

European Contract Law

Insurance contract Law and optional laws

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What is insurance?



Malcolm Clarke: The idea of an elephant
Transfer of an economic risk in case of:

- Event concerning life
- Event concerning property

Single passport for insurance companies

- Freedom to provide services
- Freedom of establishment
- → freedom to set in all member states with one authorization

Problems:

Different contract laws: examples:

Illustration 1 : A Dutch citizen may purchase a house in Germany, but continue to work and be closely connected with the Netherlands.

This citizen may prefer to take out insurance for the new house from a Dutch insurer operating in Germany.

However, the Dutch insurer may not be willing to insure this property in Germany, as it may be too complex to adapt to the requirements of applicable German law.

Problems in case of different laws: other illustrations

A company is negotiating a contract with an insurance company in another State of the European Union, but neither party wishes to apply the law of the other country.

A lawyer is advising parties to a contract of insurance involving parties in different States.

A professor of law wants his students to gain an understanding of the way in which contracts are treated by the laws of the different States of the European Union, and to learn the common principles. A legislator is drafting a code or a statute on the law of contracts. An European Union official is drafting a new Directive affecting contracts.

All these need to know the principles of contract law shared by the legal systems of the Member States and to have a concise, comprehensive and workable statement of them.

A EU citizen wants to start a new life abroad. What happens to his insurance contract and pension plans.

Examples of differences in law

- 1) Declaration on risk
- 2) Time limit/prescription

Actual solution

- Some harmonization in automobile insurances “many” directives for automobile insurance
 - Limit of protection
 - Persons insured
 - Duty to be insured
 - Exclusions not applicable to third parties

Models from insurance companies but....

Mandatory laws and provisions remain a problem!

Proposals

- A directive on insurance law?
- Soft laws?
- The example of Restatement/ regulation from the insurance contract
- The Regulation for the sale contract: a reality?

PECL : principles of European contract law
PEICL: principles of European insurance law

→ Exercise for comparative lawyers

→ Model or optional instrument → see also
the Regulation on the Sales of Goods

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Optional European Sales Law: Commission proposal backed by European Parliament committee

The proposal for an optional Common European Sales Law for consumers and businesses ([IP/11/1175](#) and MEMO/11/680) was backed today by a large majority (19 votes for, 3 against and 2 abstentions) in the leading European Parliament committee on this proposal, the Committee for Legal Affairs (JURI). An optional EU wide contract law would promote the Digital Single Market by providing a coherent set of rules for the marketing of digital products and related services which may also apply when some of these products are provided using the Cloud.

"Today's vote by the Legal Affairs Committee is a real breakthrough: it is an important signal from the European Parliament that the optional Common European Sales Law, as proposed by the European Commission in October 2011, is the right tool for cutting costs for SMEs while giving Europe's consumers more opportunities to shop across borders," said Vice-President Viviane Reding, the EU's Justice Commissioner.

"I thank the Committee, and in particular the rapporteurs Klaus-Heiner Lehne and Luigi Berlinguer for their swift and committed work which safeguards the high level of consumer protection included in the Commission's proposal. I will continue to work closely with the European Parliament and the Member States to deliver this tool which will help us boost the Single Market, Europe's engine for economic growth and digital competitiveness."

The Commission's proposal will give businesses and consumers the choice of using a single European sales law for their cross-border contracts when offering goods across the European Union.

With the principle of subsidiarity in mind, the proposal uses an innovative approach to deepen the Single Market, providing a harmonised set of contract law rules which will co-exist with national contract law and not replace it.

Examples for other EU sectors, such as insurance ?

Additional readings

- Malcolm Clarke, *Policies and perceptions on insurance*
- *PEICL, Note from EU Parliament 2010*
- European contract law in business-to-business transactions , Analytical Report 2011