

UEAPME
Att: Dora Szentpaly-Kleis
Rue Jacques de Lalaingstraat 4
B-1040 Brussels
BELGIUM

Stockholm
2011-01-17

Our Reference
Ulrica Dyrke

Green Paper from the Commission on policy options for progress towards a European Contract Law for consumers and businesses

Företagarna – Swedish Federation of Business Owners – would like to provide the following input in regards to the European Commission’s consultation on the green paper on policy options for progress towards a European Contract Law (the “Green Paper”).

Background

The Commission recognizes that more must be done in order to ease cross-border transactions by businesses and consumers within the internal market. The purpose of the Green Paper is to set out the options on how to strengthen the internal market by making progress in the area of European Contract Law, and launch a public consultation on them. Depending on the evaluation of the results of the consultation, the Commission intends to propose further action by 2012.

The internal market and Swedish SMEs

Företagarna would like to start by concluding that the internal market consists of 30 countries, approx. 500 million consumers and form a fundamental part of Swedish trade (close to 70 percent of our export and around 80 percent of our import). The importance of the internal market to Swedish SMEs has grown steadily over recent years. Since 2003, the annual growth in export value has been twice as fast in smaller business compared to larger entities. The further development of the internal market is therefore of great concern to the trade and growth of Swedish SMEs.

The initiative of the Commission

Företagarna is in favor of measures that promote cross-border trade, increase competition on the internal market and thereby makes it possible to take further advantage of our internal market. Given the above Företagarna generally sympathizes with the Commission's efforts in finding a suitable model for a European contract law for consumers and business. It must however be stressed that throughout a European contract law harmonization process necessary respect must be shown to the autonomy of contracting parties, the tradition of doing business in different member states as well as the autonomy of each member state within this area.

In addition hereto Företagarna notes that differences in national legislation on contract law likely form a considerably larger obstacle to cross-border trade as regards trade between businesses and consumers (B2C) than trade between businesses (B2B). In B2B situations there is a principle of freedom for the contracting parties to negotiate and stipulate the terms and conditions for the contract. In B2C situations however a business dealing with consumers located all over the union must consider and follow the consumer regulations of each consumer's home country. A full harmonization of consumer laws in the EU would thus significantly improve the incentives for business to engage in cross-border trade to consumers and increase the competition on the internal market.

Företagarna therefore wants to underline the need especially for harmonization of European consumer law. A consumer rights directive has long been discussed and negotiated at the EU-level. However, as recently shown, the result of this work will regrettably not be full harmonization of all relevant aspects of national consumer rights legislation within EU. The possibility of success herewith would yet, according to Företagarna, have seemed more feasible and needed than harmonization of European contract law for both businesses and consumers.

Given this Företagarna would like to stress that a harmonized contract law for both businesses and consumers is a very complex and delicate task to carry through. We are not convinced of the potential benefits of such a huge process.

Policy options

As said above, although Företagarna generally sympathizes with the Commission's efforts to strengthen the internal market. We are however not convinced of the potential benefits of a harmonization of European contract law for both B2B and B2C situations. Furthermore we do not find that we have a clear picture of the format, scope or legal basis of the contract law instruments proposed in the Green Paper.

We do not find it appropriate or possible to take a clear and definite stand on the different policy options presented in the Green Paper. We would however like to leave the following general comments thereon.

- To make the results of the Expert Group available on the Internet, in accordance with option 1, does seem appropriate.

- We find the second option of a “toolbox” interesting. We would prefer option 2 b as an interinstitutional agreement between the Commission, Parliament and Council promotes uniformity between the three lawmakers. Further studies and impact assessments are needed in order to decide on the appropriate option. In particular, policy option no. 6 and no. 7 raise major questions regarding both subsidiarity and proportionality.

Furthermore Företagarna has the following overall comments on the scope of the act as set out in Section 4.2 of the Green Paper.

- We are not convinced of the potential benefits of a harmonization of European contract law for both B2B and B2C situations. If a possible European act would apply to both B2B and B2C the regulations governing these various types of trade should be separated from each other in order to achieve a clear implementation and adaptation.
- A possible act should cover both domestic and cross-border trade. The ability of applying the same regulations in all agreements should simplify for businesses.
- A possible act should not be limited to online trading. Differencing regulations for online trade and traditional trade risk causing unnecessary confusion and difficulty for businesses, especially the smaller businesses.

Företagarna - Swedish Federation of Business Owners

Lars Jagrén

Chief Economist

Ulrica Dyrke

Legal Expert