



EUROPEAN COMMISSION

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Dear President,

Thank you very much for transmitting the Opinion of the Senate of the Czech Republic on the proposal of a Regulation on a Common European Sales Law {COM(2011) 635 final}.

In its Opinion the Senate takes the view that article 114 is not the correct legal basis for the proposal. However the Commission is convinced that Article 114 of the Treaty on the Functioning of the European Union (TFEU) is the correct legal basis for the proposal in its present form. In consumer contracts differences in national mandatory rules represent legal and practical impediments to the free movement of goods. Moreover, in both business-to-business and business-to-consumer contracts, differences in substantive law, including those in respect of rules from which the parties may derogate, represent economic obstacles in the form of transaction costs that have a disproportionately negative impact on small and medium sized enterprises (SMEs). The proposal will significantly reduce these obstacles by allowing the parties to apply a single set of rules irrespective of the Member States to which they are exporting.

In contrast to Article 114 TFEU, Article 352 TFEU is a residual legal basis which may be used for a measure only where no other provision of the Treaty gives the Union legislators the power to adopt that measure. However, Article 114 TFEU provides a more specific legal basis for this proposal. The Legal Service of the Council of Ministers has confirmed this position.

The Czech Senate considers the impact assessment as being inadequate and incomplete as it is based on a selective survey method, and thus the Czech Senate believes that the impact assessment does not provide arguments for the adequacy of the proposal related to its goal, its added value and the principle of proportionality. In contrast to the Czech Senate, the Commission deems that its impact assessment is based on a sound evidence base and methodology. All data used in the impact assessment were obtained by means of the most suitable available data collection tools. The Commission used a combination of data collection methods for different purposes depending on their characteristics. For instance, Eurobarometer surveys, which do not allow going into substantive depth in the formulation of questions, were used to collect general data on the attitudes and perceptions of businesses and consumers. The SME Panel and European Business Test Panel surveys were complementary to the Eurobarometer surveys, as they allowed asking more technical and in-

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depth questions. The results of the surveys were verified and confirmed through different methods and other data sources. Thus, the surveys are only one data collection tool the Commission used when analysing the impacts of the proposal. They were complemented by other data sources. In addition, the Commission used a range of consultation tools and took into account the views of all interested stakeholders in the impact assessment process.

The Commission is convinced that the Regulation takes particular 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 SMEs. As a consequence domestic contracts and contracts between large companies are outside the scope of the Common European Sales Law. Secondly, the parties can choose it voluntarily. They only will do it if it provides them with economic advantages. Thirdly, the pre-existing Czech sales law and other areas of law in the Czech Civil Code remain untouched. Overall this means that Community intervention and particularly interference with national law is kept to a minimum.

In contrast to the opinion of the Czech Senate, the Commission believes that there is an added value for businesses – and especially for SMEs – and consumers. The impact assessment showed that problems stemming from the co-existence of 27 different national contract law systems deter business from doing cross border transactions. These hurdles have the greatest impact on SMEs, in particular on micro and small enterprises, because the cost to enter multiple foreign markets is particularly high when compared to their turnover. The transaction costs to export to one other Member State could amount up to 7% of a micro retailer's annual turnover. Considering that in the EU micro enterprises make up 92% and SMEs account for 99% of all companies, the contract law related transaction costs hinder a large number of traders. As the Czech economy is largely constituted by small and medium-sized enterprises (99.8 % of all undertakings) the Czech Republic could really benefit from the Common European Sales Law.

The Commission has kept Member States and the national Parliaments informed about the steps which were taken in the preparation of the proposal. It has published the Feasibility study drafted by the Expert Group. Several Member States took the opportunity to reply to this informal consultation (Germany, Austria, Hungary, the United Kingdom, and the Netherlands). At the informal Justice and Home Affairs Council in Sopot in July 2011, the Commission informed the Member States about the state of play of the works in the area of European contract law. The next step was the adoption of the proposal for a Regulation on a Common European Sales Law which has been transmitted to the national Parliaments.

I hope that this reply addresses the concerns expressed by the Czech Senate and I look forward to further developing the political dialogue with the Czech Senate.

Yours faithfully,

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Vice-President*