

European contract law in business-to-business transactions

Summary

Report: 2011

This survey was requested by DG JUSTICE: and coordinated by Directorate General Communication

This document does not represent the point of view of the European Commission. The interpretations and opinions contained in it are solely those of the authors.

Flash EB Series #320

European contract law business-to-business transactions

Conducted by
The Gallup Organization, Hungary
upon the request of the DG JLS-A-2: Civil law
and contract law



Coordinated by Directorate-General
Communication

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THE GALLUP ORGANIZATION

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Introduction

The exchange of goods and services is governed by contract law. Problems in relation to using, agreeing, interpreting and applying contracts in cross-border transactions may therefore affect the smooth functioning of the internal market.

The present survey (Flash Eurobarometer #320 about Business attitudes towards cross-border business-to-business (B2B) transactions and the usefulness of a European contract law) was designed in order to obtain first-hand feedback on problems affecting businesses involved in cross-border sales to other businesses. Another survey, conducted in parallel to this study, looked at the same issues in business- to –consumer transactions (Flash Eurobarometer #321: *Business attitudes towards cross-border business-to-consumer (B2C) transactions and the usefulness of a European contract law*).

This present survey covered the following themes:

- Background information on the surveyed businesses
- Their involvement in cross-border B2B transactions
- The importance of various barriers to cross-border B2B sales
- How contract law is applied in current cross-border contracts
- An assessment of the European contract law initiative, the preferred model of businesses and the anticipated effect on cross-border transactions.

In this Flash Eurobarometer survey (No. 320), a total of 6,475 managers (senior executives or, where available, legal officers) in the 27 EU Member States were interviewed by telephone, between the 14 and the 22th of January, 2011. The survey included only enterprises that were either currently involved in cross-border business-to-business transactions (sales/purchase of goods or services) or were planning to do this in the future.

The sample was randomly selected in each country within certain activity sectors (NACE Rev 2.0):

- C: Manufacturing
- G: Wholesale and retail trade: repair of motor vehicles, motorcycles and personal and household goods
- I: Accommodation and food service activities
- J: Information and communication
- K: Financial and insurance activities.

The targeted number of interviews varied dependent on the size of the country. In most EU countries, the targeted sample size was 250. However, in Cyprus, Luxembourg and Malta, the sample size was reduced to 150.

This summary presents the key results only, the Analytical Report of the survey includes a full analysis with detailed methodology description.

Main findings

Main barriers of cross-border transactions

- Enterprises are faced with various barriers that interfere with their ability to trade cross-border with other businesses. These barriers may be practical (such as language barriers or means of delivery) as well as legal, e.g. related to the contract law applied in such transactions. According to the reports of managers of the surveyed enterprises, issues related to diverse contract law environments were almost as important as some other issues that may be barriers to (a heavier) involvement in cross-border trade.
- While non-contract law-related problems (the most important being tax regulations with 38% and formal requirements like licensing with 36%) scored slightly higher than any of the contract law-related obstacles. 35% of respondents said that difficulties in finding out about the provisions of a foreign contract law was an obstacle which impacted upon their decision to sell cross-border, 31% considered it an obstacle to obtain legal advice on foreign contract law and 30% considered it difficult to agree on the applicable foreign contract law.

Contract law as a barrier to trading cross-border

- Among potential obstacles to cross-border trade, the survey specifically enquired about the extent (if any) to which each of the following contract law-related barriers had impacted their cross-border business-to-business trade:
 1. Difficulty in agreeing on the applicable foreign contract law;
 2. Difficulty in finding out about the provisions of a foreign contract law;
 3. Problems in resolving cross-border conflicts, including costs of litigation abroad, and
 4. Obtaining legal advice on foreign contract law.
- **About half (49%) of the companies surveyed in the EU indicated that at least one of the above listed potential barriers had at least some – even if minimal – impact on their cross-border activity.**
- Contract law-related concerns were in fact hindering businesses from cross-border trade, at least to some extent. **Most companies (64%) stated that contract law-related barriers at least occasionally (i.e. “not very often”) deterred them from doing such business.**

European Contract Law

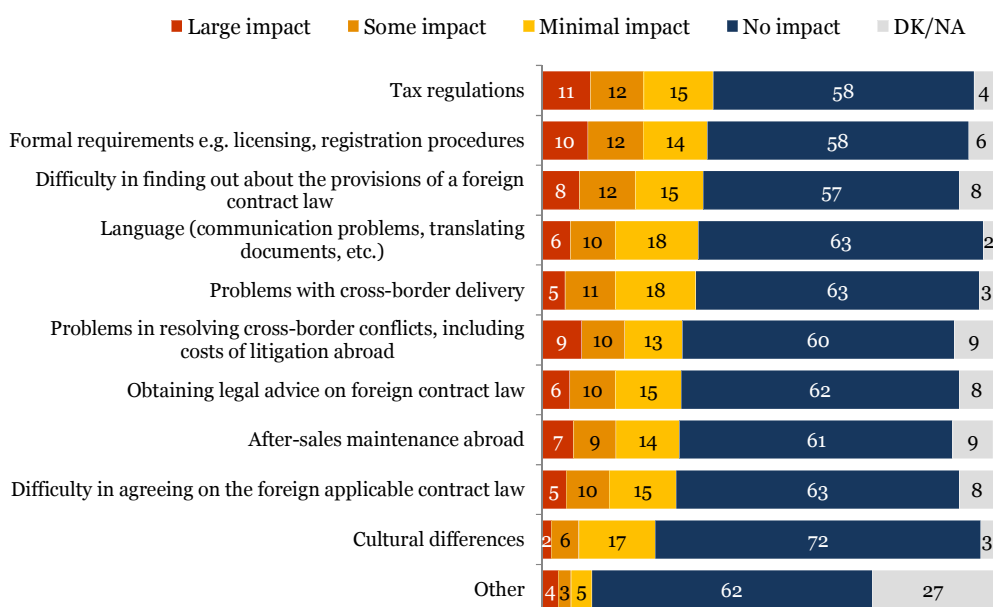
- The proposition to adopt a single EU contract law that could replace or supplement national contract laws in cross-border transactions was strongly favoured by the surveyed enterprises. **At the EU level, 7 in 10 companies would choose the jurisdiction of an EU contract law if it existed (30% were “very likely”, 40% just “likely” to use it).** Overall, one in five companies indicated that they would be unlikely to choose the aforementioned single European contract law to govern their transactions (12% were “unlikely” and 8% “very unlikely”); 10% had no opinion.

- A majority of the surveyed enterprises (52%) preferred the situation where such a single European contract law would replace the national contract law. **About four in ten surveyed enterprises (38%) favoured an *optional* EU contract law.**
- **A third of the surveyed enterprises (35%) were positive about the anticipated effects of adopting a single European contract law.** Roughly 1 in 10 (9%) at the EU level said that the option to choose the European single contract law for business-to-business cross-border transactions would increase their related activities “a lot” and a further 25% estimated that this would increase their cross-border activities “a little”).
- The main beneficiaries of such an EU law would be those companies that were only considering becoming involved in cross-border trade: the majority (52%) of these enterprises assumed that as a result of such legislation their cross-border activities would increase (22% said it would increase a lot, 30% that it would increase a little).

Barriers to cross-border trade

Enterprises are faced with various barriers that interfere with their ability to trade cross-border with other businesses. These barriers may be practical (such as language barriers, after-sales services or means of delivery) as well as legal e.g. related to the contract law applied in such transactions.

Impact of potential obstacles on companies' decision to sell or purchase cross-border



Q2. What impact do the following potential obstacles have on your decision to sell / purchase across border to / from businesses from other EU countries?

Base: all companies, % EU27
Graph sorted by 'any impact'

A number of managers identified problems with several of the listed barriers; all the listed obstacles had an impact ranking in the same order of magnitude: from 38% for tax regulations to 25% for the lowest rank obstacle- cultural differences. Very few managers added spontaneously “other” obstacles to the proposed list, which may indicate that the most important systemic obstacles were covered by the former items of the questionnaire.

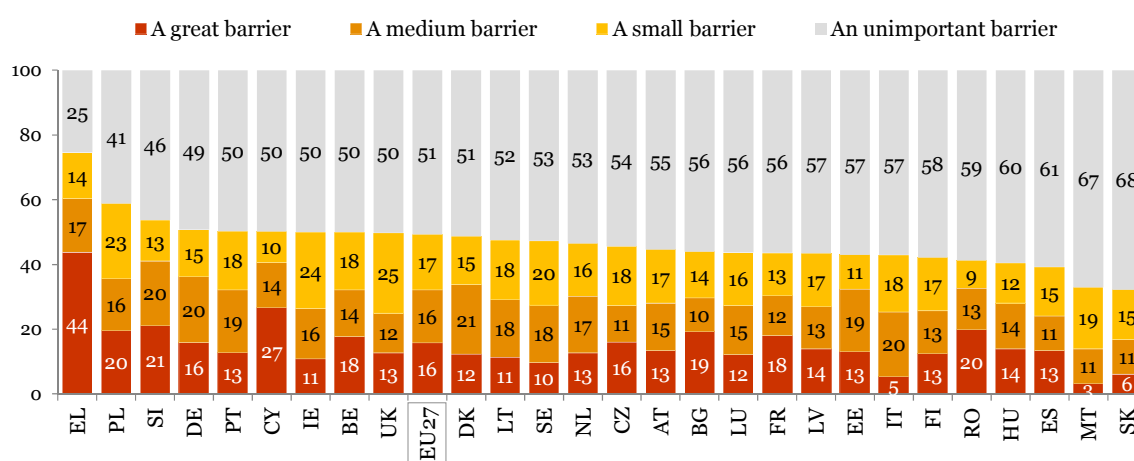
Most managers indicated *tax regulations* as a barrier (38% reported at least a minimal impact). Issues with *formal requirements of entering a foreign market* (registration, licensing, etc.) was the second most widespread concern (at least a minimal impact, 36%). The third largest problem was *obtaining information about a foreign contract law* applicable to their transactions (35% said that this had an at least minimal impact on their trading activity). *Language problems* affected such transactions for 34% of companies. The same applies to problems with *cross-border channels of delivery*.

About 3 in 10 respondents felt that *resolving cross-border conflicts*, *obtaining legal advice regarding foreign contract law*, *after-sales maintenance issues*, and *difficulties in agreeing on the applicable foreign law* had some impact on their cross-border trading. *Cultural differences* within the EU were considered to be the least troublesome; only 25% felt that this had at least a minimal impact on their operations.

Among potential obstacles to cross-border trade, the survey specifically enquired about the extent (if any) to which each of the following contract law-related barriers had impacted their cross-border business-to-business trade:

1. Difficulty in agreeing on the applicable foreign contract law;
2. Difficulty in finding out about the provisions of a foreign contract law;
3. Problems in resolving cross-border conflicts, including costs of litigation abroad, and
4. Obtaining legal advice on foreign contract law.

Contract law in cross-border trade



Q2. What impact do the following potential obstacles have on your decision to sell / purchase across border to / from businesses from other EU countries?

Categories were created on the basis of the following obstacles: 'Difficulty in agreeing on the foreign applicable contract law' or 'Difficulty in finding out about the provisions of a foreign contract law' or 'Problems in resolving cross-border conflicts, including costs of litigation abroad' or 'Obtaining legal advice on foreign contract law'

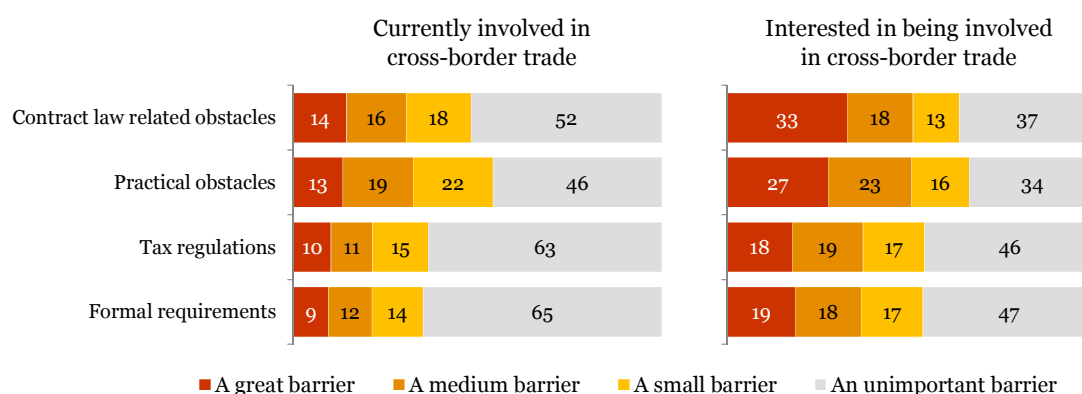
Base: all companies, % by country

About half, 49% of the companies surveyed in the EU indicated that at least one of these four items had at least some – even if minimal – impact on their cross-border activity.

About one in six of the surveyed enterprises (16%) indicated that at least one of the factors was having a big impact, another 16% felt at least some impact and 17% confirmed at least a minimal impact of one of the contract law-related problems tested. However, the majority, 51%, claimed that none of these obstacles had any impact on their operations.

Contract law-related issues posed a barrier more or less equivalent to practical difficulties of trading with other businesses cross-border (the latter being language problems, issues with cross-border delivery and after-sales maintenance). The surveyed enterprises surveyed felt that the two types of obstacles were problematic to similar degrees, however practical concerns were slightly more often mentioned than those related to contract law (54% vs. 48% among those who were currently trading indicated that these had *at least a minimal impact*, respectively).

Barriers to cross-border trade



Q2. What impact do the following potential obstacles have on your decision to sell / purchase across border to / from businesses from other EU countries?
Base: all companies, % EU27

Those who were *only considering* involvement in such transactions were more likely than those who were currently trading to say that these potential barriers had at least a minimal impact on their decision to sell/purchase cross-borders, in each distinct dimension tested. In other words: companies only interested in cross-border trade were dissuaded from cross-border trade to a much greater extent than those already trading cross-border. 64% and 66% in this group said that contract law and practical obstacles had at least a minimal impact on their cross-border trade compared to 48% and 54% companies trading cross-border currently. In the segment of those only planning to participate in cross-border trade, heavy concerns related to contract law problems exceeded those related to practical obstacles (great barrier: 33% vs. 27% respectively). These companies were roughly twice as likely as companies already engaged in cross-border trade to see each of the four categories as *great barriers* to trade.

Compared to contract law-related and practical difficulties, tax regulations and the need to comply with formal requirements were less significant barriers to being involved in cross-border B2B transaction. This was true regardless of whether the company was already trading or was only planning on it.

Focusing on enterprises that claimed to be affected by one or more of the contract law-related potential barriers of international trade within the EU, the majority (64%) claimed that such barriers at least *occasionally* deterred them from doing such business. Only 3% of these companies said that these problems completely deterred them from trading cross-border (“always”). 12% indicated that such concerns significantly decreased their cross-border activity (that they were “often” deterred from cross-border activities), 49% said these obstacles occasionally (i.e. not very often) discouraged them from cross-border trade, while 33% said that such problems were not preventing them *at all* from engaging in cross-border transactions.

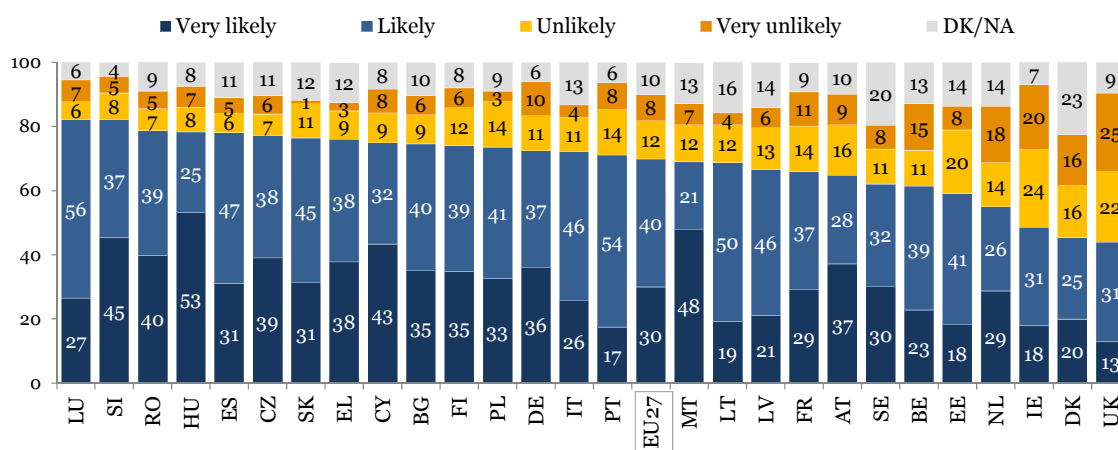
Contract law

Cross-border business transactions are typically governed by the national contract law of the seller or buyer. When asked, 60% of managers thought that the transactions they conducted with other businesses located elsewhere in the EU were most often governed by their own national contract law. About one in seven (14%) assumed that most transactions were under the jurisdiction of the other party's national law, while a mere 1% thought that the transactions that they were mostly involved in were governed by the contract law of a third country. Roughly 1 in 10 (9%) of surveyed enterprises indicated that some international conventions or the UNIDROIT principles were applicable to most transactions that they were involved with. Importantly, almost one in five respondents could not meaningfully answer this question: 17% said they could not or would not answer this question.

The proposition to adopt a single EU contract law that could replace or supplement national contract laws in cross-border transactions was strongly favoured by the surveyed enterprises. At the EU level, 7 in 10 companies involved or interested in cross-border business-to-business transactions would choose the jurisdiction of an EU contract law if it existed (30% were “very likely”, 40% just “likely” to use it). Overall, one in five companies indicated that they would be unlikely to choose the aforementioned single European contract law to govern their transactions (12% were “unlikely” and 8% “very unlikely”); 10% had no opinion.

A relative majority, at least, in each Member State favoured a European contract law, indicating that they would be “likely” or “very likely” to use it rather than national laws in cross-border business-to-business transactions.

Likelihood of using the European contract law for B2B EU cross-border transactions



Q4. If you were able to choose, for your business-to-business cross-border transactions with a partner from another EU country one single European contract law, how likely would it be that you would use it?

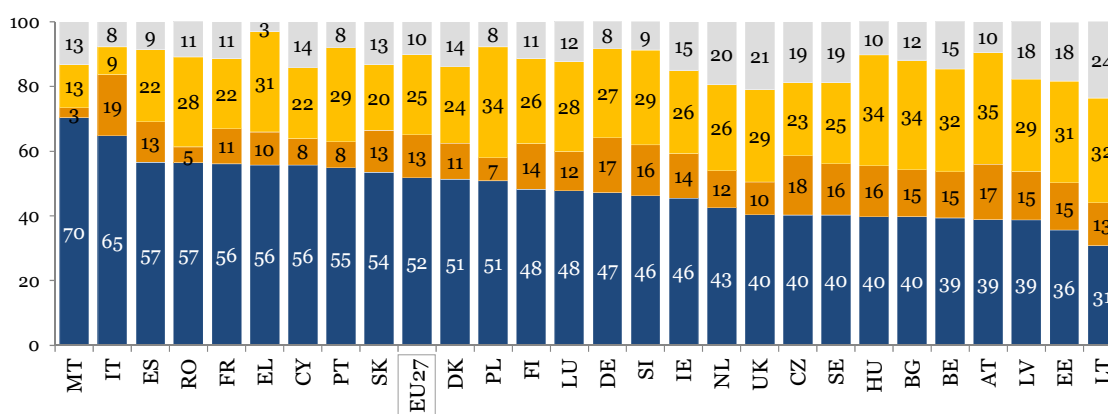
Base: all companies, % by country
Graph sorted by 'very likely' + 'likely' responses

The majority of enterprises preferred the situation where such a single European contract law would replace the contract law applicable to domestic transactions as well. At the EU level, 52% of surveyed enterprises were in favour of a single European contract law replacing national contract laws, thereby eliminating the differences that may introduce problems in cross-border trade in the single European market. 38% favoured an optional instrument. 13% thought that such a law should be available for the companies as an option for their cross-border transactions, while 25% felt that the best solution would

be an optional EU contract law equally applicable in domestic and cross-border transactions. One in 10 managers could not or would not answer this question.

Preferred contract law for B2B transactions if a European contract law was developed

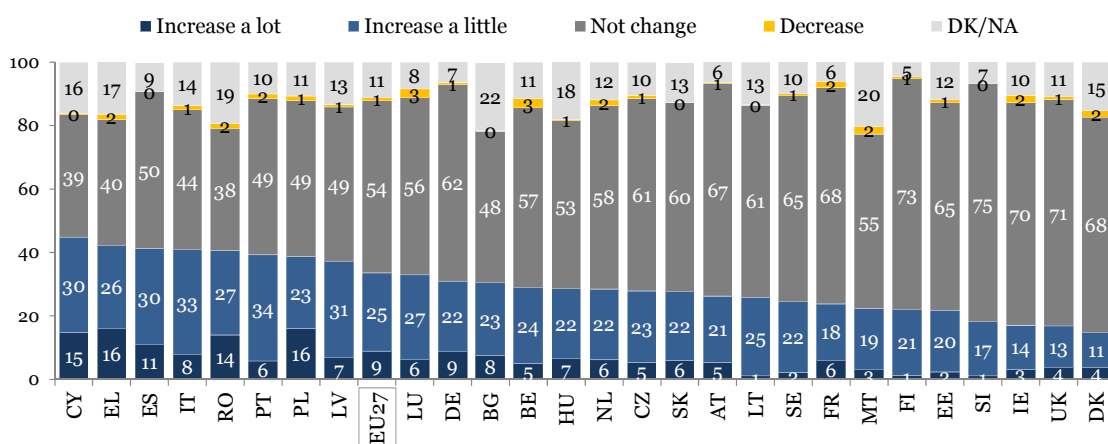
- A common EU contract law replacing 27 national contract laws
- A European contract law that you could choose as an alternative to the national laws for your cross-border transactions only
- A European contract law that you could choose as an alternative to the national laws for both your cross-border and domestic transactions
- DK/NA



Q7. If a European contract law was developed, what would you prefer for your business-to-business transactions?
Base: all companies, % by country

As to the anticipated effects of the adoption of European contract law on cross-border transactions about a third (34%) of the surveyed enterprises expected that the possibility of choosing a single European contract law would probably facilitate their cross-border activities. Roughly 1 in 10 (9%) at the EU level said that the option to choose the European single contract law for business-to-business cross-border transactions would increase their related activities “a lot” and a further 25% estimated that this would increase their cross-border activities “a little”. Most enterprises, however, felt that the adoption of a single European contract law that could be selected to govern cross-border contracts would not change the volume of their cross-border activities (54%). About 1 in 10 (11%) enterprises did not provide a response to this question.

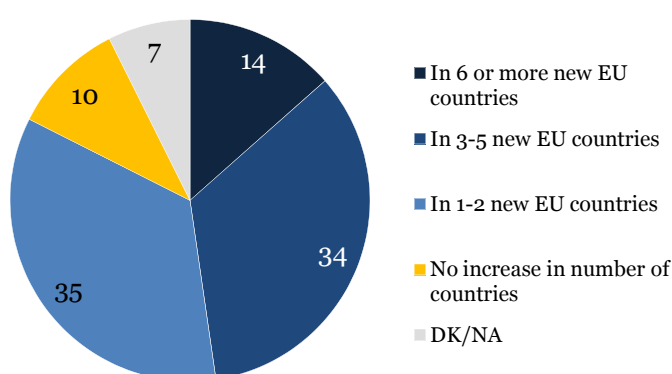
If companies were able to choose one single European contract law for their B2B cross-border transaction in the EU, would their cross-border operations ...?



Q5. If you were able to choose one single European contract law for your business-to-business cross-border transaction in the EU, would your cross-border operations ...?
Base: all companies, % by country
Graph sorted by 'increase a lot' + 'increase a little' responses

The main beneficiaries of such an EU law would be those companies that were considering becoming involved in cross-border trade: 22% of these companies felt that their cross-border activities could “increase a lot” as a result of such legislation. Similarly, those who felt that the current situation with the diversity of national contract law regulation was a great barrier to their operations confirmed in similar proportions (23%) that the adoption of an optional single European contract law would greatly boost their cross-border trading activity. Those most frequently stating that their cross-border activity would not change were companies currently trading with businesses in many other Member States (4+: 60%) and those who felt that the current environment only posed a minimal, if any, barrier to their business (61%), as well as those who were predominantly buyers in these transactions (60%).

If companies were able to choose one single European contract law, in how many additional EU countries would they make cross-border B2B transactions?



Q6. If you were able to choose one single European contract law, in how many additional EU countries do you estimate you would make business-to-business cross-border transactions?

Base: companies' EU cross-border operations would increase if they were able to choose one single European contract law, % EU27

For those companies that indicated that their cross-border activities would increase if a single European contract law was available to them, the survey asked if they would anticipate trading with more Member States (or only increase the volume of transactions with the Member States that they were currently trading with). About a third anticipated that they would make cross-border transactions with businesses in 1-2 further countries (35%) and a similar proportion felt that the number of countries they were trading with would increase by 3-5 Member States (34%). Additionally, 14% indicated that the availability of a

single EU contract law would enable them to make transactions with enterprises located in at least six new countries. Only 10% anticipated that the transaction volume would increase without extending the number of countries