

Common European Sales Law

2011/0284(COD) - 26/02/2014 - Text adopted by Parliament, 1st reading/single reading

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.

Parliaments 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.