



EUROPEAN COMMISSION

Brussels, 4. 5. 2012  
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Dear President,

*I would like to thank you for transmitting the Bundesrat's Opinion on the proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law {COM(2011 635 final} and I would like to apologize for the delay in replying to it.*

*The Commission welcomes the fact that the Bundesrat generally supports the proposal and, like the European Commission, considers it to be an important step towards developing and strengthening the single market in the interests of businesses and consumers.*

*The Bundesrat doubts whether Article 114 TFEU is the correct legal basis for the proposal and asks for verification of this point. The Commission believes that it is indeed correct. The Bundesrat refers to the judgment of the ECJ on the European Cooperative Society. The Commission, however, believes that the Common European Sales Law differs greatly from the case that was the subject of that judgment. For the European Cooperative Society a new legal form was created that was superimposed on national cooperatives with the result that, for example, the head office could be transferred from one Member State to another without the transfer entailing the cooperative's dissolution and establishment of a new legal entity. In contrast to the European Cooperative Society and the ECJ's judgments in the field of intellectual property and intellectual property law to which the judgment on the European Cooperative Society refers, the Common European Sales Law does not in any way entail a new legal form. Parties do not opt for a 'European sales contract that is conceptually different from a national contract, but agree on an independent and private basis to use the Common European Sales Law. The pre-existing sales-contract rules of the individual Member States will therefore merely be expanded by the Regulation on the Common European Sales Law.*

*The Regulation on the Common European Sales Law brings about an approximation of laws through the adoption of harmonised EU minimum standards: (i) the parties to the contract must be able to agree on the Common European Sales Law – national legislation is not allowed to obstruct or render more difficult the choice of the Common European Sales Law within the applicable national legal system; (ii) it has to be established under what conditions a sales contract is recognised as being effectively concluded under the Common European Sales Law. This involves Member States having to amend or revoke existing legislation with equivalent effect. Insofar as one can speak of a second regime for 'crossborder sales contracts', it should be stressed that the pertinence of the Common European Sales Law to a specific contract is subject to freedom of contract (party autonomy).*

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*The Bundesrat's request for verification finds a further response in the fact that the Council Working Party on Civil Law Matters has asked the Legal Service of the Council to issue an advisory opinion on the legal basis. The Commission is confident that it will reach the same view as the Commission.*

*The Commission welcomes the Bundesrat's support for the Commission having limited the substantive and geographic scope to crossborder sales contracts and its requiring consumers to opt for the Common European Sales Law in its entirety.*

*The Commission does not consider that the introduction of the Common European Sales Law will give rise to significant legal uncertainty. In order to ensure more uniform application, the Commission will set up a database containing (translated) summaries of all recent national judgements on sales law and make it accessible to practitioners.*

*The Bundesrat's desire for accompanying measures to support implementation of the Regulation is in line with the Commission's approach. In order to deal better with crossborder disputes, the Commission supports alternative forms of dispute resolution that would be seen by businesses as effective, quick and cost-efficient. Accordingly, one month after the adoption of the proposal for a Common European Sales Law, the Commission presented a proposal for a Directive designed to ensure that effective out-of-court dispute settlement facilities are put in place to deal with all contractual disputes between consumers and businesses. A parallel proposal for a Regulation on online dispute resolution will, once adopted, establish an EU-wide online platform for resolving online disputes between consumers and businesses over purchases made online in another EU country. The Commission also intends to table a proposal in the course of this year on the out-of-court resolution of disputes between businesses. It is no coincidence that these proposals are being presented almost simultaneously. It clearly shows the Commission's intention to tackle other obstacles to crossborder transactions. Furthermore, parties to disputes concerning amounts not exceeding €2000 are able to use the European Small Claims Procedure, which was introduced to facilitate the crossborder recovery of debts.*

*Regarding the Bundesrat's remark on the need, in order to avoid discrepancies when regulating the same areas of law, for complete synchronisation of the provisions of the Common European Sales Law and the already approved Directive on the rights of consumers, the Commission would point out that – give or take a few differences in the drafting - this is exactly what has happened. This applies to Chapters 2 and 4 of the Annex in particular.*

*Finally, I would like to assure you that the other proposals for changes have been noted by the Commission and will be taken into account in the negotiations.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*