

# EUROPEAN COMMISSION Impact Assessment Board

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# **Opinion**

**Title** 

Impact Assessment for a Proposal for an Optional Instrument of European contract law

(draft version of 22 June 2011)

### (A) Context

The Stockholm Programme for 2010-2014 states that the European judicial area should serve to support the economic activity in the internal market. The Programme invited the Commission to examine further the issue of contract law. The Commission Work Programme 2010 provided for a Communication on European contract law. Consequently, a 'Green Paper on policy options on progress towards a European contract law for consumers and businesses' was published in July 2010. Following the publication of the Green Paper, the Commission's Work Programme for 2011 provided for a legal instrument of European contract law as a strategic initiative to be proposed in the last quarter of 2011.

#### (B) Overall assessment

While the report is adequately structured, it should be improved in several important respects. First the report should better present the background to this initiative, explaining why existing or pending legislation is not sufficient. It should develop a fuller baseline scenario and on that basis justify more thoroughly why further EU action is required in this field and how this initiative fits into the overall framework. The report should further explain how this measure relates to internal market objectives. The report should provide a more balanced presentation of options focussing on the more feasible options and explaining fully why certain options are not considered feasible. The report should better present in the main text the assumptions underlying the assessment of the impacts, including those related to potential take-up of the proposed instrument by consumers and businesses. In particular, the report should clarify the key substantive provisions of the proposed instrument and their likely effects on the balance between consumer and business interests and the impact on take-up. The report should better present the implementation and compliance costs for all options. Finally, the report should reflect the comments of all stakeholders throughout the document.

## (C) Main recommendations for improvements

- (1) Better explain the existing framework, the baseline scenario and the need for further EU action. The report should better describe the existing and proposed EU rules, and in particular should better explain in the baseline scenario why legislation such as the forthcoming Consumer Rights Directive, the E-commerce Directive, the conflict of law rules, as well as non-acquis rules, such as the Vienna Convention, do not fully address the problems identified and consequently why further EU level action is required and how this initiative fits into the overall framework. The report should also explain how the identified problems and proposed measures relate to internal market objectives and how consistency between the existing and planned measures will be achieved. The report should briefly describe how the current contractual arrangements for cross-border transactions operate in practice, for both business-to-business and business-to-consumer transactions.
- (2) More balanced presentation of options. The report should ensure that the analysis of options is more balanced and proportionate, focussing on the more feasible options, and explaining fully why certain options, such as full harmonisation, are not considered feasible. Furthermore, alternative variants of options for harmonisation (such as only harmonising cross-border transactions) should be considered as a separate alternative option or be analysed in greater depth before being discarded. The report should also justify the choice of measure including specific provisions which will provide better consumer protection for several parts of the EU.
- (3) Assessment of economic impacts. The report should better justify and explain the assumptions underlying the assessment of the impacts, including the key factors influencing take-up of the proposed Optional Instrument such as size of company and domestic contract law. The report should fully describe the proposed substantive clauses of the preferred Optional Instrument, explaining how they will co-exist with national measures and assess more explicitly the likely effects of the content of the instrument on its attractiveness to businesses and consumers respectively, differentiating between Member States. The report should also demonstrate more clearly how the preferred option achieves an appropriate balance between consumer and business interests, also with regard to differences in consumer protection between Member States. The report should provide a better presentation of the underlying assumptions, methodology and key results of the quantitative analysis in the main text. The presentation of the analysis of the economic impacts should be improved, for example, by including a summary of all the effects, including on employment and GDP, together in one table clearly showing ranges of the benefits and costs including implementation and compliance costs for each of the options. The report should be explicit on the treatment of costs and benefits of the Optional Instrument when it provides higher standards than national consumer protection law. The assessment of the economic effects should be clearly justified in light of the estimated take-up of the proposed Optional Instrument.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

#### (D) Procedure and presentation

The report should reflect the comments of all stakeholders throughout the document and on all major points showing in particular stakeholders' views on the options for full harmonisation and the Optional Instrument.

(E) IAB scrutiny process	
Reference number	2011/JUST/001
External expertise used	No
Date of IAB meeting	19 July 2011