

---

Hearing of the Committee  
on the Internal Market and Consumer Protection

# Common European Sales Law – Good Choice for the Consumer?

Session 2:  
Consumer Protection Elements of the CESL

Bernd Seifert,  
Oldenburgische Industrie- und Handelskammer  
24 September 2012

- 
- **The concept of an optional CESL will only work if it is so well-balanced that both parties – the consumer as well as the trader – consider it a good choice!**
  - **Focussing mainly on consumer interests will inevitably generate rejection on a large scale among the professional traders.**

## TOPIC 1: CESL'S **LEGAL BASIS**

- **Acceptance among the parties involved inevitably requires a proper legal basis for CESL!**
- **CESL cannot be based on Art. 114 TFEU (Regulation intends no harmonization of national law, but the creation of a parallel legal regime.)**
- **Proper legal basis is Art. 352 TFEU**

## TOPIC 2: DUTIES TO PROVIDE **INFORMATION**

- **Seller has to provide up to 97 (!) individual pieces of information (Art. 13-22 CESL) plus another 12 when offering goods on the Internet (Art. 24-25 CESL)**
- **Additional information duties can arise from the Services Directive 2006/123/EC (Art. 12 CESL-Regulation)**
- **Does a consumer really want to read all of this?**

### TOPIC 3: BUYER'S REMEDIES

- In case of a lack of conformity, seller currently has the right to repair or replace the goods in the first place (Art. 3 (3) Directive 1999/44/EC)
- Art. 106 (3) CESL: „The buyer's rights are not subject to cure by the seller.“
- Art. 109 (1) CESL: Only „early“ performance entitles the seller to repair or replace the goods in the first place. What is „early“ performance?

### TOPIC 4: PRESCRIPTION

- Prescription periods of **10** years is far too long and way above the usual life cycle of most consumer products
- Seller cannot clearly foretell when the prescription period starts or ends (Art. 180 CESL)
- As a result, traders will have to make higher provisions in their balance sheets
- Prescription period of **2** years (starting when the goods are delivered to consumer) would be adequate

**Perspective:**

**CESL will only work if both parties  
– the trader as well as the consumer –  
consider it to be a good choice!**



**Assessor iur. Bernd Seifert**

**Oldenburgische Industrie- und Handelskammer  
Moslestraße 6, D-26122 Oldenburg**

**Tel.: 0441/2220-365**

**Fax.: 0441/2220-5365**

**E-Mail: [seifert@oldenburg.ihk.de](mailto:seifert@oldenburg.ihk.de)**

**Internet: [www.ihk-oldenburg.de](http://www.ihk-oldenburg.de)**