

Legal Perspectives and Obstacles for Unified Digital Contract Rules of Online Sales in the European Union within the Digital Single Market Strategy Context

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THE KEY AIM OF THE DIGITAL SINGLE MARKET STRATEGY

- The key aim of the Strategy is to create an on-line free market of goods, persons, services and capital across Europe so that citizens and business can seamlessly carry out on-line activities irrespective of nationality or place of residence.



THE AIM OF THE LEGISLATIVE INITIATIVE

The aim of the legislative initiative is to:

- harmonize and unify the rules for the supply of digital content and online sales of goods in order to form a Digital Single Market in the EU
- create sustainable and inclusive growth in Europe




THE GENERAL OBJECTIVE IS TO CONTRIBUTE TO FASTER GROWTH OF OPPORTUNITIES OFFERED BY CREATING A TRUE DIGITAL SINGLE MARKET

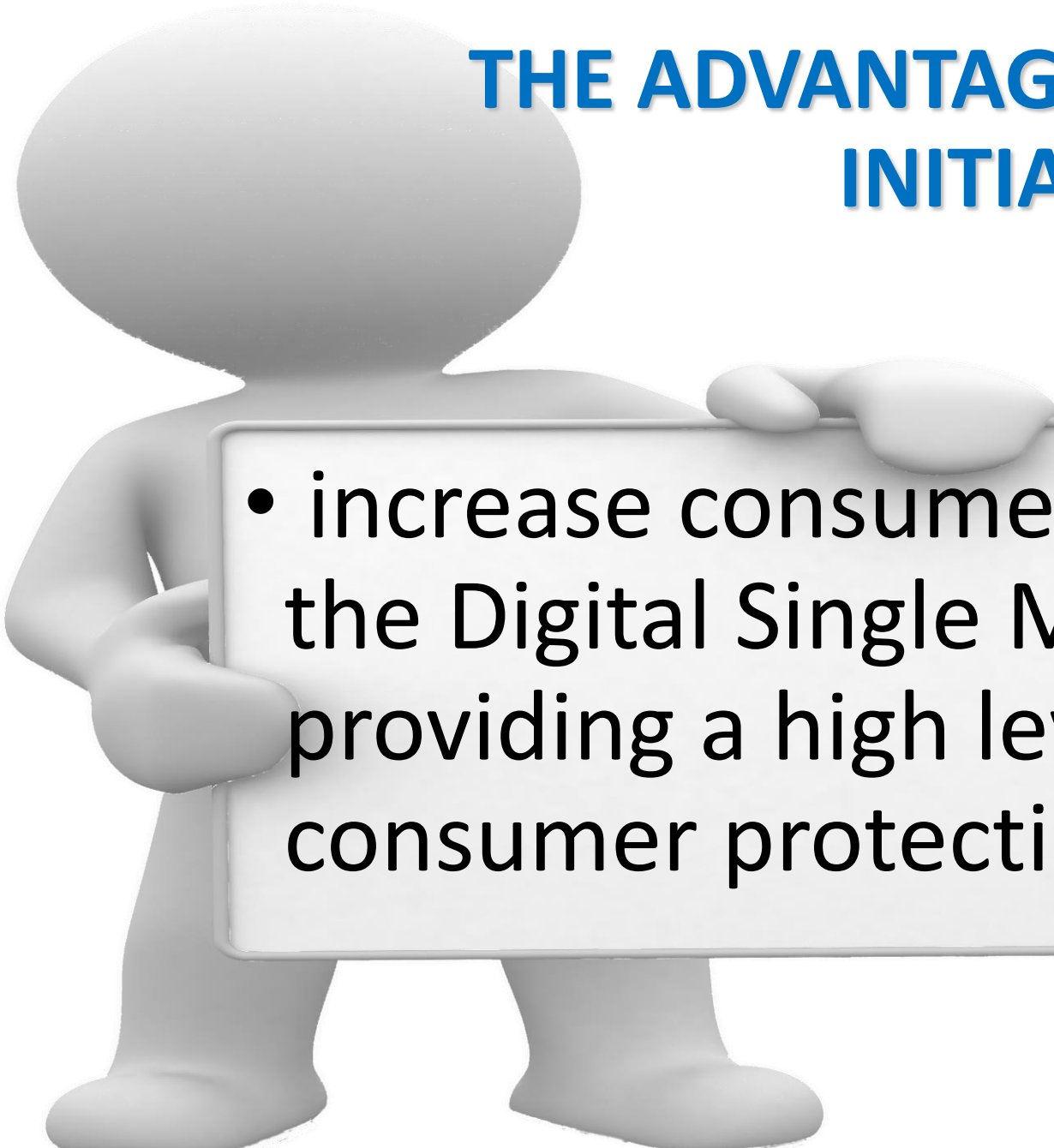
- **by**: putting forward the rules reducing the uncertainty faced by businesses and consumers due to the complexity of the legal framework and the costs incurred by businesses resulting from differences in contract law
- **by**: eliminating the key digital contract law-related barriers hindering cross-border trade



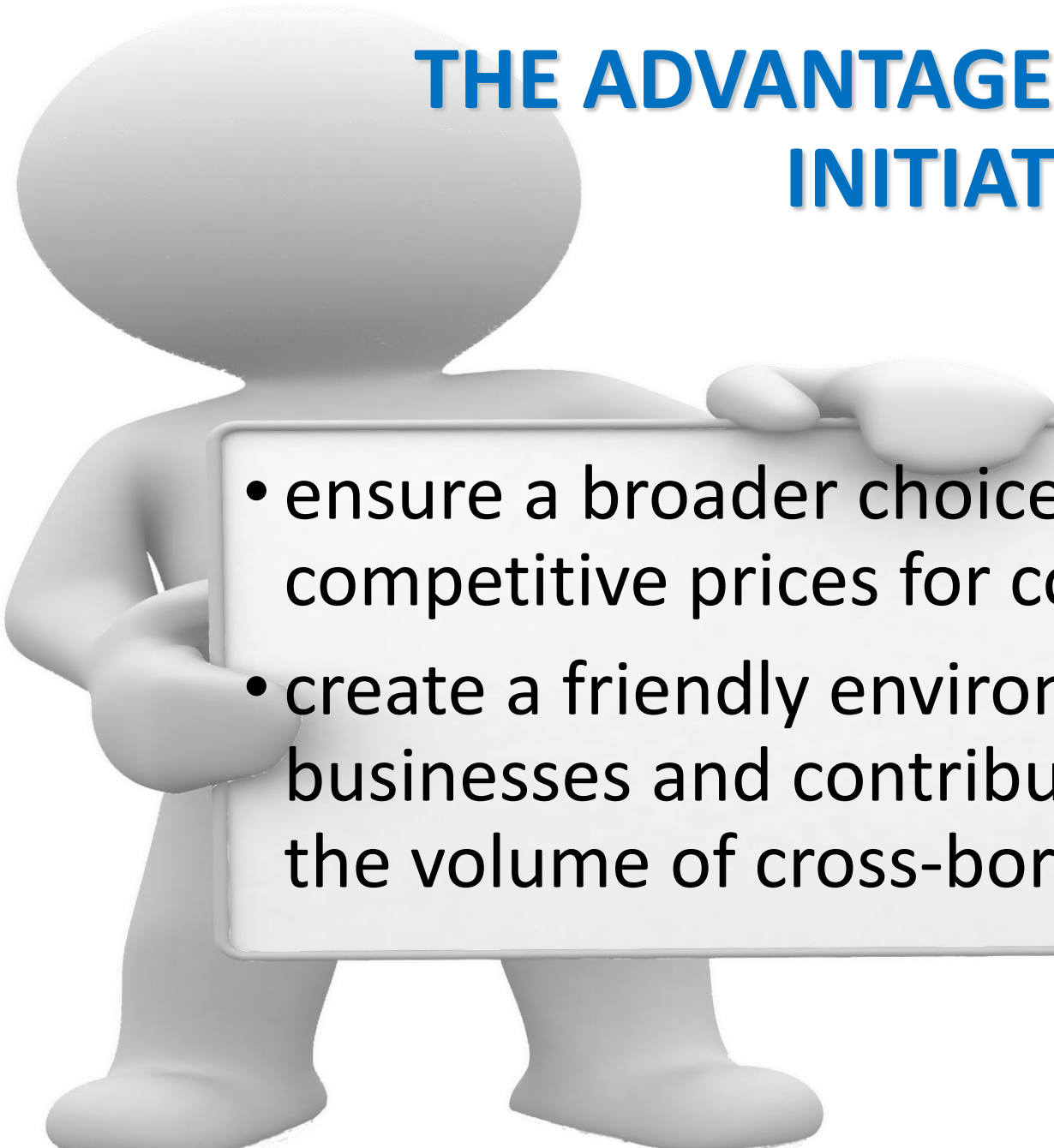
THE ADVANTAGES OF THE LEGISLATIVE INITIATIVE ARE TO:

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- A 3D white figure, resembling a stylized person, is holding a large white rectangular sign with a thin grey border. The figure is positioned on the left side of the image, with its right arm resting on top of the sign and its left arm supporting it from the side. The figure's head is turned slightly to the right.
- bring legal certainty;
 - help businesses expand their activities to foreign markets;

THE ADVANTAGES OF THE LEGISLATIVE INITIATIVE ARE TO:

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- A 3D white figure, resembling a stylized person, is holding a large rectangular sign. The figure is positioned on the left side of the image, with its right arm raised and hand resting on the top edge of the sign. The sign is white with a thin grey border and contains a single bullet point.
- increase consumer trust in the Digital Single Market by providing a high level of consumer protection;

THE ADVANTAGES OF THE LEGISLATIVE INITIATIVE ARE TO:

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- A 3D white figure, resembling a stylized person, is holding a large rectangular sign. The figure is positioned on the left side of the image, with its right arm resting on top of the sign and its left arm supporting it from the side. The sign is white with a thin grey border and contains a bulleted list of two points.
- ensure a broader choice at more competitive prices for consumers;
 - create a friendly environment for businesses and contribute to increase the volume of cross-border trade;

THE ADVANTAGES OF THE PARTIES IN THE LEGAL RELATIONSHIP

From the seller's perspective this is the possibility to extend the business without any legal barriers on the level of national legal regimes of the EU countries.

For the buyer - to ensure a high level of legal protection in matters of online seller default.



THE OBSTACLES TO BE OVERCOME

1. the lack of the rules on the ratio of the digital contract and the rules of the "face - to - face" sales contract;
2. the absence of common rules to regulate such types of online sales contracts as: *deliveries (enterprise agreement), power supply, sale of immovable property, works and services provision*;
3. the necessity to harmonize the rules of online sales of goods with the freedom of contract principle





- Digital sales of goods contract can not be presented as a separate individual type of contract, since it contains the same elements as a “face to face” contract.
- Ordinary and digital contracts correlate as the general and specific within one Contract law system. Otherwise a great number of problems will occur in law enforcement practice related to the inconsistency of common in nature regulations; there will appear the issue of legal inconsistency of certain legal relationships towards others.

SIGNIFICANT DIFFERENCES IN LEGAL RULES ON VARIOUS FORMS OF SALES AND THE ABSENCE OF A COHERENT POLICY FOR THEIR IMPLEMENTATION IN COMMON EUROPEAN SALES LAW

cast doubt:



- the possibility of Common Principles of European Contract Law application towards the Internet Contracts. The Principles of European Contract Law (PECL) developed by the United Nations Commission on International Trade Law (UNCITRAL) Vienna Convention on Contracts for the International Sale of Goods, signed in 1980, which is applied by the default, unless the parties have chosen another law;
- the principles of International Commercial Contracts (UNIDROIT Principles), which have established standard rules, regulating the purchase and sales of goods and services provision.

SOME ESSENTIAL FACTS OF THE DIRECTIVE SECTION 3



Member States of the EU are wary of political expediency and differences between online and offline sales rules. Some of them would prefer a more meticulous application, implementation and evaluation of current legislation before making a new one. In most cases, the existing problems in the legal field can be solved by changing of the current legislation rather than forming a new one.

LEGAL REGULATION OF VARIOUS ONLINE PURCHASE AND SALES CONTRACTS



- Directive shall not apply to distance contracts for the provision of services
- ‘goods’ means any tangible movable item with the exception of items sold by way of execution or otherwise by authority of law; water, gas and electricity unless they are put up for sale in a limited volume or a set quantity.
- ‘distance sales contract’ means any sales contract concluded under an organized distance scheme without the simultaneous physical presence of the seller and the consumer, with the exclusive use of one or more means of distance communication.

THE FREEDOM OF CONTRACT PRINCIPLE

- The principle of freedom of contract means that the parties to a contract are free to establish any conditions both prescribed and not prescribed in the provisions of the contract. The parties might even sign a contract, which is not provided by the current legislation, but does not contradict its merits.



THE FREEDOM OF CONTRACT PRINCIPLE

- There is a provision in the Directive on the expediency of a strict model contract. "The non-binding document, such as a voluntary model contract will not allow achieving the goal to improve the functioning of the internal market".
- Member States shall not maintain or introduce provisions diverging from those laid down in this Directive including more or less stringent provisions to ensure a different level of consumer protection.



THE FREEDOM OF CONTRACT PRINCIPLE

- freedom of contract with regard to the criteria of conformity with the contract should be ensured;
- any derogation from the mandatory rules on criteria of conformity and incorrect installation, which is detrimental to the interests of the consumer, shall be valid only if the consumer has been expressly informed and has expressly consented to it when concluding the contract.



FINAL STATEMENTS



- Consistency of fundamentals of Contract law, a harmonious combination of general and specific in the legal regulations of various online sales contracts as well as the freedom of contract principle are necessary for a single comprehensive review of the whole legislation on contracts, its systematization and harmonization across the EU.

OBSTACLES:

- The incompleteness of the process of unification of Common EU Sales Law;
- The absence of harmonized rules of cross-border online trade in goods and the rules on contracts between businesses, supply, sales of immovable property, works and services provision;
- The apparent contradiction between the principle of freedom of contract goal and a mandatory single digital model contract.



ACTIVITIES TO SUPPORT AND FULFILL THE OBJECTIVES OF THE LEGISLATIVE INITIATIVE

- to establish clear rules on the ratio of the digital contract of sales of goods and the rules on the purchase and "face to face" sales contracts;
- to work out a single, coherent package of legislative changes unifying Common European Contract law in general, to which common online sales rules will harmoniously fit;
- to extend the application of the fundamental legal acts of Common European Contract law on e-commerce products rules;
- to create a mechanism ensuring a uniform interpretation and application of these acts;



- to develop common rules for e-commerce between businesses, electricity supply, sales of immovable property, works and services provision;
- to establish a clear ratio of general and specific in the rules of cross-border online trade;
- to establish the optimal ratio of the imperative (not to be changed by an agreement of the parties), and the dispositive (possible to be changed) in the digital single contract rules.



THANK YOU FOR YOUR ATTENTION

