



EUROPEAN COMMISSION

Brussels, 18. 10. 2012
C(2012) 7313 final

Dear President,

The Commission would like to thank you for the Opinion of the Chamber of Deputies of the Romanian Parliament on the Commission Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law {COM (2011) 635 final} and the Communication {COM (2011) 636} accompanying the Proposal. Let me apologise for the long delay in replying.

The Commission welcomes the support given by the Chamber of Deputies for the proposal setting up an optional Common European Sales Law which would not replace national laws and which would apply to cross-border contracts.

The Commission takes note of the view of the Chamber of Deputies that the terminology used in the Romanian language version of the title of the proposal should be amended.

The Commission also pays particular attention to three points developed in the opinion of the Chamber of Deputies.

First, the opinion considers that the instrument would lead to a de facto harmonisation and that it should therefore be based on Article 352 TFEU.

The Commission considers that the proposal would not lead to a de facto harmonisation of national contract laws in the sense that these national laws would not be replaced or modified by the Common European Sales Law. On the contrary, as an expression of the principle of proportionality, the territorial, material and personal scope of the proposal is limited to providing solutions for those situations where differences between the national contract laws create obstacles to cross-border trade, and its application depends on a valid choice by the parties to a contract. Existing national contract laws would therefore not be affected.

The Commission would like to point out that it has chosen Article 114 TFEU as a legal basis for this proposal because it allows that measures of approximation do not formally replace national law. The Court of Justice held the view that by using the expression "measures for approximation" in Article 114 TFEU the Treaty conferred on the Union legislature a discretion as regards the method of approximation most appropriate for achieving the desired result.

*Mr Valeriu Ștefan ZGONEA
President
Chamber of Deputies
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – BUCHAREST*

In contrast to Article 114 TFEU, Article 352 TFEU is a residual legal basis which may only be used where no other provision of the Treaty gives the Union legislature the possibility to adopt that measure. The Commission considers it has rightly chosen Article 114 TFEU as a legal basis for this proposal.

Second, the opinion of the Chamber of Deputies also voices some concerns as to the legal certainty following the adoption of the proposal, in particular in the context of the fact that the proposal would not completely remove the application of conflict of law rules and that potential beneficiaries may not perceive the new law as a stable basis for their transactions.

The Commission is of the opinion that these concerns are unwarranted. The Common European Sales Law is a self-standing set of rules in that it contains legal solutions for the large majority of problems which are likely to be relevant in cross-border transactions. The fact that some subjects remain outside the scope of the proposal can be explained either by the fact that those rules are unlikely to be often encountered in cross-border sales contracts (e.g. rules on set-off) or by the fact that they are so sensitive to the Member States that approximating them at EU level may not correspond to the principle of proportionality (e.g. rules on immoral and illegal contracts and on the capacity of minors).

As for the likely perception of beneficiaries, the Commission has consulted stakeholders and has good reasons to believe that potential users will see the added value of the proposal which is to reduce their transaction costs and simplify the legal environment. The Commission ran two surveys among European businesses which are exporting already or are interested in exporting to consumers or to other businesses in the EU¹. In Romania, as many as 79% in B2B and 73 % in B2C of the surveyed companies were in favour of having one single European contract law which they could use in cross-border contracts. Furthermore, 41 % in B2B and 38% in B2C said that they would increase their cross-border operations if they could use a single European contract law. These support rate are mostly above the EU average.

Finally, the Opinion of the Chamber of Deputies states that the proposal does not provide enough information on the compliance with the principle of subsidiarity. In the opinion of the Commission, the compliance of the proposal with the principle of subsidiarity is duly justified in the articles of the proposal itself, the explanatory memorandum and the recitals to the proposal, as well as the impact assessment report, all of which have been transmitted to all national Parliaments upon the adoption of the proposal.

I hope that these clarifications address the concerns raised in your Opinion and I look forward to continuing the political dialogue with the Romanian Chamber of Deputies.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

¹ Eurobarometer 321 and 320 respectively, 2011.