

## **A Common European Sales Law**

The European Commission has recently published a proposal for a Common European Sales Law (CESL) that would allow businesses trading online to opt to make sales under a single, EU-wide contract law, rather than 27 different national laws. According to the Commission, traders who are dissuaded from cross-border transactions due to contract law obstacles forgo at least €26 billion in intra-EU trade every year.

"The optional Common European Sales Law will help kick-start the Single Market, Europe's engine for economic growth. It will provide firms with an easy and cheap way to expand their business to new markets in Europe while giving consumers better deals and a high level of protection," said European Commission Vice-President Viviane Reding, who is also responsible for justice, fundamental rights and citizenship. "Instead of setting aside national laws, today the European Commission is taking an innovative approach based on free choice, subsidiary and competition."

The new law will have a limited scope. The CESL would be voluntary, and would apply only where both parties agree. It is intended that the CESL will be capable of applying only to certain types of contract (although this may change over time), namely contracts between a business (of any size) and a consumer, and contracts where at least one of the businesses involved is a small or medium-sized enterprise (SME). An SME is defined as a business employing fewer than 250 people *and* having an annual turnover of €50 million or less/a balance sheet of €43 million or less.

The CESL document itself specifies that the law must be adopted in full or not at all. However, certain provisions of the law could still become standardised contract terms in national law contracts particularly for cross-border trading in the same way that provisions or definitions within Incoterms are commonly adopted. The CESL is a development that commercial lawyers should be aware of.

The Federation of Small Businesses in the UK is championing this proposed legislation as they say that it will cut costs and enable many small businesses to extend their markets, and this is so valuable to them during challenging times. According to an article in *The Guardian*, the law will mean that online shoppers should be able to get hold of any product produced in an EU state, without seeing the annoying message that pops up on the screen saying 'This product is not available for your country.' They also say that it can improve consumer protection by the requirement to provide consumers with details of their rights in their own language.

On Friday, March 9, MEUSAC held a Consultation Session about this directive in collaboration with the Ministry of Home and Parliamentary Affairs. The aim of the consultation session was to get feedback from civil society on this issue. After a presentation by Dr Sarah Portelli from the office of the Attorney General, representatives from the Federation of Travel Agents, GRTU and the Malta Business Bureau could pose questions and put forward their queries about the topic.

The Common European Sales Law is a concrete solution for a tangible problem for businesses and consumers: costs and legal uncertainty when buying or selling cross-border in Europe's internal market. It is also an innovative approach because, in line with the principle of proportionality, it preserves Member States' legal traditions and cultures whilst giving the choice to businesses to use it. Consumers benefit, not only because of the confidence it provides through its high level of protection, but also because its use will lead to lower prices and more product choice. For traders, it cuts red tape and transaction costs, thus contributing to more cross-border trade and growth of the European economy.

The Commission will work closely with the European Parliament, the Council and with National Parliaments to ensure a swift agreement on the Common European Sales Law in time for the 20th anniversary of the Single Market. The Commission will also continue to work closely with stakeholders, and notably with the users of the Common European Sales Law (in particular SMEs and consumers) as well as with the legal profession to achieve a broad acceptance of the Common European Sales Law across the European Union. In view of its optional nature, the success of the Common European Sales Law will in the end depend on whether and to which extent it will be chosen for transactions in the internal market.