

Common European Sales Law

The proposed Common European Sales Law (CESL) is intended to create a uniform set of contract rules available to traders and consumers entering into cross-border transactions in the internal market. The Legal Affairs Committee backs the proposal, but has tabled numerous amendments.

Background

After the Tampere European Council (1999) [requested](#) a study on the possible need to harmonise Member States' private laws, the Commission [launched](#) a debate on European contract law, in 2001. Concluding this, it proposed the creation of a Common Frame of Reference (CFR) containing principles, definitions and model rules for European contract law. A network of experts delivered a draft [CFR](#) in 2009. In parallel, the usefulness of an optional instrument in contract law was discussed, and in 2010 year a group of experts prepared a [feasibility study](#) on the topic. With its 2010 [Green Paper](#) the Commission re-consulted the public on possible policy options, including an optional instrument. The EP backed the idea in a [resolution](#) of 2011.

Commission proposal

Drawing on the feasibility study, in 2011 the Commission tabled a [proposal](#) for a CESL, invoking the legal basis of internal market harmonisation (Art. 114 TFEU). The CESL would be an optional instrument. That is, it would apply only if parties opt for it in a specific cross-border contract for the sale of goods or digital content, and for related service contracts. A consumer would have to agree explicitly to the use of CESL, after receiving information on its content. The CESL would contain a single set of pan-EU rules which would exist in parallel to Member States' contract laws. The proposed substantive rules would encompass, *inter alia*, the conclusion of a contract, the determination of its content, obligations and remedies, damages and interest, restitution and time limits for making claims. Buyers would have a free choice of remedies (repair, replacement, or termination of the contract). Although uniform across Europe, the CESL would not be a "29th legal system", which could be chosen instead of a specific national law under conflict of law rules.

European Parliament

As from 2012, the Legal Affairs Committee (co-rapporteurs: Klaus-Heiner Lehne, EPP, Germany, and Luigi Berlinguer, S&D, Italy) organised a number of [hearings](#), [workshops](#) and [conferences](#), with the participation of representatives from Member State parliaments, as well as legal practitioners, business and consumer representatives. Issues discussed were both general (e.g. how CESL should function within the existing legal framework and whether its coverage and content meet the needs of its users, whether it provides for sufficient legal certainty and clarity and a sufficient level of consumer protection), as well as specific ones related to the main chapters in the annex to the proposal (i.e. on unfair contract terms, remedies, as well as restitution and prescription). In January 2013, the Parliament's Impact Assessment Unit positively [evaluated](#) the Commission's assessment, but expressed certain reservations as to the use of public opinion surveys.

In September 2013, the Legal Affairs Committee adopted its [report](#), backing the proposal, in particular the optional character of the instrument and the legal form of a regulation. The report would, however, limit the applicability of CESL to distance contracts only, make clearer the line between CESL and Member State contract laws, limit the scope and effects of "good faith and fair dealing", and modify the rules on buyer's remedies. In its [opinion](#), the Committee on the Internal Market and Consumer Protection (rapporteurs: Evelyne Gebhardt, S&D, Germany and Hans-Peter Mayer, EPP, Germany), an associated committee under Rule 50, suggested changing the legal form to a directive, which would harmonise certain aspects of the seller's liability towards consumers, thereby supplementing the [Consumer Rights Directive](#).

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