



EUROPEAN COMMISSION

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final

Dear President,

*The Commission would like to thank the National Assembly of the Republic of Bulgaria for its Opinion on the proposal for a Regulation on a Common European Sales Law {COM(2011) 635 final} and apologises for the delay in replying.*

*The National Assembly concludes that the proposal for a Regulation on a Common European Sales Law complies with the principle of subsidiarity laid down in Article 5 (3) of the Treaty on the Functioning of the European Union (TFEU). The Commission agrees with this view given that the co-existence of 27 different national contract laws affects cross-border trade. The proposal aims at creating an identical corpus of sales law that can be used by undertakings and consumers for cross-border contracts irrespective of the country of destination. This aim has a clear cross-border dimension and cannot be sufficiently achieved by the Member States acting independently in the framework of their national systems. Furthermore, as market trends evolve and prompt Member States to take action independently, for example in regulating the emerging digital content market, regulatory divergences leading to increased transaction costs and gaps in the protection of consumers are likely to grow. The Union is best placed to address the problems of legal fragmentation by a measure taken in the field of contract law which approximates the rules applicable to cross-border transactions.*

*The Commission takes the view that the proposed Regulation takes full account of the principle of proportionality. First, its scope is limited to the areas in which problems are most acute, namely cross-border sales contracts and contracts involving small and medium sized enterprises. Secondly, it does not in any way pre-empt the field within which the national legislatures may act since, outside the second sales law regime that the proposed Regulation introduces, they may continue to legislate in the field of sales law and may even enact mandatory rules.*

*Furthermore, the proposed Regulation does not propose full harmonisation that would replace national law and impose new law on the parties irrespective of whether they want to export. Rather, an optional instrument that the parties can choose when they want is being proposed. Overall this means that interference with national law is kept to a minimum.*

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*Consumers and businesses are faced with the problem that different rules apply to the same products depending on whom they are purchasing from and where the supplier is located: When consumers pro-actively contact traders who do not target their country, they most probably are subject to a foreign law which they do not know and may not even be able to read in a foreign language.*

*With the Common European Sales Law, they will be better positioned from an economic and legal point of view when the Common European Sales Law applies. From an economic point of view, Bulgarian consumers are currently often disadvantaged by a restricted choice, higher prices and refusals of sales from other EU countries. A recent study<sup>1</sup> on e-commerce showed that in 41% of product searches for popular consumer goods, the products could not be found online in Bulgaria. On the other hand, those available online in Bulgaria could be found at least 10% cheaper in another EU country in 38% of the cases. However, consumers in Bulgaria who try to shop online from another EU country are likely to face a refusal of sales in about 75% of the purchase attempts. The Common European Sales Law would make it easier for Bulgarian consumers to access offers in other EU countries, as it would make it easier, cheaper and more attractive for traders to sell also to smaller countries. With businesses competing across the EU, Bulgarian consumers would benefit from a better choice of goods and services at lower prices than cross-border shopping offers.*

*From a legal perspective, the Common European Sales Law will give consumers a high level of consumer protection and the possibility to shop cross-border in the EU on the basis of the same rules. For instance, the Common European Sales Law offers Bulgarian consumers a choice between repair, replacement, price reduction or cancelling the contract if goods delivered are faulty. Bulgarian consumers currently do not have such a free choice. Furthermore, under the Common European Sales Law, Bulgarian consumers who receive a defective product would maintain their rights to repair, replacement, etc. even if they do not inform the seller of such a defect immediately. Under current Bulgarian law the consumer has to notify the seller of any defect within two months after having discovered it.*

*In order to make sure that the consumers make an informed choice, a standardised information notice would inform them that the trader proposes to use this law. In addition, they would be informed about their core rights under this law. Moreover, this notice would be the same throughout the EU and will be available in Bulgarian, as well as all official EU languages.*

*The Common European Sales Law would not increase transaction costs, but decrease them thereby making it easier for Bulgarian traders to export. Under the current framework traders have to get information on foreign sales law rules if they decide to sell to consumers in other Member States and if they direct their activities to the consumer's Member State. In this case those provisions of the consumer's Member State law apply, notwithstanding the law which has been agreed on, as far as they are more favourable for the consumer. Thus, businesses face additional costs and complexity due to the need to deal with foreign laws when selling abroad. Notably, 70% of export-oriented Bulgarian companies selling to consumers considered contract law related obstacles a barrier while 45% of export-oriented Bulgarian companies involved in business-to-business transactions thought the same.*

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<sup>1</sup> [http://ec.europa.eu/consumers/consumer\\_research/market\\_studies/docs/study\\_ecommerce\\_goods\\_en.pdf](http://ec.europa.eu/consumers/consumer_research/market_studies/docs/study_ecommerce_goods_en.pdf)

*The Common European Sales Law would tackle these problems by providing uniform rules. The possibility to use one additional law independently of the number of Member States businesses and consumers are dealing with would decrease transaction costs. Without the Common European Sales Law businesses wishing to export would have to pay on average around €10,000 per Member State they export to. These costs stem from the need to obtain information about the applicable foreign contract law rules, possibly from international law firms or lawyers based in the partner country, and to adapt contracts accordingly. With the Common European Sales Law they would only have two different sales law regimes: the national law for domestic transactions and the Common European Sales Law for all transactions into all other Member States. Furthermore, it would be easy to obtain legal advice on this law, even from a local Bulgarian lawyer, since the Common European Sales Law would be part of the Bulgarian legal system and would be available in Bulgarian language. Notably, 75% of export-oriented Bulgarian companies were interested in using a single European contract law and about 45% thought that it would lead to an increase in their cross-border operations for B2C transactions (respectively 31% for B2B).*

*The National Assembly is concerned that a series of essential concepts frequently used in sales contracts are not covered by the proposal and thus many references to national legislation would be needed which could jeopardise its self-standing nature. The Commission agrees that several areas such as rules on set-off, renewal, remission, plurality of debtors and creditors fall outside the scope of the Common European Sales Law and remain to be governed by the national law determined in accordance to the normally applicable private international law rules. Nevertheless, the Commission is convinced that the proposal is a self-standing set of rules containing legal solutions for the large majority of problems which are likely to be relevant in cross-border transactions. The matters which are not regulated in the Common European Sales Law are less likely to give rise to cross-border litigation. In any case, the optional nature of the Common European Sales Law means that only parties who see an economic benefit in the proposed law would use it.*

*I hope that these explanations serve to clarify the issues raised in the National Assembly's Opinion. The Commission is of course available to discuss the issues further in the context of the ongoing negotiations.*

*I look forward to continuing our political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*