

OPINION

concerning

1) the proposal for a Regulation of the European Parliament and of the Council on a
Common European Sales Law, COM(2011) 635

2) the Communication – **A Common European Sales Law to facilitate cross-
border transactions in the single market, COM(2011)636**

Having regard to the Treaty of Lisbon and in particular Articles 5 and 12 TEU and
Protocols 1 and 2 annexed to the Treaty,

Having regard to the Constitution of Romania, republished, in particular Article 148
thereof,

Having regard to Decision No 11/2011 of the Chamber of Deputies,

Considering the draft opinions of the Committee for Legal Affairs, Disciplinary
Matters and Immunities at its meetings of 25 October 2011 and 22 November 2011
on the compliance of the proposal for a regulation [COM(2011) 635] with the
principles of subsidiarity and proportionality,

Taking into account the view of the Romanian Government, presented in the note of
the Ministry for European Affairs concerning the two documents,

Considering the draft opinion adopted by the Committee for European Affairs at its
meeting of 13 December 2011,

Having regard to the approval given by the Permanent Office of the Chamber of
Deputies on 19 December 2011,

The Chamber of Deputies, acting in accordance with Article 40 of Decision
No 11/2011 of the Chamber of Deputies of 27 April 2011, hereby adopts this
Opinion:

I. Objective of the proposed regulation

In essence, the Communication accompanies and explains the proposal for a
regulation.

The Communication and the proposal for a regulation have as their point of

departure the premise that the differences in contract law between Member States constitute obstacles that prevent consumers and traders from benefitting from the advantages of the internal market. The Reflection on the effects of such obstacles, which are generated by the differences in contract law between Member States, began in 2001 and the identification of such obstacles could form grounds for legislative action at EU level.

More recently, in its replies to national parliaments on the 2010 Green Paper¹ launching the reflection on the proposal for a regulation, the European Commission indicated that the legislative initiative was motivated by the fact that neither consumers nor businesses were able to reap the benefits of the single market owing to the co-existence in the EU of different national contract laws, making cross-border transactions more complex and more costly.

The proposal for a regulation aims at establishing a uniform set of contract law rules relating to sales, in order to improve the establishment and operation of the internal market.

Annex I to the proposal for a regulation, entitled 'Common European Sales Law', contains a uniform set of contract law rules relating to sales.

The rules would be optional (their implementation depending on agreement between contractual parties) and non-binding (the rules would apply only in cross-border situations, and would exist in addition to the contract law rules in force without replacing them; Member States would also have the possibility to extend the application of the rules to cover domestic situations as well).

The scope of the regulation will include:

- the *material* scope, covering the types of contracts covered by the rules: cross-border transactions relating to the sale of goods (sale-purchase contracts); the supply of digital content (contracts to supply digital content); or the provision of related services, in the event that the contracting parties reach agreement in this respect (contracts for the provision of related services); the proposal does not include mixed-purpose contracts and contracts linked to a consumer credit;
- the *territorial* scope, which is limited to cross-border transactions: the parties must have their habitual residence in different countries, of which at least one is a Member State (therefore, the territorial applicability of the rules would also extend

¹ Green Paper from the Commission on policy options for progress towards a European Contract Law for consumers and businesses, COM(2010) 348, 1 July 2010.

to third countries);

- the *personal* scope, i.e. to which types of contracting parties it applies: the Regulation will apply to business-to-business contracts² and business-to-consumer contracts. If the parties agree to apply the Common European Sales Law for a contract, the aspects that fall within the scope of that Law will be covered by it exclusively. Provided that the contract has actually been concluded, the Common European Sales Law will also cover compliance with the obligations to provide pre-contractual information and remedies in the event that such obligations are not met.

The regulation will harmonise the contract law of the Member States not by imposing a revision of the contract law previously adopted, but by creating within the national legal framework of each Member State a second legal framework for contracts that fall within the scope of the proposed regulation; this second legal framework will be identical throughout the territory of the EU and will co-exist with the national contract law rules already adopted.

The proposal does not represent a choice of applicable legislation within the meaning of the rules governing conflicts of law; it will be without prejudice to such rules, i.e. the Rome I³ and Rome II⁴ Regulations (the latter relating to obligations to provide pre-contractual information).

The proposal is intended to establish a complete set of fully harmonised imperative rules in the field of consumer protection.

The proposal would be supplemented by the national legislation in force concerning matters of a contractual or non-contractual nature that are not addressed in the proposal (see recital (27) in the preamble).

The regulation will be without prejudice to the information requirements laid down in Directive 2006/123/EC on services in the internal market⁵.

II. Positions expressed with regard to the proposal

The scope of the proposal was restricted (i.e. to sale-purchase contracts) following

² This legislation would apply to such contracts only if at least one of the parties is a small or medium-sized enterprise (SME); SMEs are defined in Article 7 of the proposal.

³ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4 July 2008, p. 6.

⁴ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31 July 2007, p. 40.

⁵ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, OJ L 376, 27 December 2006, p. 36, Special Edition 13/vol. 58, p. 50.

the unofficial Justice and Home Affairs Council held in July 2011 in Sopot, Poland, organised by the Polish Presidency of the European Union. Several Member States expressed reservations about the legal basis of the proposal and supported the need to submit Annex I of the proposal to the legislative procedure.

The Romanian Government supports, in general terms, the adoption of the proposed regulation, welcoming any instrument intended to consolidate the single market.

The Committee for Legal Affairs, Disciplinary Matters and Immunities took the view that establishing a common law represents a concrete solution to a genuine problem faced by businesses and consumers. The Committee also identified the following aspects as positive effects of the proposal: the elimination of legal uncertainty, the reduction of costs and prices for some products, the guarantee of a high level of protection, the reduction of bureaucracy and transaction costs, all of the above being beneficial for the growth of cross-border trade and for economic growth in general.

The Committee for European Affairs indicated that it had not been able to issue a reasoned opinion owing to the insufficient information sent by the European Commission concerning the analysis of the proposal's compliance with the principle of subsidiarity. The Committee for European Affairs also insisted that the text of the proposals be revised in the manner that it requested after the subsidiarity assessment and that it be provided with information that is sufficiently detailed to allow for an in-depth analysis of the proposals as regards their compliance with the principle in question.

III. Assessment

The Chamber of Deputies considers that, from a terminological point of view, it would be preferable to use the notion of '*drept european*' ['European law'] instead of '*legislație europeană*' ['European legislation'] in the Romanian language version, as other language versions used the same term⁶. Moreover, the use of this terminology is supported by the term '*drept privat european*' ['European private law'], which is the field to which the proposal for a regulation belongs.

The Chamber of Deputies considers it necessary to submit Annex I of the proposed regulation to debate and adoption by ordinary legislative procedure (applicable to the entire regulation).

⁶ i.e. 'law' (EN), 'droit' (FR), 'diritto' (IT), 'recht' (DE).

The Chamber of Deputies notes the use of the legislative technique involving a 28th regime co-existing with national regimes. This legislative technique was also mentioned in 2010 in the Monti Report⁷, understood as meaning an alternative legislative framework that does not replace national rules; the regime in question would apply predominantly to cross-border operators, while purely domestic operators (i.e. those situated within a single Member State) would continue to be subject to the national regime. The Chamber of Deputies welcomes this legislative technique, which would be without prejudice to the national legal framework, and is favourable to this solution, including insofar as it would consolidate the legal security of legal relations.

The Chamber of Deputies takes note of the fact that the notions governed by the regulation in question would be autonomous, in that the rules of the regulation would be interpreted autonomously, without necessarily taking into account notions used in the legal systems of the Member States. The Court of Justice would have exclusive authority to interpret the notions.

The Chamber of Deputies also notes that in Member States with a broad set of civil law rules (such as Romania), the proposal creates a legal framework that exists *de facto* in parallel to the applicable national framework. Romania recently adopted a new Civil Code, which entered into force on 1 October 2011 following an in-depth comparative law analysis. As a result, the parallel existence of the proposed legal framework seems to reduce the intended effectiveness of the set of civil law rules rather than increase it.

The Chamber of Deputies considers that leaving the application to the agreement of the parties will lead to a *de facto* harmonisation of the applicable legislation, in other words to a parallel legislative instrument that falls within the competence of the Member States. From this point of view, the Regulation should have been based on Article 352 TFEU, which would have required a unanimous vote in the Council. The Chamber of Deputies warns that there is no certainty that a conflict of rules would be avoided by the procedure described or that the potential beneficiaries would perceive the new regulation as an anchor of stability, rather than as a new variable in the analysis preceding the contracts.

This Opinion shall be sent to the Presidents of the European Parliament, the Council

⁷ Mario Monti, *A new strategy for the single market. At the service of Europe's economy and society*, report to the President of the European Commission, 9 May 2010.

and the European Commission.

PRESIDENT, Roberta Alma Anastase