

MPI Comments on Green Paper on European Contract Law

The Max Planck Institute for Comparative and International Private Law has submitted its comments on the European Commission's Green Paper on Policy Options for Progress Towards a European Contract Law for Consumers and Businesses.



These Comments are the product of a working group established inside the Institute which has met since September 2010. The Comments will also be published in a forthcoming issue of the *RabelsZeitschrift*.

While welcoming the Commission's initiative, the Institute criticizes that the Commission did not sufficiently consider the issue of the legislative competence of the EU. At present, an optional instrument (opt-in) drafted as a Regulation (option 4) and based on Art. 352 TFEU seems to be the preferable option. Such an instrument raises a number of questions regarding its choice and its area of application which have been addressed by the Working Group. An optional instrument should be granted a broad scope of application, including both B2B and B2C contracts, domestic contracts, intra-Union cross-border contracts as well as contracts with parties resident in third states. Its scope should neither be limited to cross-border contracts nor to contracts concluded online. At present, however, the Institute does not recommend any specific option since such a recommendation would in the end depend on the substantive quality of the final instrument. In this regard, an important preparatory work for any future European contract law, i.e. the Draft Common Frame of Reference (DCFR), has already been criticized by some members of the Working Group.

See also the post of the Institute on its website.