, in connection with the goal of a European Contract Law, the importance of a functioning European jurisdiction in civil matters must not be overlooked;

36. Urges the Commission to carry out, in collaboration with Member States, quality testing and checks to ascertain whether the proposed instruments of European Contract Law are user-friendly, fully integrating citizens' concerns, providing added value for consumers and business, strengthening the Single Market and facilitating cross-border commerce;

Stakeholder involvement, impact assessment

37. Emphasises the vital importance of involving stakeholders from throughout the Union and from different sectors of activity, including legal practitioners and recalls the Commission to undertake a wide and transparent consultation with all the stakeholders before it takes a decision based on the results of the Expert Group;

38. Appreciates that both expert and stakeholder groups already have a varied geographical and sectoral background; believes that stakeholder contributions will become even more important once the consultation phase is over and if a legislative procedure as such, which would need to be as inclusive and transparent as possible, is launched;

39. Recalls, in accordance with Better Lawmaking principles, the need for a comprehensive and broad impact assessment, analysing different policy options, including that of not taking Union action, and focusing on practical issues,such as the potential consequences for SMEs and consumers, possible effects on unfair competition in the Internal Market and pinpointing the impact of each of those solutions on both the Community acquisand on national legal systems;

40. Considers, pending the completion of such an impact assessment, that, while EU-level harmonisation of contract law practices could be an efficient means of ensuring convergence and a more level playing field, nonetheless, given the challenges of harmonising the legal systems not only of Member States but also of regions with legislative competences on this matter, an OI could be more feasible as long as it is ensured that it implies added value for both consumers and businesses;

41. Insists that Parliament should be fully consulted and involved in the framework of the ordinary legislative procedure with regard to any future OI to be submitted by the

European Commission and that any OI proposed be subject to scrutiny and amendment under that procedure;

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42. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

I. Background

Contract law determines and organises transactions within the internal market, its potential for both hindering and facilitating those transactions is therefore obvious. Choosing the right way forward in the area of contract law can make a significant contribution to improving the functioning of the internal market and opening up its full potential for businesses, in particular SMEs, and consumers.

The potential benefits of European contract law to the internal market have been discussed in the interinstitutional framework and with the broad public for a many years; the Parliament pronounced itself for the first time on the issue in 1989. The Commission has broadened the debate by issuing its Communication of 2001, focusing on possible problems divergences in contract law might raise within the internal market and on possible options for action. Within the light of the responses to this consultation, the Commission has issued an Action Plan in 2003, proposing, *inter alia*, the elaboration of a Common Frame of Reference, containing definitions, common principles and model rules, with a view to improving the quality and coherence of European Contract Law. In a further Communication, in 2004, the Commission has set out the follow-up to that Action Plan and also proposed to review the Union *acquis* in the area, it submitted in 2008 a proposal for a Directive on consumer rights. As regards European Contract Law and the Common Frame of Reference, the Commission has reported twice on progress in this area, and has, now again, proposed a number of actions to take in the area in the form of a Green Paper.

It merits attention that the Parliament has, in its various resolutions on this matter, repeatedly acknowledged the benefits an improved contract law framework has on the internal market, has further welcomed the idea of a Common Frame of Reference, and has insisted on close involvement of itself and the stakeholders concerned.

The report intends to respond to the recent Commission Green Paper on European Contract Law, and to set out the Parliament's priorities in this area.

II. Evidence

Given that any initiative in contract law will have to closely respond to actual needs and concerns of businesses and consumers, the rapporteur believes that any reasoning in this area needs to be built on practical evidence relating to the current situation in contract law and any difficulties that businesses and consumers encounter, in particular in cross-border transactions.

The report therefore refers to several sets of recent data:

– The UK Federation of Small Businesses have calculated in their position paper on the Rome I Regulation, 2007, that it would cost a business an amount of € 15,000 to enter the e-commerce market of one Member State, the costs including legal fees, translation fees and implementation fees.

– For the Flash Eurobarometer 224, 2008, on "Business attitudes towards cross-border sales and consumer protection", according to the information provided, a total of 7,282 managers in the 27 Member States and Norway were interviewed between 30 January and 7 February 2008. Among the main findings are the following results (Main findings, p. 4):

- Three-quarters of EU retailers sell only to their domestic markets. Furthermore, the businesses most likely to be involved in cross-border retailing are medium and medium-large retail enterprises.

- The perceived cost of complying with different national laws regulating consumer transactions was seen by 60% of the retailers as an obstacle that caused them concern.

- It was further found that 46% of the retailers agreed that if the provisions of the laws regulating consumer transactions were harmonised throughout the Union, their cross-border sales would increase. 41 % said the level of cross-border sales would not change. Furthermore, whereas 75% do not currently sell cross-border, only 41% say that they would continue not to do so if regulations were harmonised.

– The evidence used from the Communication from the Commission of 22 October 2009 on Cross-Border Business to Consumer e-Commerce in the EU (COM(2009)0557) has, according to the information contained in that communication, the following background: testers located in all the Member States were instructed to search for a list of 100 popular products on the internet and to record the total price, all delivery charges and costs included. Domestic and cross-border offers, if available, were compared. Also the availability of products and whether the transaction could be concluded was recorded. The following were some of the findings obtained:

- Price comparison: in 13 EU Member States out of the 27 (Portugal, Italy, Slovenia, Spain, Denmark, Romania, Latvia, Greece, Estonia, Finland, Hungary, Cyprus, Malta) for at least half of all the product searches, testers were able to find one cross-border offer that was at least 10% cheaper than the best domestic offer (COM (2009)0557, p. 3).

- Access to products: within the exercise described above, testers in Cyprus, Malta, and Luxembourg, but also in Lithuania, Latvia, Ireland, Belgium, Estonia, Portugal and Finland could not find domestic online offers for at least half the products contained within their search for 100 products (COM (2009)0557, p. 4).

- Failure of online transactions: Within the 10,964 cross border tests that were carried out, an order could be only placed in on average 39 % of the cases where the online shop was not located within the same country as the consumer. 61 % of the orders would have failed, because the retailer refused to serve the consumer's country or for other reasons.

The rapporteur believes that these data make a case that divergences in contract law discourage businesses, in particular SMEs, from engaging into cross-border trade and keep them from benefiting from opportunities and gains which the Internal Market offers. They further confirm that consumers are disadvantaged by limited product choice, higher prices and

lower quality due to weak cross-border competition; consumers even may be refused access to cross-border offers altogether.

III. Structure of the report

The report falls into four sections: in the first and second section, it provides responses to the questions raised by the Commission in its Green Paper; the third and fourth sections address issues the rapporteur believes to be of specific importance, in particular issues of the application of a European Contract Law instrument in practice and questions related to stakeholder involvement and the impact assessment.

Legal nature of the instrument of European Contract Law

The rapporteur takes the view that the option of setting up an optional instrument (OI) for European Contract Law by virtue of a regulation (Option 4) is to be favoured. It could be complemented by a "toolbox" for Commission and legislator (Option 2) which should be implemented by an interinstitutional agreement. The rapporteur believes that a toolbox has the advantage that it could be set up rather speedily; it could be introduced by a step-by-step approach, and could be made first available to the Commission when proposing legislation relevant to contract law, and then, in a second step, once an interinstitutional agreement has been concluded, to Parliament and Council when legislating in this area. The speed with which a "toolbox" could be drawn up would ensure first field testing of individual elements of the CFR and first jurisprudence, thus preparing the legal background against which an OI will operate.

The rapporteur sees it as a clear advantage of an OI, for instance compared against existing international sets of rules as the Vienna Convention on International Sale of Goods (CISG) or the UNIDROIT Principles of International Commercial Contracts, that it will provide legal certainty under the jurisdiction of the Court of Justice and language plurality. The rapporteur particularly sees it as advantageous that an OI will enlarge the choice of parties, and will have benefits should it be perceived as attractive by the parties and chosen. It will not be of any detriment if it is not chosen. The rapporteur further takes the view that a monitoring and review mechanism will be of crucial importance in order to ensure that the OI keeps up with market needs and legal and economic developments.

Scope of application of the instrument

The rapporteur considers that both business-to-business and business-to-consumer contracts should be covered by an OI. She believes that the level of consumer protection would need to be high in order to ensure the expected internal market effects.

She further takes the view that an OI could be available for opt-in both in cross-border and domestic situations, but wishes to see the question thoroughly analysed whether and how the availability of an OI for domestic transactions would affect the evolution of national contract laws; such analysis could be done in the framework of the impact assessment which will have to accompany the proposal of any contract law instrument.

The rapporteur notes that there are voices wishing to limit a future contract law instrument to e-commerce or distance selling and acknowledges that such contracts would be one of the

main fields of application of a future instrument, but she does not wish to create an artificial differentiation between "virtual"/distance and face-to-face transactions and therefore does not favour to limit the scope of an OI in that respect.

As regards the material scope of the instrument, the rapporteur believes that it should focus on core issues of contract law.

Concerning the coverage of specific types of contract, the rapporteur believes that provisions on sale of goods merit priority, as well as service contracts. She further wishes to recall that Parliament has already emphasised in its resolution of 2 September 2003 that an opt-in instrument in the areas of consumer contracts and insurance contracts should be a priority, she sees benefits for an OI in particular in respect of small scale insurance contracts. The rapporteur further is interested in exploring the opportunities the OI can offer as regards digital rights and beneficial ownership, issues that have been raised in the ongoing discussions. On the other hand, the rapporteur sees a need to clearly define the limits as regards types of contracts covered. For instance, it should be clear that complex public law contracts or certain large scale contracts in the area of public procurement would not fall under an OI.

Application of a European contract law instrument in practice

In this section, the rapporteur raises a number of issues that appear important for the practical application of an OI.

She above all emphasises that simplicity and readiness for use should be a key objective. Furthermore, an OI will have to be seen in the context of standard terms and conditions, and it will be crucial for those seeking to use the OI, in particular for SMEs, that simple and comprehensible sets of standard rules are available. If some form of trust mark system were in place, this would ensure additional consumer confidence.

The rapporteur further takes the view that synergies with ADR, and also with the European Order for Payment Procedure and the European Small Claims Procedure should be sought.

She finally emphasises that an OI will open up consumer choice.

Stakeholder involvement, impact assessment

The rapporteur recalls that broad and balanced stakeholder involvement is of crucial importance. She acknowledges that the present Commission working method involving an expert and a stakeholder group already assures participation of interested parties. But she believes it important to emphasise that the process has not yet left the consultation phase, the legislative procedure as such has not started yet; stakeholder involvement will in particular be essential during that legislative procedure, the inclusivity and transparency of which will have to be assured by all available means.

Finally, the rapporteur emphasises the importance of a broad and varied impact assessment, exploring a wide range of policy options and focusing on practical issues important for the functioning of an OI.

22.3.2011

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION (*)

for the Committee on Legal Affairs

on Policy options for progress towards a European Contract Law for consumers and businesses
(2011/2013(INI))

Rapporteur: Hans-Peter Mayer

(*) Associated committees – Rule 50 of the Rules of Procedure

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

A. whereas greater study is needed to further understand why the internal market remains fragmented and how best to address these problems, including how to ensure implementation of existing legislation,

B. whereas some of the most evident impediments that consumers and SMEs face with regard to the Single Market are complexity in contractual relations, unfair terms and conditions of contracts, inadequate and insufficient information and inefficient and time-consuming procedure,

C. whereas a common European Contract Law would benefit consumers and in particular contribute to more and easily accessible cross-border trade within the internal market,

D. whereas in its Green Paper[1] the Commission sets out a range of options for a European Contract Law instrument which could help develop entrepreneurship and strengthen public confidence in the Single Market,

[1] COM(2010)0348 final.

E. whereas the negotiations on the Consumers' Rights Directive (CRD)[2] illustrated just how difficult it is to harmonise consumer law applied to contracts without undermining the common commitment to a high level of consumer protection in Europe and what limits this imposes on the process,

F. whereas any end product in the field of European Contract Law must be realistic, feasible, proportionate and properly thought through prior to being amended, if necessary, and formally adopted by the European co-legislators,

1. Welcomes the open debate on the Green Paper and urges the relevant Commission departments to carry out a thorough analysis of the outcome of this consultation process; calls on the Commission to provide an in-depth impact assessment of all proposed options, taking into consideration especially an evaluation of the actual needs of the economic actors, the cost incurred and the added value of each option;

2. Urges the Commission to undertake a thorough impact assessment of the option deemed most appropriate; stresses that this impact assessment should include, inter alia, identification of the most suitable legal basis, social and economic impacts, coherence with existing EU, international and private law, possible systems of arbitration in cases of conflict regarding the choice and application of the optional instrument between consumers and businesses, and the level of added value for consumers and businesses of such an optional instrument; considers that this impact assessment should be completed and concerns addressed before work commences on the chosen policy option;

3. Highlights the economic importance of SMEs and craft manufacturing businesses in the European economy; insists, therefore, on the need to ensure that the 'think small first' principle promoted by the 'Small Business Act' is well implemented and considered as a priority in the debate over EU initiatives related to contract law;

4. Takes the view that the development of a combination of an optional European Contract Law and a 'toolbox' could do much to improve the functioning of the internal market and that Parliament and the Council should have final responsibility for determining its legal form and scope; stresses that the application of an optional European Contract Law should aim to cover sales contracts and e-commerce, and the toolbox should function with general definitions to facilitate arrangement of other types of contracts; recalls that there are many other practical barriers to cross-border trade, including language, delivery cost, consumer preference and culture, which cannot be resolved by contract law;

5. Urges the Commission to carry out, in collaboration with Member States, quality testing and checks to ascertain whether the proposed instruments of European Contract Law are user-friendly, fully integrating citizens' concerns, providing added value for consumers and business, strengthening the Single Market and facilitating cross-border commerce;

6. Calls on the Commission to examine, in relation to the European Contract Law initiative, certain difficulties that consumers and business encounter in cross-border commerce, especially those that are related to investments, payment, delivery, language barriers, redress and differences in legal, administrative and cultural traditions;

[2] COM(2010)0614.

7. Takes the view that if an optional legal instrument of contract law is set up at EU level, it should constitute an additional, alternative, separate system governing cross-border contracts that consumers and businesses could choose instead of the applicable national legislation; considers that Member States could be given the option of applying it to contracts concluded under their domestic law as well;

8. Takes the view that a common European Contract Law could make the internal market more efficient without affecting Member States' national systems of contract law;

9. Takes the view that it needs to be further considered if Articles 114 and 169 or 352 of the Treaty on the Functioning of the European Union would constitute the appropriate legal basis for an instrument regulating business-to-business (B2B) and business-to-consumer (B2C) contracts;

10. Notes that the contract law provisions governing B2B and B2C contracts respectively should be framed differently, out of respect for the shared traditions of national legal systems and in order to place special emphasis on the protection of the weaker contractual party, namely consumers;

11. Recalls that there are still many questions to be answered and many problems to be resolved regarding a European Contract Law; calls on the Commission to take into account case law, international conventions on sales of good such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the impact of the Consumer Rights Directive; emphasises the importance of harmonising contract law within the EU while taking into account relevant national regulations providing high-level protection in B2C contracts;

12. Emphasises the particular importance of facilitating e-commerce in the EU, given that this sector is underdeveloped, and considers it necessary to assess whether differences between national contract law systems could represent an obstacle to the development of that sector, which has rightly been identified by businesses and consumers as a potential motor for future growth;

13. Points out that essential components of consumer law applied to contracts are already spread across various sets of European rules, and that important parts of the consumer acquis are likely to be consolidated in the Consumer Rights Directive; points out that the aforementioned Directive would provide a uniform body of law which consumers and businesses can readily identify; therefore, stresses the importance of waiting until the outcome of the CRD negotiations before any recommendation is made;

14. Stresses that, in the field of insurance contract law, preliminary work has already been performed with the Principles of European Insurance Contract Law (PEICL), which should be integrated into a body of European contract law and should be revised and pursued further;

15. Further believes, taking into account the special nature of the different contracts, especially B2C and B2B contracts, leading national and international principles of contract law, and the fundamental principle of a high degree of consumer protection, that existing branch practices and the principle of contractual freedom have to be preserved

regarding B2B contracts;

16. Is convinced that any initiative in the field of European Contract Law should be balanced, simple, clear, transparent and user-friendly and not employ vague legal terms, so that European consumers in particular can understand it, although due account should be taken of the potential interests of both (or all) parties to a given contract;

17. Points out that for consumers it would be an additional burden and in order to make an informed choice, knowledge of the two sets of contract law would be necessary: unless explained in simple terms with pros and cons of both options stated it would not be possible for consumers to make a meaningful choice;

18. Maintains that consumers are not being given the necessary information relating to the availability and enforcement of their contractual rights, especially in cross-border commerce; calls on the Commission to consolidate an easily accessible user-friendly information mechanism which will clearly explain how contract law works among Member States and more importantly what benefits it can offer to citizens, consumers and SMEs;

19. Takes the view that any initiative on European Contract Law in the B2C sphere must establish a very high level of consumer protection and that, should Member States nevertheless guarantee a higher level of protection, consumers should not be deprived of access to this protection;

20. Emphasises that although the supreme test of the effectiveness of any final instrument is the internal market itself, it must be established beforehand that the initiative represents an added value to consumers and will not complicate cross-border transactions for both consumers and businesses; emphasises the need to include rules on the provision of appropriate information concerning its existence and the way it works to all potential interested parties and stakeholders (including national courts).

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	22.3.2011
Result of final vote	+: 20 –: 3 0: 13
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Cristian Silviu Buşoi, Lara Comi, Anna Maria Corazza Bildt, António Fernando Correia De Campos, Jürgen Creutzmann, Christian Engström, Evelyne Gebhardt, Iliana Ivanova, Philippe Juvin, Sandra Kalniete, Eija-Riitta Korhola, Edvard Kožušník, Kurt Lechner, Toine Manders, Gianni Pittella, Mitro Repo, Zuzana Roithová, Heide Rühle, Matteo Salvini, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Kyriacos Triantaphyllides, Bernadette Vergnaud, Barbara Weiler
Substitute(s) present for the final vote	Damien Abad, Cornelis de Jong, Ashley Fox, Constance Le Grip, Pier Antonio Panzeri, Antonyia Parvanova, Sylvana Rapti, Amalia Sartori
Substitute(s) under Rule 187(2) present for the final vote	Michael Gahler

23.3.2011

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

on policy options for progress towards a European Contract Law for consumers and businesses
(2011/2013(INI))

Rapporteur: Sirpa Pietikäinen

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Supports action to address the range of barriers faced by those who wish to enter into cross-border transactions in the Internal Market and considers that, along with other measures, the European Contract Law project could be useful for realising the full potential of the internal market, entailing substantial economic and employment benefits;

2. Insists that the Commission carry out an impact assessment to provide a factual basis for assessing the implementation costs of a contract law instrument as well as whether the harmonisation of European contract law would bring added value in practice to businesses, particularly SMEs, and to consumers;

3. Urges the Commission to address in its impact assessment how the contract law instrument would bring benefits to businesses given the other internal market barriers SMEs face which may have a more immediate and significant impact, and to consider alternative approaches to addressing the barriers faced;

4. Considers, pending the completion of such an impact assessment, that, while EU-level harmonisation of contract law practices could be an efficient means of ensuring convergence and a more level playing field, nonetheless, given the challenges of harmonising the legal systems not only of Member States but also of regions with legislative competences on this matter, an optional instrument could be more feasible as

long as it is ensured that it implies added value for both consumers and businesses;

5. Considers that such an instrument should be based on the Lex Generalis principle of prescribing general provisions which would be overridden should special legislation exist at national or Community level and provided that it ensures a higher level of legal protection;

6. Considers it likely, subject to impact assessment, that in order to add value for SMEs the instrument would need to cover both business-to-consumer and business-to-business relationships and that the widest possible scope might be needed to reduce the risk of unfair competition within the internal market, and invites the Commission to address the scope for such unfair competition explicitly in its impact assessment;

7. Considers that, whatever the merits of covering some limited parts of financial services in the longer term, the Commission should specifically exclude financial services from any contract law instrument proposed at this stage;

8. Calls on the Commission to establish a dedicated intra-service expert group for any future preparatory work on financial services to ensure that any future instrument takes into account the possible specific characteristics of the financial services sector and any related initiatives led by other parts of the Commission, and to involve the European Parliament at an early stage;

9. Notes that in order to be acceptable and successful a contract law instrument will need to provide a very high level of consumer protection, remaining coherent with the Consumer Rights Directive and in some areas offering even greater protection;

10. Calls on the Commission to ensure close alignment of the proposed Consumer Rights Directive and any potential European Contract Law instrument by waiting until the outcome of the negotiations on the Consumer Rights Directive, and by providing legal clarity on the relationship between the two measures, and also to ensure that, in case of conflict, the higher provisions in national mandatory consumer law take precedence;

11. In this respect, calls on the Commission also to ensure that the European Contract Law instrument requires contracts to be in clear, everyday language, so that consumers can understand the terms, and to take account of the linguistic protection of citizens speaking any of the official languages in Member States;

12. Urges the Commission to closely link the work being done on the anticipated legislative proposal on an EU-wide Alternative Dispute Resolution (ADR) system to the preparatory work carried out in the field of European contract law so as to ensure that the possible future contract law tool provides for appropriate access to ADR.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	22.3.2011
Result of final vote	+: 42 –: 2 0: 0
Members present for the final vote	Sharon Bowles, Udo Bullmann, Pascal Canfin, Rachida Dati, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Vicky Ford, Ildikó Gáll-Pelcz, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Astrid Lulling, Íñigo Méndez de Vigo, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Olle Schmidt, Edward Scicluna, Peter Simon, Peter Skinner, Theodor Dumitru Stolojan, Ivo Strejček, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool
Substitute(s) present for the final vote	Marta Andreasen, Sophie Auconie, Lajos Bokros, David Casa, Robert Goebbels, Enrique Guerrero Salom, Carl Haglund, Olle Ludvigsson, Thomas Mann, Jiří Maštálka, Sylvana Rapti, Gianluca Susta

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	12.4.2011
Result of final vote	+: 19 –: 2 0: 2
Members present for the final vote	Sebastian Valentin Bodu, Christian Engström, Lidia Joanna Geringer de Oedenberg, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Sergio Gaetano Cofferati, Sajjad Karim, Kurt Lechner, Eva Lichtenberger, Arlene McCarthy, Angelika Niebler
Substitute(s) under Rule 187(2) present for the final vote	Claudio Morganti