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The Technical Architecture of European Commercial Law: French Contract Law, Corporate Obligations and the Regulation of Cross-Border Business

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European commercial law constitutes a complex legal framework governing business transactions, corporate organisation, contractual obligations, competition, financial activity, and the resolution of disputes arising from commercial relationships. Unlike a single national commercial code, European commercial law operates through the interaction of European Union regulations, directives, international conventions, national legislation, and judicial decisions. Its objective is not to replace every national legal system with a uniform body of law, but to establish common rules where necessary for the functioning of the internal market while preserving important elements of national legal traditions. France provides a particularly instructive example of this relationship because its commercial law combines codified national legislation with the directly applicable rules and harmonising measures of the European Union. French commercial transactions are principally governed by the *Code de commerce*, while contractual obligations are also substantially regulated by the *Code civil*. Depending upon the transaction, additional provisions concerning competition, consumer protection, intellectual property, data protection, insolvency, and financial services may apply. The technical complexity of this framework arises not merely from the number of legal instruments involved, but from the necessity of determining which rules govern a particular transaction, how competing provisions interact, and which court possesses jurisdiction when a dispute crosses national borders. Understanding French and European commercial law therefore requires a systematic examination of contractual formation, the allocation of commercial risk, corporate liability, competition, digital transactions, and cross-border dispute resolution.

The institutional foundation of European commercial law lies in the European Union's internal market. Articles 26 and 114 of the Treaty on the Functioning of the European Union provide important foundations for the development of the internal market and the approximation of national laws, while Articles 49 and 56 protect the freedom of establishment and the freedom to provide services, subject to the conditions established by EU law. These principles facilitate business

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activity across Member States and restrict certain national measures that unjustifiably obstruct cross-border economic activity. Nevertheless, the internal market does not create a completely uniform system of private commercial law. Member States retain distinct rules concerning contract formation, property, company structures, remedies, and procedural matters, except where European law establishes common requirements. Regulations are generally directly applicable, whereas directives ordinarily require implementation through national law. This distinction is particularly important in commercial transactions because the applicable legal obligation may arise directly from an EU regulation or through national legislation implementing a directive. Consequently, a lawyer examining a commercial agreement involving a French company and a business established in another Member State must identify both the relevant French provisions and any applicable European rules before determining the parties' rights and liabilities.

French commercial law begins with the classification of commercial activities and the legal status of commercial operators. Article L.110-1 of the *Code de commerce* identifies transactions regarded as acts of commerce, including specified purchases for resale, manufacturing activities, transport operations, and certain financial and intermediary activities. Article L.121-1 defines a *commerçant* by reference to the habitual exercise of commercial acts as a profession. These provisions help distinguish commercial activities from transactions governed primarily by the general rules of civil law, although the classification of a particular transaction depends upon its legal characteristics and the relevant statutory provisions. Article L.110-3 establishes that commercial acts may generally be proved by any means as between merchants, unless legislation provides otherwise, while Article L.110-4 establishes a five-year limitation period for many obligations arising in the course of trade, subject to special shorter periods and other applicable rules (*Code de commerce*, arts. L.110-1, L.110-3 and L.110-4). These provisions have practical consequences for the documentation of transactions, the preservation of evidence, and the commencement of legal proceedings. Commercial operators must therefore consider not only the substantive obligations created by a contract but also the evidential and procedural requirements that may determine whether those obligations can be enforced.

The relationship between the French Civil Code and the Commercial Code is especially significant in contractual disputes. The Civil Code supplies general rules governing obligations, contractual consent, performance, interpretation, and remedies, while the Commercial Code contains provisions applicable to particular commercial activities and relationships. Article 1103 of the Civil Code provides that lawfully formed contracts bind the parties who conclude them, and Article 1104 requires contracts to be negotiated, formed, and performed in good faith. Article 1217 identifies the principal remedies available to a party where the other party fails to perform or performs imperfectly, including refusal or suspension of performance, specific performance, price reduction, termination, and damages, subject to the applicable conditions. Articles 1231-1 and following address contractual damages and related limitations. These provisions establish the general architecture of contractual responsibility in France (*Code civil*, arts. 1103, 1104, 1217 and 1231-1). Their application requires careful analysis of the contract, the nature of the breach, causation, and the remedy sought. A failure to deliver goods, for example, may justify a demand for performance or

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termination, but the availability and consequences of a particular remedy depend upon the contractual terms and the applicable legal requirements. Commercial drafting must therefore translate general statutory principles into precise obligations concerning delivery, payment, quality, acceptance, notice, and the consequences of non-performance.

Contract formation presents a further set of technical questions. Under French law, the existence of a contract generally depends upon the exchange of consent and satisfaction of the applicable requirements concerning capacity and lawful and certain contractual content. Articles 1113 and following of the Civil Code govern the formation of contracts through offer and acceptance. Article 1128 identifies consent, capacity, and lawful and certain content as requirements for the validity of a contract. In commercial practice, however, identifying the precise moment at which consent becomes legally binding may be difficult. Negotiations may involve successive drafts, purchase orders, framework agreements, general conditions of sale, and electronic communications. A party may issue an order subject to its own standard terms while the other party responds with different terms. The resulting dispute may concern whether a contract was concluded and which provisions were incorporated into it. Under Article 1119 of the Civil Code, general conditions invoked by one party have effect against the other only if they have been brought to the latter's attention and accepted, while conflicting general conditions are without effect to the extent provided by that article. Particular conditions prevail over incompatible general conditions. Accordingly, businesses should establish a clear hierarchy of contractual documents and retain evidence showing which terms were communicated and accepted. The technical quality of a commercial contract depends not merely upon the sophistication of its language, but upon whether its obligations can be identified, interpreted, and enforced when the parties disagree.

Good faith is another fundamental element of French contractual law. Article 1104 of the Civil Code makes good faith mandatory throughout negotiation, formation, and performance. Its operation does not mean that every commercial disagreement constitutes unlawful conduct or that courts may freely rewrite an agreement whenever one party considers its terms commercially disadvantageous. Rather, good faith operates within the applicable legal framework and may influence the assessment of conduct, cooperation, disclosure, and the exercise of contractual rights. In long-term commercial relationships, parties may depend upon each other for supply, distribution, technical support, or access to specialised infrastructure. An abrupt withdrawal from negotiations, concealment of material information, or opportunistic exercise of a contractual power may give rise to legal questions depending upon the facts and the relevant provisions. Article 1112 also addresses the freedom to initiate, conduct, and terminate negotiations, subject to the requirements of good faith, while Article 1112-1 establishes a pre-contractual duty to disclose information that is determinative of the other party's consent in the circumstances specified by law. The legal challenge is to distinguish legitimate commercial bargaining from conduct that breaches an applicable obligation. Good faith must therefore be analysed alongside contractual freedom, statutory requirements, and the particular circumstances of the transaction rather than treated as an unrestricted source of judicial discretion.

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Cross-border transactions introduce the additional problem of determining which country's law governs the contract. Within the European Union, Regulation (EC) No. 593/2008, commonly known as Rome I, establishes rules concerning the law applicable to contractual obligations in civil and commercial matters. Article 3 recognises the parties' freedom to choose the governing law, subject to the Regulation's requirements and limitations. Where no effective choice is made, Article 4 establishes default connecting rules for different categories of contracts, with additional provisions addressing characteristic performance and the closest connection where applicable. The Regulation also contains mandatory protections and limitations that may restrict the practical effect of a choice-of-law clause. For example, Article 6 establishes special rules for certain consumer contracts, while Article 9 addresses overriding mandatory provisions. Article 21 provides an exception where the application of a provision of the designated law would be manifestly incompatible with the public policy of the forum. These rules are particularly important when a French business contracts with a supplier, distributor, or customer established abroad. A governing-law clause can improve predictability, but it cannot necessarily displace every mandatory rule applicable to the transaction. Businesses should therefore distinguish the law governing the substance of contractual obligations from the procedural rules governing litigation and the jurisdiction of the court hearing the dispute.

The jurisdiction of courts in cross-border commercial disputes is principally addressed within the European Union by Regulation (EU) No. 1215/2012, commonly known as Brussels I bis. The Regulation establishes rules governing jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Article 4 generally provides for proceedings to be brought against a defendant in the Member State where that defendant is domiciled, subject to the Regulation's exceptions. Article 7(1) provides special jurisdiction in matters relating to a contract, including jurisdiction connected with the place of performance of the obligation in question, as defined by the Regulation. Article 25 addresses agreements conferring jurisdiction on the courts of a Member State, subject to the applicable requirements. These provisions have practical significance when commercial parties seek to determine where a dispute will be litigated. A French company may prefer proceedings in Paris, while its foreign counterparty may prefer the courts of its own country. A properly drafted jurisdiction clause can reduce uncertainty, but its effectiveness depends upon the applicable legal framework and the circumstances of the dispute. It is also important to distinguish jurisdiction from governing law: a French court may, in an appropriate case, be required to apply foreign substantive law, while a foreign court may apply French law to a contractual dispute. This distinction is fundamental to international commercial practice because the court hearing the dispute and the law governing the contractual obligation are separate legal questions.

The sale of goods across national borders adds another layer of legal complexity. The United Nations Convention on Contracts for the International Sale of Goods (CISG), adopted in Vienna in 1980, establishes uniform rules for many international commercial sales of goods. France is a Contracting State, and the Convention may apply to a sale between parties whose places of business are in different Contracting States, subject to the Convention's scope and other applicable requirements. Article 6 permits parties to exclude the Convention or, subject to the Convention's provisions, vary the effect of its rules. The CISG addresses matters such as contract formation, the

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obligations of sellers and buyers, remedies for breach, and the allocation of certain risks. However, it does not govern every issue associated with a commercial transaction. Questions concerning the validity of a contract or the effect of a contract on property in the goods generally fall outside its scope, subject to its express provisions. Nor does the Convention automatically govern every transaction involving a French business. Its applicability depends upon the relevant connecting factors, the type of transaction, and any effective exclusion. Commercial lawyers must therefore consider whether the CISG applies before relying exclusively upon the French Civil Code or Commercial Code. A carefully drafted international sales agreement should address the governing legal framework, delivery terms, inspection procedures, allocation of transport risks, payment obligations, and remedies for non-performance.

Corporate law represents another important dimension of French and European commercial regulation. Article L.210-1 of the *Code de commerce* provides that the commercial character of a company is determined by its legal form or its object, and identifies certain company forms that are commercial by virtue of their form irrespective of their object. Article L.210-2 addresses essential information contained in company statutes, including the corporate name, registered office, purpose, duration, and share capital (*Code de commerce*, arts. L.210-1 and L.210-2). French businesses may adopt different legal forms, including the *société à responsabilité limitée* (SARL), the *société par actions simplifiée* (SAS), and the *société anonyme* (SA), each subject to its own rules concerning governance, capital, decision-making, and liability. The selection of a company form affects the allocation of management powers, the rights of shareholders, the procedures for transferring interests, and the formalities associated with corporate decisions. It also affects how the company interacts with creditors, employees, regulators, and commercial counterparties. Corporate organisation must therefore be assessed in light of the business's scale, financing needs, ownership structure, governance arrangements, and exposure to regulatory obligations. Although limited liability is a defining feature of several French corporate forms, it should not be interpreted as eliminating every possible personal liability of directors, shareholders, or other participants where a separate legal basis for liability exists.

European company law complements national corporate legislation through measures addressing cross-border operations, disclosure, shareholder rights, accounting, and corporate restructuring. Nevertheless, a company incorporated in France remains subject to the relevant French rules governing its legal form and internal organisation, alongside applicable European requirements. Cross-border mergers, establishment in another Member State, and the relocation or restructuring of corporate operations may raise questions involving company law, taxation, employment, creditor protection, and the rights of minority shareholders. The Court of Justice of the European Union has played an important role in interpreting the freedom of establishment in relation to corporate mobility. In *Centros Ltd v. Erhvervs- og Selskabsstyrelsen* (Case C-212/97, 1999), the Court considered the refusal to register a branch of a company incorporated in another Member State and examined the implications of freedom of establishment. The judgment illustrates the principle that Member States must respect applicable EU rules governing cross-border establishment, although it does not eliminate all national requirements or every restriction justified under EU law. Corporate mobility

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consequently requires more than selecting the most favourable company form. Businesses must examine the applicable incorporation rules, the requirements of the host state, the tax consequences of their arrangements, and any sector-specific regulatory obligations.

Competition law is equally central to the functioning of the European commercial market. Article 101 of the Treaty on the Functioning of the European Union prohibits agreements between undertakings, decisions by associations of undertakings, and concerted practices that have the object or effect of preventing, restricting, or distorting competition within the internal market, subject to the conditions and exceptions established by the Treaty. Article 102 prohibits the abuse of a dominant position within the internal market or a substantial part of it where the relevant conditions are satisfied. These provisions may apply to commercial arrangements involving price fixing, market sharing, restrictions on production, or other conduct that unlawfully restricts competition. Their application depends upon the specific facts, the relevant market, the conduct concerned, and the legal criteria established by EU law. At the national level, French competition law is contained principally in the *Code de commerce*, including provisions governing anticompetitive practices and abuse of dominance. The French Competition Authority and the European Commission exercise enforcement powers within their respective legal competences. Commercial contracts must therefore be examined not only for enforceability between the parties but also for their compatibility with competition rules. A distribution agreement, for example, may contain provisions governing territorial sales, resale pricing, exclusivity, or access to customers. Such provisions may be commercially understandable but still require competition-law analysis. Contractual consent does not by itself validate an arrangement that infringes mandatory competition rules.

The digitalisation of commercial transactions has further increased the technical demands of European commercial law. Businesses increasingly conclude agreements through electronic platforms, automated ordering systems, cloud services, and digitally signed documents. The legal analysis must establish whether the electronic process satisfies the applicable requirements for consent, attribution, integrity, and evidence. Regulation (EU) No. 910/2014, known as eIDAS, establishes a European framework for electronic identification and trust services, as amended by Regulation (EU) 2024/1183. Article 25 of the amended framework provides that an electronic signature cannot be denied legal effect or admissibility as evidence solely because it is electronic or does not meet the requirements for a qualified electronic signature, while a qualified electronic signature has the equivalent legal effect of a handwritten signature under the Regulation. The legal consequences of a particular signature still depend upon the relevant requirements and the circumstances in which it is used. Businesses must therefore distinguish between the existence of an electronic document, the identification of the signatory, the reliability of the signature mechanism, and compliance with any applicable formal requirements. Electronic contracting may reduce transaction costs and facilitate cross-border operations, but it also requires reliable systems for record retention, identity verification, cybersecurity, and the preservation of evidence.

Digital commercial relationships also raise questions concerning data protection, platform regulation, and the allocation of technological risk. The General Data Protection Regulation

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(GDPR), Regulation (EU) 2016/679, establishes obligations concerning the processing of personal data, including requirements relating to lawful processing, transparency, data minimisation, security, and the rights of data subjects. A commercial agreement involving customer databases, employee information, or platform users may therefore require a clear allocation of responsibilities between the parties and compliance with applicable data-protection requirements. Depending upon the relationship, contractual provisions may need to address the parties' roles, permitted processing, security measures, incident notification, retention, and the handling of data-subject requests. In addition, the EU Digital Services Act and Digital Markets Act regulate specified aspects of digital intermediary services and designated gatekeepers. These instruments do not replace general contract law, but they may impose mandatory obligations that affect the drafting and performance of commercial agreements. The technical task is to identify which rules apply to the particular service and whether the contractual allocation of responsibilities accurately reflects the parties' legal positions. Digital contracts must consequently be evaluated through a combination of contract law, data protection, competition law, intellectual property, and applicable sector-specific regulation.

The regulation of unfair commercial practices and imbalanced business relationships presents a further challenge. Commercial parties are generally expected to negotiate terms in pursuit of their own economic interests, but freedom of contract does not remove all statutory controls over commercial conduct. French law contains specific provisions addressing certain restrictive practices and imbalances in commercial relationships, while EU law establishes additional protections in defined contexts, including consumer transactions and certain digital-market relationships. A distinction must be maintained between contracts concluded between businesses and agreements involving consumers, because the applicable protections may differ substantially. A term that is enforceable in one commercial context may be subject to additional scrutiny in another. Similarly, the existence of unequal bargaining power does not automatically render a contract invalid; the legal consequences depend upon the applicable statutory provision and the facts. For this reason, commercial drafting requires a detailed examination of the parties' legal status, the nature of the transaction, the negotiating process, and the mandatory provisions that cannot be displaced by agreement. Businesses should not assume that a clause becomes lawful merely because both parties have signed it, nor should they assume that every disadvantageous clause is prohibited. The correct analysis requires the identification of a specific legal rule and the assessment of its application to the contractual arrangement.

Commercial disputes may also involve insolvency, creditor protection, and the continuity of contractual performance when a business encounters financial distress. French insolvency law provides procedures designed to address financial difficulties, including preventive and collective proceedings, while balancing the interests of debtors, creditors, employees, and other affected parties. The opening of insolvency proceedings may affect the enforcement of claims, the continuation of contracts, and the ability of creditors to pursue individual remedies. In cross-border insolvency cases within the European Union, Regulation (EU) 2015/848 establishes rules concerning jurisdiction, the recognition of insolvency proceedings, and cooperation between relevant authorities, subject to the Regulation's scope and exceptions. These rules are particularly important for groups of companies

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operating across several Member States because the location of assets, creditors, and establishments may complicate the administration of insolvency. Commercial agreements should therefore consider credit risk, security interests, guarantees, payment schedules, and the legal consequences of a counterparty's financial deterioration. However, contractual provisions cannot necessarily override mandatory insolvency rules. The enforceability of a particular security arrangement or termination clause depends upon the governing law and the applicable insolvency framework. Effective commercial risk management requires an understanding of both ordinary contractual remedies and the special legal regime that may apply when a party becomes insolvent.

The technical complexity of French and European commercial law ultimately arises from the interaction of legal sources rather than from any single statute. A cross-border transaction may simultaneously engage French contract law, the Commercial Code, EU competition rules, the Rome I Regulation, the Brussels I bis Regulation, the CISG, data-protection legislation, and sector-specific requirements. Each instrument addresses a different legal question, and their applicability must be established rather than assumed. The governing law determines the substantive rules applicable to contractual obligations; jurisdiction rules determine which court may hear a dispute; international conventions may establish uniform substantive rules for particular transactions; and mandatory regulatory provisions may constrain the parties' freedom to contract. Confusing these categories can produce significant drafting and litigation risks. A commercially sophisticated agreement should therefore identify the parties accurately, define the scope of their obligations, establish payment and delivery procedures, allocate liability, address intellectual property and data protection where relevant, and provide workable mechanisms for dispute resolution. It should also account for the possibility that mandatory rules may apply despite the parties' chosen contractual terms.

In conclusion, French commercial law provides a valuable illustration of how national legal traditions operate within the wider framework of European economic integration. The *Code de commerce* and the *Code civil* establish important foundations for commercial activity, while EU legislation and international conventions regulate cross-border contracts, corporate mobility, competition, digital transactions, and dispute resolution. The practical application of these rules requires careful attention to contractual formation, the incorporation of standard terms, good faith, limitation periods, governing law, jurisdiction, regulatory compliance, and the remedies available for breach. Commercial law is therefore not simply a collection of rules governing business transactions; it is an institutional framework designed to make economic relationships legally predictable while protecting the public interests and individual rights recognised by law. For companies operating across borders, legal certainty depends upon the accurate identification of applicable rules and the preparation of contracts that reflect both commercial objectives and mandatory legal requirements. For courts and regulators, the challenge is to preserve contractual freedom and economic activity without allowing private agreements to circumvent competition rules, statutory protections, or fundamental legal obligations. The effectiveness of European commercial law ultimately depends upon its capacity to reconcile national legal diversity with the requirements of a functioning internal market. France demonstrates that this balance is achieved not through the elimination of every

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difference between legal systems, but through the coordinated application of national legislation, European legal principles, and international commercial standards.

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