



CCBE PRELIMINARY POSITION PAPER REGARDING THE PROPOSAL FOR A REGULATION ON A COMMON EUROPEAN SALES LAW (COM(2011)0635)

CCBE Preliminary Position Paper regarding the proposal for a Regulation on a Common European Sales Law (COM(2011)0635)

The Council of Bars and Law Societies of Europe (CCBE) is the representative organisation of around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer countries.

This document is presented as a preliminary position paper in order to express some initial observations before presenting a more elaborated response on the substance of the proposed Common European Sales Law (CESL) that was published on October 11, 2011.

In consideration of a number of position papers already issued by the CCBE which outlined support for the work of the European Commission on European Contract law, and during 2011, for its project for an optional CESL¹, a discussion has taken place among CCBE members regarding the proposal for a CESL. The CCBE has considered the submissions of the House of Commons², the Austrian Bundesrat³ and the German Bundestag⁴, claiming that the legal basis for the CESL cannot appropriately be Art. 114 of the [Treaty on the Functioning of the European Union](#) (TFEU). The CCBE has also taken into account serious doubts outlined in these submissions as to whether the project of the CESL is fully in line with the principle of subsidiarity pursuant to Art. 5 TFEU.

In addition, doubts exist as to the relationship of the proposal with Art. 6 of the [Rome I Regulation](#)⁵ and the legal uncertainty that may be caused if no consensus can be found about this issue.

The CCBE has also considered in detail the Commission's reasoning that Art. 114 TFEU is an appropriate legal basis for the enactment of a CESL Regulation and that the proposal complies with the principle of subsidiarity. The explanation given by the Commission regarding the applicability of Art. 6 of the Rome I Regulation has also been noted.

The CCBE, whilst not currently in a position to prejudge these legal issues, nevertheless must reflect the views of its membership, which indicate that, whilst there are differences of view, at the very least, there are serious doubts about the above mentioned aspects. Reference is made to the statements which CCBE members have published.⁶

1 So far, the following work has been undertaken by the CCBE:

- [CCBE Resolution on European Contract Law](#)
- [CCBE Position Paper on certain principles of European Contract Law](#)
- [CCBE Position paper on the Draft Consumer Rights Directive](#)
- [CCBE Position Paper on the Draft Common Frame of Reference](#)
- [CCBE position on the services and mandate of the Draft Common Frame of Reference with particular reference to service contracts between lawyers and clients](#)
- [CCBE Submission regarding the Green paper from the Commission on policy options for progress towards a European Contract Law for consumers and businesses](#)

2 Reasoned opinion by the House of Commons of the United Kingdom of Great Britain and Northern Ireland on the proposal for a regulation on a Common European Sales Law, 14 December 2011.

3 Reasoned opinion by the Bundesrat of the Republic of Austria on the proposal for a Regulation on a Common European Sales Law, 9 December 2011.

4 Reasoned opinion by the Bundestag of the Federal Republic of Germany on the proposal for a Regulation on a Common European Sales Law, 16 December 2011.

5 Regulation (Ec) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)

6 The UK delegation:

- The Bar Council of England and Wales:
http://www.barcouncil.org.uk/media/112927/bar_council_of_e_w_preliminary_views_on_cesl_legal_basis_-_january_2012.pdf

- The Law Society of England and Wales:
http://international.lawsociety.org.uk/files/LSEW_Preliminary%20comments%20on%20relationship%20between%20CESL%20and%20Rome%20I.pdf

The Austrian delegation: http://www.rechtsanwaelte.at/downloads/21_10_103_cesl.pdf

The German delegation:

- Bundesrechtsanwaltskammer: <http://www.brak.de/zur-rechtspolitik/europa/zivilrecht/vertragsrecht/>

The CCBE thus considers that the Commission, the Council and the European Parliament should quickly try to form a uniform position on these issues in light of the submissions presented and referred to herein.

The CCBE is convinced that the acceptance of the CESL Regulation as an optional instrument will be heavily impaired if there is no solid and tested ground for its enactment. The legal uncertainty and confusion that could result for both consumers and traders would not be a desirable outcome.

The CCBE will continue its review of the substantive legal provisions of the CESL, the findings of which will, in due course, be published in a position paper to be submitted to the relevant institutions. But the CCBE feels that the legal issues mentioned need urgent resolution.

The CCBE therefore calls upon the EU institutions to engage in an in-depth analysis of these legal issues, before proceeding further with the legislative process.

-
- Deutscher Anwaltverein:
<http://www.anwaltverein.de/interessenvertretung/stellungnahmen?PHPSESSID=edj1v0gle7vc7cmhr3bokf072>
 - The Danish delegation: <http://www.advokatsamfundet.dk/OmAdvokatsamfundet/Hoeringssvar/Hoeringssvar/2011/2011-4339%20Lovudvalget.aspx>

Conseil des barreaux européens – Council of Bars and Law Societies of Europe
association internationale sans but lucratif

Avenue de la Joyeuse Entrée 1-5 – B 1040 Brussels – Belgium – Tel.+32 (0)2 234 65 10 – Fax.+32 (0)2 234 65 11/12 – E-mail ccbe@ccbe.eu – www.ccbe.eu

16.02.2012