



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 12 December 2011

18552/11

**Interinstitutional File:
2011/0284 (COD)**

**JUSTCIV 358
CONSOM 215
CODEC 2425**

NOTE

from : the Presidency

to : Council

No. prev. doc. : 18353/11 JUSTCIV 351 CONSOM 210 CODEC 2367

No. Cion prop. : 15429/11 JUSTCIV 265 CONSOM 158 CODEC 1667

Subject : Proposal for a Regulation of the European Parliament and of the Council on a
Common European Sales Law

- Report from the Presidency on the state of play

I. Introduction:

1. The proposal for a Regulation on a Common European Sales Law builds upon over 10 years of preparatory work carried out by the Council¹, the European Parliament and the European Commission, as well as academics and legal practitioners, in the framework of the work on moving towards a Draft Common Frame of Reference in European Contract Law. The “Stockholm programme for 2010-2014 – An open and secure Europe serving and protecting citizens”² has called for further work in this field. The proposal constitutes immediate follow-up to the public consultation initiated by the Commission Green Paper on policy options for progress towards a European Contract Law for consumers and businesses³.

¹ For example the Guidelines on the setting up of a common frame of reference for European contract law adopted by the 2946th meeting of the Council (Justice and Home Affairs) in Luxembourg on 5 June 2009 (9741/09 JUSTCIV 120 CONSOM 111).

² OJ C 115, 4.5.2010, p. 1.

³ 11961/10 JUSTCIV 135 CONSOM 69 MI 236, COM (2010) 348.

2. At the informal meeting in July 2011 (Sopot, Poland), the Ministers discussed how overcoming differences in contract law regimes could contribute to economic growth in the EU. The severe economic conditions that affect all citizens of the European Union and undermine their trust in European integration make it essential to enable European consumers and traders to benefit more effectively from the opportunities offered by the developing internal market. The need for stronger mobilisation in the interest of the internal market was broadly recognised. Readiness to examine attentively, once tabled, a future initiative by the Commission on an optional contract law regime was expressed by several Member States, even if the debate confirmed also some reservations. Ministers stressed that any such initiative would have to be legally sound and economically credible.
3. The European Commission adopted the proposal on 11 October 2011. The Commission aims to introduce an alternative contract law regime which would be identical in each Member State and which contracting parties could freely choose to apply to their contracts of sale. During the preparation of the proposal, the Commission called on the external expertise of legal practitioners and academics brought together in two Commission expert groups and also consulted stakeholders.
4. Over lunch at the JHA Council in October 2011, the Ministers stressed the need to adopt a methodology of negotiations which would allow in-depth examination of all parts of the proposal in the Council.
5. On 9 and 10 November 2011, the Presidency, acting jointly with the European Commission, held a Presidency conference on "European Contract Law – unlocking the internal market potential for growth", which provided an opportunity for the first exchange of views about the proposal between practitioners, academics and representatives of the Member States.

II. State of play of negotiations:

6. The Presidency welcomes the Commission proposal for a Regulation on a Common European Sales Law, which aims to overcome the internal market barriers stemming from differences between national contract law regimes. The Presidency takes note of the Commission's analysis that these barriers have an impact on consumers' and traders' decisions to make use of the internal market.
7. The legislative process has just begun. The Council shares responsibility with the European Parliament for examining the merits of the proposal. It should be examined as swiftly as possible while allowing the Member States sufficient time to formulate and argue their positions.
8. The Presidency devoted four days of meetings to the presentation of the proposal by the Commission and a first exchange of views between experts. The work has been conducted in the Working Party on Civil Law Matters.
9. That preliminary exchange of views in the Working Party on Civil Law Matters confirmed that many aspects of the proposal, including chapeau rules and annexes, require examination. Some Member States maintained at that stage their reservations regarding the optional instrument. The Working Party, in particular, examined the content of the chapeau rules – i.e. the personal, material and territorial scope of the proposal, the modalities and consequences of choosing the instrument, the consequences of an invalid choice, the consumer protection rules relating to the choice and the reporting obligations, including the online database of judgments envisaged. The Impact Assessment accompanying the proposal was submitted to analysis of the Working Party, together with the proposal.

10. Further discussion should address the crucial issues relating to the proposed legal basis of the instrument as well as the content-specific issues. On the basis of the proceedings of the Working Party on Civil Law Matters, among the many possibilities for moving forward, the Presidency considers that the most pragmatic option is to deal with the legal basis for the instrument when at least some of the content-specific issues have been settled and the merits of the economic impact of the proposal has been sufficiently evaluated.
11. In the first instance, there is a strong need to properly scrutinise the content-specific issues relating to the optional character of the Common European Sales Law (i.e. the exact legal nature of the second contract law regime), its relationship with the existing *acquis* (including private international law rules and consumer *acquis*), issues relating to the proposed scope (e.g. the economic case for applying the Sales Law to contracts concluded solely between businesses), as well as the consumer protection mechanisms provided for (e.g. the standard information notice). In view of the complexity of this proposal, the order in which those elements are dealt with can either facilitate or complicate further negotiations and influence the organisation of the work in the Council's preparatory bodies .
12. In the light of the views expressed by the Ministers over lunch at the JHA Council in October 2011, parallel scrutiny of Annex I to the proposal should provide an opportunity for an in-depth discussion of its provisions in the regular preparatory bodies of the Council. In this context, it might be useful to note that Annex I comprises, on the one hand, a number of provisions with a significant impact on the situation of consumers and traders (e.g. the rules on obligations and remedies of the parties to the contract) and, on the other hand, provisions of contract law common to the legal traditions of many Member States (e.g. the rules on formation of contract and its interpretation) and provisions stemming directly from the existing fully harmonised directives.

III. Conclusion:

13. The Presidency recalls the commitment expressed in the 18-month programme for Council activities in relation to this proposal¹. In this context the incoming Presidencies should continue the efforts undertaken in this area during the second half of 2011. At the same time, there should be close cooperation between all the institutions concerned with a view to ensuring constructive progress at all stages of the legislative process. The organisation of the legislative process as regards the sequence of issues to be dealt with and the working method should be defined by the Presidencies in line with the views expressed by Ministers. The Presidency expects that such joint efforts will allow successful conclusion of the work undertaken.

¹ 11447/11 POLGEN 100, page 89.