

Common European Sales Law

2011/0284(COD) - 25/09/2013 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Legal Affairs adopted the report by Klaus-Heiner LEHNE (EPP, DE) and Luigi BERLINGUER (S&D, IT) on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law.

The Committee on the Internal Market and Consumer Protection, exercising its prerogatives as an associated committee under Parliament's [Rule 50 of the Rules of Procedure](#), also gave an opinion on the report.

The committee recommended that the Parliament's position adopted in first reading following the ordinary legislative procedure should amend the Commission proposal. The key amendments are as follows:

Structure: the report proposed merging regulation and annex, so as to obtain one consolidated and integrated instrument.

Purpose: the Common European Sales Law must be established **within the legal order of each Member State**. Members stressed the need to protect small or medium-sized enterprises ('SMEs').

Scope: The Common European Sales Law will only apply to **distance contracts**, including online contracts. The rules will also be applicable to digital content or related services are provided **using a cloud**, in particular when digital content can be downloaded from the seller's cloud or temporarily stored in the provider's cloud.

The Common European Sales Law may also apply under certain conditions to **mixed-purpose contracts and contracts linked** with a credit element. Linked contracts shall be governed by national law applicable by virtue of the conflict of laws rules.

Relationship with Rome I: the amendments aim to clarify the relationship between the Common European Sales Law and Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I)

Members proposed that the Common European Sales Law qualify **as second regime within the legal order of each Member State**. The agreement to use the Common European Sales Law is a **choice between two different regimes** within the same national legal order. This is not to be confused with a choice between two legal orders.

Once there is a valid agreement to use the Common European Sales Law, **only the latter** govern the matters falling within its scope.

The Common European Sales Law should also govern the **pre-contractual phase** from the point where the parties refer to it during negotiations. Where a trader leaves open whether it is prepared to contract under the Common European Sales Law under the otherwise applicable law, it must comply with both sets of standards.

Areas covered: in the interest of clarity and legal certainty, Members stipulated clearly, within the operative part of text, which areas are covered, and also provided a list of issues that are not covered

The **following matters are covered**: (i) pre-contractual duties to provide information; (ii) the conclusion of a contract including formal requirements; (iii) the right of withdrawal and its consequences; (iv) avoidance of the contract as a result of mistake, fraud, threat or unfair exploitation and the consequences of such avoidance; (v) interpretation; (vi) contents and effects, including those of the relevant contract; (vii) the assessment and the effects of unfairness of contract terms; (viii) the rights and obligations of the parties; (ix) remedies for non-performance; (x) restitution after avoidance or termination or in the case of a non-binding contract; (xi) prescription and preclusion of rights; (xii) sanctions available in the event of breach of the obligations and duties arising under its application.

Matters not addressed in the Common European Sales law are governed by the relevant rules of the national law applicable under Regulations (EC) No 593/2008 and (EC) No 864/2007 or any other relevant conflict-of-law rule.

Good faith and fair dealing: Members state that the principle of good faith and fair dealing is an important tool for finding equitable solutions on a case-by-case basis. They considered that ‘good faith and fair dealing’ means a standard of conduct characterised by **honesty, openness and, insofar as may be appropriate, reasonable consideration for the interests of the other party** to the transaction or relationship in question.

Digital content: Members amended the provisions regarding cases **where digital content is not paid for with money**. They considered that the buyer –who may have provided **personal data** instead of a price - should be able to have recourse to the full range of remedies – such as termination or restitution- except price reduction, since he did not pay a price. Furthermore, there are specific provisions made for the return of digital content in this case.

Prescription period: Members proposed that the long period of prescription should be **6 years** (rather than 10 years) bearing in mind prescription periods in Member States. They have made amendments to the Chapter relating to prescriptions.

Flanking measures: Members proposed a number of additional provisions in order to anchor flanking measures in the operative part of the text. These concern the database of judgments, the link with alternative dispute resolution, as well as the elaboration of EU-wide standard model contracts.

Review: this should take into account, amongst other matters, the need for new rules relating to retention of title clauses. Particular consideration shall further be given to whether the limitation in respect of distance, and in particular online contracts, remains appropriate or whether it may be feasible to **widen its scope** to cover, inter alia, on-premises contracts.