



A Quick Guide to the Common European Sales Law

On 26 February 2014, MEPs voted in the European Parliament to approve the Common European Sales Law (CESL). Here Burges Salmon gives you a quick guide to the key things you should know about the CESL.

What is the CESL and how will it work?

The CESL will create a new “European” legal contractual framework for distance selling and will negate the need for businesses to rely on the national laws of all the states from which they operate. The CESL will be optional but can be expressly opted into for any cross border contract for the sale of goods and/or digital content.

It will be available for both business to business and business to consumer distance selling transactions. For added flexibility it will also be available where only one party is a member of the EU opening up the possibility of it being used for international contracts.

When they implement the CESL, Member States will have the option to make it available for domestic contracts where there is no cross border element. However, the likelihood is that some Member States, possibly including the UK, will choose not to implement the CESL scheme for domestic contracts leaving businesses having to work with both the CESL and one or more national contract law systems.

Why is it being implemented?

The EU has succeeded in creating a single trading market but as technology and online selling have increased, new issues have arisen. For example, an EU report in 2012 found that intra-EU cross-border trade via the eBay marketplace had grown six times faster than offline cross-border trade for the period 2004 to 2010. Despite that growth in online sales, only 9.3% of all EU companies sell across EU borders. The EU concluded that businesses are being put off exporting their goods into other member states because of the need to work with multiple sets of national laws. It is estimated that it costs on average €10,000 to export into a new market place.

The EU concluded that in order to tackle the lack of trade between states, a new European set of rules for the export of



goods and digital content was needed. The CESL is intended to simplify cross border selling by providing these rules. It is expected that having one set of European rules will lower the legal and administrative hurdles of cross border selling alongside cutting transaction costs for businesses throughout Europe.

When will it be in force?

Although it has been approved by the European Parliament it has yet to go to the European Council to be approved. Following the vote in the Parliament, Vice-President Viviane Reding (the EU’s Justice Commissioner) issued a press release urging the European Council of Ministers to vote to approve the law quickly. It looks like the CESL is on its way and will be implemented, although how long this will take is currently unknown.

How will it impact on me?

Once the CESL has been approved it will be available for businesses across Europe to use. Businesses will need to understand it to be able to decide whether to use it for their own contracts and how to react when presented with it by the other side in a transaction. In reality, how much it is taken up

will be guided both by the big players in the market and the negotiating power of each individual party. If supporters of the CESL, such as eBay, get on board then it is likely that this will pave the way for smaller market players to follow suit.

However, not everyone is happy. The UK and German Governments have criticised the CESL as they are not convinced that a single EU law is the best way of tackling the issues the CESL sets out to solve. The UK is already trying to deal with the same or similar issues via the Consumer Rights Bill. As the CESL drafting is simpler it should be attractive for businesses. For example, if goods do not conform to the contract a buyer under CESL has a free choice of any remedy from a non-hierarchical list, whereas under the Consumer Rights Bill the remedy available turns on the type of term that has been breached. This unnecessarily complicates the position and it will ultimately be businesses that will end up paying more in legal fees to work out what their obligations are.

In light of the criticism from the UK and Germany it remains to be seen whether optimism over the implementation of the CESL is warranted. In any event, it will be businesses that have the final say as to whether to opt in or out.

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