




Basic information	
2011/0284(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure lapsed or withdrawn
Common European Sales Law Subject 2.10 Free movement of goods 2.40 Free movement of services, freedom to provide 3.45.01 Company law 3.45.05 Business policy, e-commerce, after-sales service, commercial distribution 4.60.06 Consumers' economic and legal interests 7.40.02 Judicial cooperation in civil and commercial matters	





Key players				
European Parliament	Committee responsible		Rapporteur	Appointed
	JURI	Legal Affairs		
	Committee for opinion		Rapporteur for opinion	Appointed
	ECON	Economic and Monetary Affairs		
	IMCO	Internal Market and Consumer Protection (Associated committee)	GEBHARDT Evelyne (S&D)	29/11/2011
Council of the European Union	Council configuration	Meetings	Date	
	Justice and Home Affairs (JHA)	3172	2012-06-08	
	Justice and Home Affairs (JHA)	3279	2013-12-06	
European Commission	Commission DG	Commissioner		
	Justice and Consumers	REDING Viviane		
European Economic and Social Committee				

Key events			
Date	Event	Reference	Summary
		COM(2011)0635	Summary

11/10/2011	Legislative proposal published		
25/10/2011	Committee referral announced in Parliament, 1st reading		
24/05/2012	Referral to associated committees announced in Parliament		
08/06/2012	Debate in Council		Summary
17/09/2013	Vote in committee, 1st reading		
25/09/2013	Committee report tabled for plenary, 1st reading	A7-0301/2013	Summary
06/12/2013	Debate in Council		
26/02/2014	Decision by Parliament, 1st reading	T7-0159/2014	Summary
26/02/2014	Results of vote in Parliament		
26/02/2014	Debate in Parliament		
29/09/2020	Proposal withdrawn by Commission		

Technical information	
Procedure reference	2011/0284(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	JURI/7/07445

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee opinion	ECON	PE491.011	11/10/2012	
Committee draft report		PE505.998	06/03/2013	
Amendments tabled in committee		PE510.560	03/05/2013	
Committee opinion	IMCO	PE505.986	11/07/2013	
Committee report tabled for plenary, 1st reading/single reading		A7-0301/2013	25/09/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0159/2014	26/02/2014	Summary
European Commission				
Document type	Reference		Date	Summary

Legislative proposal	COM(2011)0635 	11/10/2011	Summary
Document attached to the procedure	COM(2011)0636 	11/10/2011	Summary
Document attached to the procedure	SEC(2011)1165 	11/10/2011	
Document attached to the procedure	SEC(2011)1166 	11/10/2011	
Commission response to text adopted in plenary	SP(2014)446	20/05/2014	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	DE_BUNDES RAT	COM(2011)0635	28/11/2011	
Contribution	PT_PARLIAMENT	COM(2011)0635	08/12/2011	
Contribution	BE_CHAMBER	COM(2011)0635	12/12/2011	
Contribution	IT_SENATE	COM(2011)0635	13/12/2011	
Contribution	RO_CHAMBER	COM(2011)0636	12/01/2012	
Contribution	RO_CHAMBER	COM(2011)0635	01/02/2012	
Contribution	CZ_SENATE	COM(2011)0635	06/02/2012	
Contribution	BG_PARLIAMENT	COM(2011)0635	24/02/2012	
Contribution	DE_BUNDES RAT	COM(2011)0635	18/03/2013	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES0800/2012	29/03/2012	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Common European Sales Law

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.

Common European Sales Law

The European Parliament adopted by 416 votes to 159, with 65 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law.

Parliament's position adopted in first reading following the ordinary legislative procedure amended the Commission proposal as follows:

Objective and scope: the new Regulation should enable traders, in particular **small or medium-sized enterprises** (SMEs), to rely on a common set of rules and use the same contract terms for all their cross-border transactions.

Members proposed that the Common European Sales Law should only apply to **distance contracts**, including online contracts. The rules should 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.

It approximates the contract laws of the Member States not by requiring amendments to the first national contract-law regime, but by creating a second contract-law regime for contracts within its scope. This directly applicable second regime should be an **integral part of the legal order applicable in the territory of the Member States**. In so far as its scope allows and where parties have validly agreed to use it, the Common European Sales Law should apply instead of the first national contract-law regime within that legal order.

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.

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

Linked contracts: 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.

The following matters are covered:

- pre-contractual duties to provide information;
- the conclusion of a contract including formal requirements;
- the right of withdrawal and its consequences;
- avoidance of the contract as a result of mistake, fraud, threat or unfair exploitation and the consequences of such avoidance;
- interpretation;
- contents and effects, including those of the relevant contract;
- the assessment and the effects of unfairness of contract terms;
- the rights and obligations of the parties;
- remedies for non-performance;
- restitution after avoidance or termination or in the case of a non-binding contract;
- prescription and preclusion of rights;
- 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: Parliament amended the provisions regarding cases **where digital content is not paid for with money**. It 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.

Common European Sales Law

This Commission communication accompanies the proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (*for details of this proposal, please refer to the summary of the initial legislative documents dated the same day*).

(1) Barriers hindering cross-border trade: despite these impressive successes, barriers between the EU Member States still remain. Many of these barriers result from **differences between national legal systems**. Among the main barriers that hinder cross-border trade are differences between the contract law systems of the EU's 27 Member States.

- **Difficulties for traders** (notably micro and small businesses): overcoming these hurdles means incurring transaction costs. The transaction costs to export to one other Member State could amount up to 7% of a micro retailer's annual turnover. To export to four Member States this cost could rise to 26% of its annual turnover. Traders who are dissuaded from cross-border transactions due to contract law obstacles forgo at least €26 billion in intra-EU trade every year.
- **Difficulties for consumers:** these differences make it more difficult to shop in countries other than their own, a situation which is particularly felt in the context of online purchases. 44% of consumers say that uncertainty about their rights discourages them from buying from other EU countries. While a third of consumers would consider buying online from another EU country if uniform European rules would apply, only 7% currently do. At least 3 million consumers had this experience over a one year period.

(2) The need for action at European Union level: the EU has been working on European contract law for a decade. With its [2001 Communication](#) on European contract law, the Commission launched a process of extensive public consultation on the problems arising from differences between Member States' contract laws. The Commission subsequently financed the work of an international academic network which carried out the preparatory legal research. This research work was finalised at the end of 2008 and led to the publication of the **Draft Common Frame of Reference** as an academic text.

On 1 July 2010, the Commission launched a public consultation ([Green Paper](#)) on different ways to make contract law more coherent in the EU.

The European Parliament has for many years strongly supported the work on European contract law. In June 2011, in response to the Commission's Green Paper, the Parliament voted a [resolution](#) with a four-fifths majority in support of optional EU-wide contract rules that would ease cross-border transactions (Option 4 of the Green Paper). The European Economic and Social Committee has also adopted an Opinion in favour of an optional advanced new regime on contract law.

Following the extensive consultation with stakeholders, and on the basis of an impact assessment, the Commission has decided to bring forward a **proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law**. This proposal is meant as a contribution to enhancing growth and trade in the internal market on the basis of freedom of contract and a high level of consumer protection. The proposal foresees a comprehensive set of uniform contract law rules covering the **whole life-cycle of a contract**, which would form part of the national law of each Member State as a **'second regime'** of contract law. This 'second regime' is carefully targeted to those contracts that are most relevant to cross-border trade, and where the need for a solution to the barriers that have been identified is most apparent.

(3) Effectiveness of the Common European Sales Law: the Commission considers that an **optional** Common European Sales Law will be more effective than soft law solutions, such as a simple 'toolbox' (which, as a non-binding instrument, would not be able to give traders or consumers legal certainty for their transactions), because it will create a single and uniform set of contract law rules that will be directly available for businesses and consumers.

Advantages for business:

- when a trader chooses the Common European Sales Law, it would be the only contract law rules that would apply in the area covered by its scope. Therefore, the trader would have to consider only one set of rules – those of the Common European Sales Law;
- the Common European Sales Law will ensure that businesses can substantially cut their transaction costs. In practice, a business seeking to expand into new markets would need to familiarise itself with just one contract law system in addition to the one with which it is already familiar. Once chosen, it represents a saving compared to the 26 national contract laws they would otherwise have to research to trade throughout the EU;
- for B2B contracts, use of the Common European Sales Law would add value by easing negotiations of the applicable law for SMEs. It could be easier to agree on a neutral law that is equally accessible for both parties in their own language.

Advantages for consumers:

- the Common European Sales Law has been designed to provide consumers with a **high level of protection**, and is the same in all Member States so that it can be seen as a mark of quality that can be trusted by consumers when buying across borders;
- the proposal will guarantee that a consumer is always **informed**, and consents to the fact that the contract is concluded on the basis of the Common European Sales Law. This information must be provided by the trader to a consumer alongside a summary of the core rights protected by way of a standardised information notice;
- the greater availability of cross-border offers will benefit consumers as more competition in the internal market will provide **more choice of products and the prospect of lower prices**.

(4) Flanking measures: following suggestions made by the European Parliament, businesses, legal practitioners and consumer organisations, the Commission will work closely with all relevant stakeholders to help develop 'European model contract terms' for specialist areas of trade or sectors of activity. A model contract which has standard terms and conditions and is available in all official languages of the European Union could be helpful for traders wishing to conclude cross-border contracts for which the Common European Sales Law is chosen. The Commission will, within 3 months of the entry into force of the Common European Sales Law, start this process by setting up a Group of Experts.

By 2018, the provisions of the Regulation itself will be reviewed taking into account, amongst others, the need to further extend the scope in relation to B2B contracts, market and technological developments in respect of digital content and future developments of Union acquis.

Common European Sales Law

2011/0284(COD) - 11/10/2011 - Legislative proposal

PURPOSE: to improve the establishment and the functioning of the internal market by facilitating the expansion of cross-border trade for business and cross-border purchases for consumers.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: **differences in contract law between Member States** and the additional transaction costs and complexity that they generate in cross-border transactions dissuade a considerable number of traders, in particular SME, from expanding into markets of other Member States. These differences also have the effect of limiting competition in the internal market. Currently, **only one in ten traders in the Union exports goods within the Union** and the majority of those who do, only export to a small number of Member States. The value of the trade foregone each year between Member States due to differences in contract law alone amounts to **tens of billions of Euros**.

With its [2001 Communication](#) on European contract law, the Commission launched a process of extensive public consultation on the problems arising from differences between Member States' contract laws. In July 2010, the Commission launched a public consultation by publishing a '[Green Paper](#) on policy options for progress towards a European contract law for consumers and businesses', which set out different policy options on how to strengthen the internal market by making progress in the area of European contract law.

In response to the Green Paper, the European Parliament issued a [Resolution](#) on 8 June 2011 in which it expressed its strong support for an instrument which would improve the establishment and the functioning of the internal market and bring benefits to traders, consumers and Member States' judicial systems.

The [Commission Communication](#) 'Europe 2020' recognises the need to make it easier and less costly for traders and consumers to conclude contracts with partners in other Member States, notably by making progress towards an optional European contract law. The [Digital Agenda for Europe](#) envisages an optional instrument in European contract law to overcome the fragmentation of contract law and boost consumer confidence in e-commerce.

IMPACT ASSESSMENT: the Impact Assessment analysed the **seven policy** options set out in the Green Paper. These options were: (1) the baseline scenario (no policy change); (2) a toolbox for the legislator; (3) a Recommendation on a Common European Sales Law; (4) a Regulation setting up an optional Common European Sales Law; (5) a Directive (full or minimum harmonisation) on a mandatory Common European Sales Law; (6i) a Regulation establishing a European contract law; (7) a Regulation establishing a European Civil Code.

The **establishment of an optional uniform contract law regime** (Option 4) was therefore reasoned to be the most proportionate action as it would reduce transaction costs experienced by traders exporting to several Member States and give consumers more product choice at a lower price

LEGAL BASIS: Article 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the Proposal provides for the **establishment of a Common European Sales Law**. It harmonises the national contract laws of the Member States not by requiring amendments to the pre-existing national contract law, but by creating within each Member State's national law a **second contract law regime** for contracts covered by its scope that is identical throughout the European Union and will exist alongside the pre-existing rules of national contract law.

This 'second regime' is characterised by the following features:

- **A contract law regime common to all Member States:** the Common European Sales Law will be a 'second regime' of contract law that is identical in every Member State. It will be common for the whole of the EU.
- **An optional regime:** the choice of the Common European Sales Law will be voluntary. In line with the principle of freedom of contract, a trader is free to choose to offer a contract under this regime (opt-in system) or to remain with the existing national contract law.
- **Focus on 'sales' contracts:** the Common European Sales Law will introduce a self-standing and complete set of rules for sales transactions. This will in particular but not exclusively be useful for the online supply of goods. The Common European Sales Law could also be used, for example when buying music, films, software or applications that are downloaded from the internet. These products would be covered irrespective of whether they are stored on a tangible medium such as a CD or a DVD.
- **Limited to cross-border contracts:** the scope of the Common European Sales Law is focussed on cross-border situations where the problems of additional transactions costs and legal complexity arise. The Common European Sales Law is therefore targeted to where it is needed and is not available as a general substitute to existing national contract law. It is left to the discretion of Member States whether to give the regime a wider application. Member States thus have the choice to make the Common European Sales Law also available for domestic contracts – which could further reduce transaction costs for businesses active on the single market.
- **Focus on B2C contracts and B2B contracts where at least one party is an SME:** the scope of the Common European Sales Law is focussed on aspects which pose real problems in cross-border transactions, i.e. business-to-consumer relations and business-to-business relations where at least one of the parties is an SME. Contracts concluded between private individuals (C2C) and contracts between traders where neither of the parties is an SME are not included.
- **Identical set of consumer protection rules:** the Regulation will establish for all the areas of contract law the same common level of consumer protection.
- **A comprehensive set of contract law rules:** the Common European Sales Law includes rules that cover issues of contract law that are of practical relevance during the life-cycle of a cross-border contract. These issues fall within the areas of the rights and obligations of the parties and the remedies for non-performance, pre-contractual information duties, the conclusion of a contract (including formal requirements), the right of withdrawal and its consequences, avoidance resulting from a mistake, fraud or unfair exploitation, interpretation, the contents and

effects of a contract, the assessment and consequences of unfairness of contract terms, restitution after avoidance and termination as well as prescription. It settles the sanctions available in case of the breach of the obligations and duties arising under its application. On the other hand, certain topics that are either very important for national laws or less relevant for cross-border contracts – such as rules on legal capacity, illegality/immorality or representation and the plurality of debtors and creditors – will not be addressed by the Common European Sales Law. These topics continue to be governed by the rules of the national law that is applicable under the Rome I Regulation.

- **With an international dimension:** the proposal also has an international vocation in that, in order to be applicable, it is sufficient that only one party is established in a Member State of the EU. This international vocation enables the Common European Sales Law to become a standard setter for international transactions in the area of sales contracts.

BUDGETARY IMPLICATION: after the adoption of the proposal, the Commission will set up a database for the exchange of information concerning final judgments referring to the Common European Sales Law or any other provision of the Regulation, as well as relevant judgements of the Court of Justice of the European Union. The costs associated with this data-base are likely to grow as more final judgments become available. At the same time, the Commission will organise **training sessions for legal practitioners using the Common European Sales Law**. These costs are likely to decrease with time, as knowledge about how the Common European Sales Law works spreads.

Common European Sales Law

2011/0284(COD) - 08/06/2012

The Council held an **orientation debate** on how to handle the further negotiations on the proposal for a regulation on a Common European Sales Law.

The Council was invited to address questions relating to:

- **the legal basis;**
- the need for the proposed Common European Sales Law;
- its scope;
- whether to start work on model contracts.

The debate showed that the **views of member states on the proposal varied**, but that despite the diverging views it was possible to draw a number of concrete conclusions on the organisation of further work on this dossier.

Even though approaches to the issue are different, there was **overall agreement that work should start on the examination of the substance of the Annex to the proposal**.

Even though a final position on the legal basis can be taken only once the final structure and scope of the proposal are clear, the diverging views on the question of the legal basis should not present an obstacle to starting work on examination of the Annex.

Particular emphasis was placed on the importance of allowing sufficient time for the proposal to be examined thoroughly during the actual examination of the Annex, taking account of the views and concerns of all the member states.

Moreover, it needed to be ensured during the examination of the Annex that the focus was on the question of the extent to which the individual parts of the proposal would work towards removing the actual practical obstacles to the internal market.