

## ABSTRACT

### **THE MANY ADVANTAGES OF A COMMON EUROPEAN SALES LAW**

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1 Whatever may be its merits and demerits, the draft regulation on a common European sales law (CESL) has had one major effect. It has been discussed all over Europe and even outside. Whether or not an Optional Instrument should be introduced by the European Union, is a hotly debated issue.

Basically, the authors of the various publications referred to above have either given a positive appraisal of the project, albeit usually with reservations regarding specific proposals, or rejected the Optional Instrument. However, among the latter there is a widely held view that if the proposal does not help, it does not harm either. This is a view which I wish to challenge. I am myself in favour of the Optional Instrument – although in my view a two-year period of reflection to substantially improve the text would be necessary. But seen from the viewpoint of an adversary, it would in my mind be unwise to adopt the Instrument. The lenient attitude of opponents of the proposal is based on the understanding that if no one opts in, the Optional Instrument will have no impact. So, opponents argue, let the Regulation be adopted and the fact that no-one opt in, will defeat the project by itself. This view, I submit, with respect is incorrect. Thanks to interpretation in conformity with directives, provisions such as those on reasonableness and good faith (Article 2), if the proposal is adopted, may be applied outside the few directives where they have been introduced (unfair contract terms and commercial agents), whereas the rules on formation may be applied to forum choice clauses. It is most probable that the regulation's opponents have never considered this possibility.

2 Why it is that the Common European Sales Law seems to provoke the German speaking part of Europe so much more than other linguistic communities? The reason may be the following. Christian Müller-Graff has pointed out that the draft Regulation is available in all official languages including German. Until then, the Feasibility study and its drafts existed only in English. And although this is comprehensible to most German lawyers, it does make discussion of technical issues awkward. The present abundance of German language commentaries is most certainly attributable to this linguistic argument.

4 CESL was preceded by a feasibility study, drafted by a group of mainly academics. Although basically the CESL proposal is modeled after the feasibility study, there are also some differences. The major difference of course, is that whereas the Feasibility study dealt with Contract Law in general, CESL focuses on a sales plus contract. By 'sales plus' we should think of sales contracts and some related contracts. In the future CESL may serve as a building block for a future Civil Code. It may even contribute to the further development of CISG.