

Call for Evidence on European Commission Green Paper about European contract law

Resource type: Legal update: archive

Status: Law stated as at 18-Aug-2010

Jurisdictions: European Union, United Kingdom

The Ministry of Justice has published a Call for Evidence on the European Commission's Green Paper on options for progress towards a European contract law for consumers and businesses. The deadline for responses is 26 November 2010.

PLC Dispute Resolution

We previously reported on the publication, by the European Commission, of a Green Paper on options for progress towards the introduction of a European contract law, and the launch of a public consultation on the issues raised (see *Legal update, European Commission publishes Green Paper on developing a European contract law* (www.practicallaw.com/0-502-7240)). The deadline for responses to the European Commission's consultation is 31 January 2011.

The Ministry of Justice has now published a *Call for Evidence* about the potential impact of the European Commission's policy proposals on individuals and organisations in the United Kingdom. The Call for Evidence will close on 26 November 2010. Responses received will help to inform the government's response to the European Commission's Green Paper.

Respondents are invited to comment (and provide supporting evidence for any conclusions) on all aspects of the Green Paper, but a number of specific points are raised, including:

- Whether the current regulation of contract law, in particular, the divergence of laws at national level, causes problems (and, if so, details of the significance and quantification of those problems and who they affect).
- Which of the options set out in the Commission's Green Paper should be preferred, and why?
- Whether European contract law measures should cover business-to-business contracts, business-to-consumer contracts or online transactions, respectively, and why? Whether it would be appropriate to attempt to regulate both cross-border and domestic contracts, or if they should be addressed separately or differently.
- What should be the material scope of any legislation: for example, whether it should be broad or narrow, or cover only specific types of contract?

The Call for Evidence specifically encourages respondents also to respond directly to the Commission's consultation on the Green Paper.

Source: *Ministry of Justice.*

Resource information

Resource ID: 1-503-0807

Law stated date: 18-Aug-2010

Products: , PLC Commercial, PLC Construction, PLC Dispute Resolution, PLC Finance, PLC IPIT & Communications, PLC Law Department Email, PLC Public Sector

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Ministry of
JUSTICE

Call for Evidence on the European Commission's Green Paper about European Contract Law

Status: Open

Open date: 18 August 2010

Close date: 26 November 2010

This is a Call for Evidence about the European Commission's Green Paper on policy options for progress towards a European Contract Law for consumers and businesses.

The Government has issued a Call for Evidence from interested parties about the impact of the European Commission's policy proposals on individuals and organisations in the United Kingdom. The responses shall help inform the government's response to the European Commission's Green Paper.

The Call for Evidence will close on 26 November 2010.

This is not a consultation and as such does not fall within of the code of practice on consultation.

Call for evidence

- [A European Commission Consultation on Contract Law - UK Government Call for Evidence and Views to Inform its Response \(PDF 0.05mb 8 pages\)](#)
- [Call for Evidence - questionnaire \(Word 0.06mb 4 pages\)](#)

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A European Commission Consultation on Contract Law

UK Government Call for Evidence and Views to Inform its Response

Purpose

The UK Government, in association with the Scottish Government and Northern Ireland Executive, is seeking evidence and views to inform the UK response to a European Commission public consultation about European contract law.

Introduction

On 1 July, the European Commission (hereafter "the Commission") published a *Green Paper on policy options for progress towards a European Contract Law for consumers and businesses*. The link to the Green Paper is at: http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0052_en.htm. This publication initiated a public consultation on its content which will run until 31 January 2011. Details of how to respond directly to the Commission's consultation are set out in Section 5 of its Green Paper.

The Governments within the UK now seek evidence and views to inform the UK response to the Commission's Green Paper. Your response is requested by **26 November 2010**. Responses are needed by then to allow adequate time to consider properly all those received and then frame a response in time to meet the Commission's deadline.

The Commission's Green Paper is wide-ranging and canvasses several different approaches.

To help frame responses there appears below a framework of questions flowing from the Commission's Green Paper. Whilst it would be helpful to

address each of these points, respondents are invited to comment on all aspects of the Commission's Green Paper and should not feel constrained to comment only the points specifically in this document.

It would be helpful to include and / or cross-reference any relevant available evidence to support your conclusions. Please balance your response by noting any benefits or otherwise that might accrue from the current arrangements, including reliance on divergent national laws. In particular if costs and impacts are presented as determinative factors in your response, please include or provide references to evidence for those.

Please focus your response primarily on issues that flow from the legal framework, as distinct from different administrative systems and language questions, unless the latter are clearly relevant to your answer or necessary to the context.

Background

Confidence in the system of contract law is essential if trade is to be carried out effectively. Cross-border trade introduces an additional dimension which necessitates the parties agreeing which country's law should apply, and rules on applicable law that would apply if no choice is made.

The Commission has overseen a long-standing project looking at the issue of European contract law. For nearly a decade a project has been underway which has been looking to improve the general legislation which affects contract law by creating a Common Frame of Reference ("CFR") which has been widely characterised as a "legislator's toolbox". Its purpose is to draw together legal concepts, definitions and principles based on the laws of all the Member States, so that any future European legislation in these areas could be based on a common understanding of how it would be interpreted throughout Europe. By doing so it would, it has been argued, improve the

quality of European Union legislation in this sphere and avoid disputes arising about different interpretations of the law. The CFR is not a legislative measure and does not itself affect the law of Member States.

Discussion & Questions

The need for and purpose of any European Union work in this sphere

The Green Paper assumes throughout that the current divergence of laws of contract and private international law rules present problems for business and consumers alike in cross-border trade, and that this may hinder the smooth operation of the internal market. The Commission puts forward a number of possible factors (e.g. higher transaction costs) which, it argues, suggest action is needed. It goes on to discuss ways that this divergence of laws might somehow be reduced and how that might affect outcomes.

The UK Government will want to be satisfied that there is genuine evidence of a problem for cross-border trade associated with the differences among national laws, before considering whether any EU intervention in the area of contract law is needed or desirable. Respondents' views and evidence on this question are particularly sought.

Question 1

Does the current regulation of contract law, and in particular divergence of laws at national level, present problems? If problems are present, how significant are they? How can any problems be quantified, and who is affected by them?

What is the best response to the issues?

Based on the assumption that the status quo presents problems, the Green Paper then canvasses what form or shape any response might take. It sets out seven possible options, ranging from publication of the work of the Expert Group responsible for drafting the common frame of reference, without endorsement at EU level – the nearest to a “do nothing” option canvassed in the Green Paper (Option 1) – to an optional European system of contract law (Option 4), a directive to harmonise national contract law (Option 5) or even a European civil code (Option 7) Respondents are invited to comment on the various options set out in the Green Paper.

Question 2

What are your views on the relative advantages and disadvantages of each of the options and sub-options identified in the Green Paper? In particular, which should be preferred and why?

- Option 1: Publication of the Results of the Expert Group*
- Option 2: An official “toolbox” for the legislator*
 - 2(a) via a Commission act; or*
 - 2(b) via inter-institutional agreement*
- Option 3: Commission Recommendation on European Contract Law*
 - 3(a) via encouragement for Member States to replace national laws with the European Union instrument; or*
 - 3(b) via encouragement to Member States to incorporate the European Union instrument as an optional regime*
- Option 4: Regulation setting up an optional Instrument of European Contract Law*
- Option 5: Directive on European Contract Law*
- Option 6: Regulation establishing a European Contract Law*
- Option 7: Regulation establishing a European Civil Code*

It would be helpful if your response could address all the points raised in the Green Paper and discuss the relative merits of the options (e.g. the relative merits of choosing a soft law option from a hard law one; the balance of argument between an optional legal instrument and a mandatory one etc). If you wish to declare a preferred option from amongst these (or suggest other ideas) then please do so. As with all aspects in this exercise, please cite and reference any available evidence to support your submission.

The Scope of Any Instrument

Different needs from different market positions

The Green Paper discusses (see in particular paragraph 4.2 *et seq*) whether any European measures in the area of contract law should cover business-to-business contracts, business-to-consumer contracts, and on-line transactions. It also raises the question whether European work should cover both cross-border and domestic contracts. Your views on these questions are invited.

Question 3

Should any future work/response cover any or all of:

- *business-to-business contracts?*
- *business-to-consumer contracts?*
- *on-line transactions?*

What are the specific points that lead you to conclude this?

Should any solution attempt to regulate both cross-border and domestic contracts or approach those separately or differently?

What would be the priority needs to be addressed for each of these groups and how might that be done? What would be the key features of any solution and why?

Material Scope

The Green Paper discusses what it describes as the “material scope” of any proposed legislative response (see section 4.3 *et seq* in particular). It suggests that “the instrument should cover mandatory consumer contract law rule, taking the Union acquis as a starting point”. Your views on that premise are invited as are those on the specific points raised by the Commission which include:

Question 4

What should be the preferred “material scope” of any instrument? In particular should it:

- (a) have a narrow or a broad scope (see paragraphs 4.3.1 & 2 of the Green Paper)?*
- (b) Cover all or only specific types of contracts – which ones and why (paragraph 4.3.3)?*
- (c) If a code is created should it also cover any other issues and what might those be (see paragraph 4.3.4 of the Green Paper which specifically mentions tort, unjustified enrichment and the benevolent intervention in another's affairs as possibilities here)?*

Other Matters

Question 5

Are there any other matters not covered in the Commission's Green Paper or this Call for Evidence which you think should be addressed in this exercise and any following work? What are those issues and why should they be covered here?

Conclusions and Next Steps

This Call for Evidence exercise runs until 26 November 2010. Comments can be sent by e-mail to: Andrew Lee at the following address –

andrew.lee@justice.qsi.gov.uk

or by post to:

Andrew Lee
Ministry of Justice
6th. Floor
102 Petty France
London
SW1H 9AJ

The UK Government may wish to attribute and possibly quote from responses received. You should make it clear if this is *not* acceptable to the authors.

Views are invited from anyone with an interest in the subject. This Call for Evidence has been sent directly to those with a previously identified interest in the general subject matter as best as could be known to the Ministry of Justice and has also been made available on the website [www.justice.gov.uk/consultations/consultations.htm].

Please feel free to pass this request to anyone else. Further copies are available on the Ministry of Justice website or on request to the above address.

Respondents to this exercise are also encouraged to respond directly to the Commission's own public consultation exercise. When the UK Government issues its own response to the Green Paper this will be available on request to the Ministry of Justice (above details refer) and it is expected that all responses will also be published on the European Commission's own website (see earlier link details).

Ministry of Justice 18 August 2010

Call for Evidence and Views on the European Commission's Green Paper on policy options for progress towards a European Contract Law for consumers and businesses

List of questions for response

We would welcome responses to the following questions set out in this Call for Evidence and Views. Please email your completed form to: andrew.lee@justice.gsi.gov.uk.

Question 1. Does the current regulation of contract law, and, in particular, any divergence of laws at national level, present problems or not?

If problems are present, how significant or otherwise are they?

How can any problems be quantified, and who is affected by them?

Comments:

Question 2. What are your views on the relative advantages and disadvantages of each of the options and sub-options identified in the Green Paper? In particular, which should be preferred and why?

Option 1: Publication of the Results of the Expert Group

Option 2: An official "toolbox" for the legislator

2(a) via a Commission act; or

2(b) via inter-institutional agreement

Option 3: Commission Recommendation on European Contract Law

3(a) via encouragement for Member States to replace national laws with the European Union instrument; or

3(b) via encouragement to Member States to incorporate the European Union instrument as an optional regime

Option 4: Regulation setting up an optional Instrument of European Contract Law

Option 5: Directive on European Contract Law

Option 6: Regulation establishing a European Contract Law

Option 7: Regulation establishing a European Civil Code

It would be helpful if your response could address all the points raised in the Green Paper and discuss the relative merits of the options (e.g. the relative merits of choosing a soft law option from a hard law one; the balance of argument between an optional legal instrument and a mandatory one, etc.).

If you wish to declare a preferred option from amongst these (or suggest other ideas) then please do so. As with all aspects in this exercise, please cite and reference any available evidence to support your submission. In particular if costs and impacts are presented as determinative factors in your option appraisal please include / reference any evidence for those.

Comments:

Question 3. Should any future work / response cover any or all of:

- business-to-business contracts?
- business-to-consumer contracts?
- on-line transactions?

What are the specific points that lead you to conclude this?

Should any solution attempt to regulate both cross-border and domestic contracts or approach those separately / differently?

What would be the priority needs to be addressed for each of these groups and how might that be done? What would be the key features of any solution and why?

Comments:

Question 4. What should be the preferred "material scope" of any instrument? In particular should it:

- (a) have a narrow or a broad scope (see paragraphs 4.3.1 & 2 of the Green Paper)?
- (b) cover all or only specific types of contracts – which ones and why (paragraph 4.3.3)?
- (c) if a code is created should it also cover any other issues and what might those be (see paragraph 4.3.4 of the Green Paper which specifically mentions tort, unjustified enrichment and the benevolent intervention in another's affairs as possibilities here)?

Comments:

Question 5. Are there any other matters not covered in the Commission's Green Paper or this Call for Evidence which you think should be addressed in this exercise and any following work?

What are those issues and why should they be covered here?

Comments:

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this Call for Evidence and Views (e.g. member of the public, etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.
