

Construction Contracts: An Illustration of the Different Legal Systems in the U.S. and the European Union

Struggling with the complexities of construction contracts in the U.S.? Unlike the EU, the U.S. common law system provides less statutory protection, which offers more negotiating freedom but heightens the risk of prolonged disputes. In the absence of automatic safeguards, parties in the U.S. must actively include necessary protections within the contract. Therefore, a comprehensive grasp of provisions within the “four corners” is essential when navigating the complexities of the U.S. construction environment.

In this article, Chambliss shareholders [Brian Eftink](#) and [Jeffrey Maddux](#), and Helge Nestler of [MxV Consulting Group](#) discuss fundamental contracting styles and how they are tied to project delivery methods, offer insights to mitigate risks when undertaking projects, and explore the crucial differences in U.S. and EU construction contracts.



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As described in our earlier articles, “Mind the Gap! Pitfalls and Risks to Consider When Moving Production to the U.S.” and “Navigating the Land of Opportunity: An Introduction to the Unique Legal System of the United States,” the U.S. common law system provides fewer statutory protections to parties in a contractual relationship compared to the EU. The absence of these statutory protections allows sophisticated parties substantial freedom to negotiate. Yet, the lack of automatic safeguards can lead to lengthy and costly disputes for the unwary, particularly within the U.S.’ litigious environment. Without the EU’s self-executing protections, contracting parties in the U.S. must be certain to include all necessary protections within the “four corners” of their contracts. Accordingly, when operating in the U.S., one must understand that the specific provisions of a contract — and only those provisions — will govern the parties’ rights, obligations, and legal exposure.

Statutory Protections in the EU

Unlike the U.S., the EU has adopted a variety of codified laws that apply to contracts, limiting the ability of the parties to negotiate specific terms but ensuring each party retains certain inherent protections. For example, Title 9 of the German Civil Code (BGB) governs contractual relationships between buyers and sellers. The code also regulates contractual relationships between architects, engineers, and customers; within these provisions, it provides warranties, termination rights, and the regulation of unit rates for a variety of services. Likewise, the HOAI (Honorarordnung für Architekten und Ingenieure), a German regulation, provides a fee scale for architects and engineers, setting minimum and maximum rates for specific services. Although the legality of certain aspects of the HOAI is currently contested under EU law, it nonetheless illustrates the protections afforded to EU contracts. These protections enable the parties to resolve their contract disputes expediently and inexpensively.

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