



## COMMON EUROPEAN SALES LAW - JUSTICE AND HOME AFFAIRS COUNCIL MEETING, 28 OCTOBER 2011

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BEUC, the European Consumers' Organisation

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 EC register for interest representatives: identification number 9505781573-45 



The European Consumers' Organisation  
Bureau Européen des Unions de Consommateurs



Permanent Representation to the EU  
Brussels

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*Common European Sales Law -  
Justice and Home Affairs Council Meeting, 28 October 2011*

Dear Permanent Representative,

We are writing on behalf of BEUC, the European Consumers' Organisation, which represents 42 national consumer associations across Europe and UEAPME, the European Association of Craft, Small and Medium-Sized Enterprises, which represents approximately 12 million SMEs across Europe, to express our joint concerns in relation to the proposal for a European Common Sales Law, due to be presented to Ministers of Justice on Friday 28<sup>th</sup> October.

Both organisations are strongly committed to supporting measures to improve the functioning of the Single Market and ease cross-border transactions for both consumers and for SMEs. We agree that **the proposed Common European Sales Law will not achieve this goal and will not provide added value to consumers or SMEs in the Internal Market.**

This measure is presented as a positive step for consumers and business, but as representatives of the intended beneficiaries of such an instrument, we would like you to bear in mind that according to our experience and expertise, it will not encourage firms and consumers to take advantage of the Single Market, but rather lead to confusion and additional complications for all market players.

Notably, according to the Impact Assessment of the European Commission,<sup>1</sup> only 7% of companies perceive the "need to adapt and comply with different consumer protection rules in foreign contract law" as having a large impact on their decision to sell across border to consumers from other EU countries. In relation to consumers, all evidence, including that of the European Commission, confirms that diverging rules of national contract laws definitely **do not** influence consumers' attitudes in relation to buying from another Member State. On the contrary, the Commission's Consumer Market Scoreboard<sup>2</sup> found the major reasons for a lack of cross-border trade to be practical. 62% of consumers cited fears of fraud, 59% were worried about what to do if problems arose and 49% were concerned about delivery. None of these factors are contract law related and the 'European Sales Law' would not address any of them.

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<sup>1</sup> Commission Staff Working Paper, Executive summary of the Impact Assessment, p.13, FB 321.

<sup>2</sup> March 2011.

The Commission has provided no convincing evidence to support its position that this new EU contract law instrument would boost cross-border trade<sup>3</sup>.

There are indeed **other real and major obstacles** which currently prevent consumers and SMEs benefitting from the Internal Market e.g. difficulties for small businesses to access national markets due to administrative barriers and differences in tax regimes; cultural barriers such as language and digital literacy; low levels of broadband penetration; territorial limitations of intellectual property laws; difficulties to access redress; no or difficult access to means of e-payment. In addition, many consumers simply prefer local shops, as proven again by the most recent Commission survey<sup>4</sup> on obstacles for citizens in the Single Market.

The proposal for a Common European Sales Law raises many fundamental questions, which we would ask you to address firstly and thoroughly before proceeding with any technical discussion on the content of its provisions and in particular with its annex.

- Why is it necessary to introduce an entirely new legal system for b2c distance selling contracts when nearly all relevant parts of such contracts will be fully harmonised by the Consumer Rights Directive in 2013 and the remaining parts are covered by previous minimum harmonisation Directives?
- What is the relationship to the 'Rome I' regulation which, according to the proposal for a Common European Sales Law, remains unaffected? Which mandatory national consumer protection rules would be overruled?
- Is this instrument, which claims to be "optional" for consumers when in reality it is not at all, an appropriate tool for 'contracts of adhesion', such as consumer contracts?
- The argument of the "optional nature" of the instrument with respect to SMEs does not correspond to the commercial reality - neither from an economic nor legal point of view. How could legal certainty be guaranteed if significant national provisions concerning contracts e.g. transfer of ownership are not covered by this instrument thus national law applies in parallel leading to more burdens and complications ?
- What will be the impact if the instrument is used only for cross-border contracts by some Member States and in others both cross-border and "domestic" contracts are covered?

Our organisations wish to underline that the views of the stakeholders most concerned by the Commission's initiative – consumers and SMEs - have not been taken into account in this process. We strongly believe that in this time of economic and political crises there is a greater need to tackle the issues which really matter to consumers and entrepreneurs.

For all the reasons mentioned above, we urge you not to rush to any decision based on superficially attractive yet unsubstantiated economic growth arguments. This proposal would lead to more difficulties than solutions for consumers and for SMEs.

Yours sincerely,

Monique Goyens  
BEUC Director General

Andrea Benassi  
UEAPME Secretary General

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<sup>3</sup> In a recent Flash Eurobarometer (No. 300), nearly 80% of traders told the Commission that harmonised consumer law in the EU would make "little or no difference to their cross-border trade". And, according to Flash Eurobarometer 321, nearly 90% of traders never or rarely refused to sell to foreign consumers because of differences in consumer protection rules in the contract laws of their EU country.

<sup>4</sup> In the Commission's qualitative Eurobarometer survey on "Obstacles for citizens in the Internal Market" aggregate report of September 2011, the most prominent reason why consumers do not buy cross-border was that they prefer to buy locally.