

Europe 2020: EU contract law

As part of its “Europe 2020” economic strategy, the Commission is currently tackling the bottlenecks which restrict cross-border activity in the Single Market. A general briefing on the Commission’s initiatives for SMEs and attempts to unblock the Single Market is available [here](#). The Commission has identified that one issue is each of the EU’s 27 member states having different legal systems. This briefing provides an overview of the current proposals being considered by the Commission to make it easier for businesses and consumers to conclude contracts in other EU countries and identifies those with the strongest support across the EU.

European Contract Law proposals

On 1 July 2010 the Commission published a Green Paper on policy options for progress towards a European Contract Law for consumers and businesses. The goal was to allow SMEs to offer their products and services to consumers in other EU countries without having to become experts in the national contract law systems of all the other member states.

The Green Paper launched a public consultation on the following proposals for making contract law more coherent across the EU:

- **Option 1:** publishing the report of the Expert Group on European Contract Law set up by the Commission, which could then be used as a (non-binding) source of inspiration when European and national legislation is being drafted;
- **Option 2:** establishing a “toolbox” which either:
 - a. the Commission would use as a reference tool when drafting or amending EU legislation; or
 - b. the Commission would agree with the Parliament and Council and which they would all use as a reference tool when drafting or amending EU legislation;
- **Option 3:** issuing a recommendation encouraging member states to incorporate a European contract law instrument into their national laws gradually and on a voluntary basis, either:
 - a. to replace national laws (similar to the Uniform Commercial Code in the United States); or
 - b. to stand as an alternative to national law;
- **Option 4:** establishing an optional European Contract Law which would operate as a “28th regime”, standing alongside the existing contract laws of the 27 member states;

- **Option 5:** harmonising national contract laws through a Directive setting minimum common standards. Member states would be able to retain more protective rules;
- **Option 6:** replacing national contract laws with a uniform European Contract Law across the EU; and
- **Option 7:** establishing a European Civil Code covering not only contract law but also all other types of obligations (such as tort law).

The responses

The consultation closed on 31 January 2011 and resulted in 320 responses. It is clear that the Commission favours Option 4. On the whole, many respondents to the consultation saw the value in Options 1 and 2. There was little support for Option 3 and Options 5-7. Most responses concentrated on option 4, in relation to which opinions were more varied. In many cases, the lack of detail in the form and content of any proposal restricted the scope of comments.

The UK government responded to the Commission's proposal on 10 February 2010. Like many UK based respondents, the UK government did not support Option 4. It argued in particular that little evidence had been provided to support the Commission's assertion that divergences in national contract law deterred some parties from trading across the internal market. Many of the groups consulted in the UK considered the choice of contract law of relatively limited importance. Other issues were far more important, including language, currency, shipping costs, local taxation schemes, brand familiarity, lack of understanding of redress and enforcement measures and security for payment.

An additional concern raised by the UK government was that Option 4 would result in additional costs being incurred. Trading parties would need to be aware of the new law's content to make an informed choice about whether to use it. Judges would need to be trained throughout Europe. Legal advisors would need to be able to advise on the relative pros and cons and courts would need to be able to determine cases brought under the new law as well as all others currently handled. There would also be some scope for uncertainty because different courts would interpret the new law differently at least until a body of case law had been established.

The next steps

On 12 April 2011, the European Parliament's Legal Affairs Committee approved a report which favoured Option 4, as well the publication of standard terms and conditions based on the European contract law.

On 3 May 2011, the Commission published the Expert Group's feasibility study on European Contract Law. This study included a draft complete set of contract rules. In many areas, these draft rules differ significantly from the contract law of England and Wales. For example, they would introduce a general, free-standing duty of good faith and fair dealing which is not present in English law. The Expert Group has invited all interested parties to submit feedback on a number of specific issues relating to the draft text by 1 July 2011.

The Expert Group study is to be used by the Commission (and also other EU institutions) as a toolbox in the preparation of any possible future initiative in the field of contract law. Therefore, both Option 1 and Option 2 have been implemented in practice to a large extent. On 8 June 2011, the European Parliament voted in favour of supporting Option 4 and legislative proposals are expected in the autumn of this year following an impact assessment and a Commission review.

Conclusion

Whilst the adoption of a new EU-wide contract law to sit alongside existing member state laws is far from a *fait accompli*, it is clear that there is a strong legislative and political will, at least at EU level, for this option. Quite separately from the form these proposals will eventually take is the issue of whether a European Contract Law could be something of a white elephant in practice (like the European public company, the “Societas Europaea”) or an essential tool for trading in the EU. Certainly however, it is something which all businesses dealing with parties in other member states will need to be aware of as it seems almost inevitable that there will be legislative developments in this area in the relatively near future.

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