



A COMMON EUROPEAN SALES LAW FOR  
THE EUROPEAN UNION – A PROPOSAL  
FOR A REGULATION FROM THE  
EUROPEAN COMMISSION

SUBMISSION FROM THE BOOKSELLERS  
ASSOCIATION TO THE MINISTRY OF JUSTICE

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## 1 INTRODUCTION

1.1 The Booksellers Association welcomes the opportunity to give its views on the proposal by the European Commission to introduce a Regulation for a Common European Sales Law for the European Union.

1.2 It is hoped that our views on this Consultation will help the Ministry of Justice and the Coalition Government to develop its position on this Commission proposal.

### **BA membership**

1.3 The Booksellers Association [the “BA”] is a trade association, based in London WC2, currently with 3,618 bookselling outlets in membership. Of these, 1,056 are from businesses which have five or fewer outlets – very much Small or Medium Enterprises [“SMEs”].

1.4 Our members cover a diverse range of different bookselling businesses - large High Street chains with mixed businesses (eg W H Smith); large specialist bookselling chains (eg Waterstones); independents (eg Daunts); library suppliers (eg Askews); school suppliers (eg Heath Educational Book Supplies); specialist Internet booksellers (eg Eddington Hook); supermarkets (eg Tesco); and the two national wholesalers (Bertrams and Gardners).

1.5 BA members sell to all markets (consumer – fiction/ non-fiction/ reference/ children’s; academic – academic/ professional/ school/ English Language Teaching) from terrestrial shops and over the internet in a variety of different formats (hardback, paperback, audiobook and now e-book).

### **The BA**

1.6 The BA helps its members to sell more books; operate from a lower cost base; improve competitiveness and productivity; network with others in the ‘book world’ and further afield and, most importantly, to represent their views..... as we are now doing.

## 2 THE PRINCIPLE OF A COMMON EUROPEAN SALES LAW

2.1 The Booksellers Association does not support the principle of a Common European Sales Law [“CESL”] as proposed by the Commission.

2.2 As we understand the proposals, there will be two sales’ law systems in operation sitting alongside each other:

- A member state’s national domestic laws
- The CESL.

2.3 The latter will only deal with cross-border B2B or B2C transactions when at least one of the businesses is a SME.

2.4 Having two different systems is confusing. It is doubly confusing, because introducing the CESL will be optional. Businesses will have to keep asking themselves: *Which of the two systems is being used in a particular situation?*

2.5 Confusion causes uncertainty. How do you know before a business ‘relationship’ gets which of the two arrangements will be used?

2.6 And complexity increases costs. Many of our members will simply not know which system is better to be used within the business – and will therefore have to seek professional advice.

### **3 THE SCOPE OF THE COMMON EUROPEAN SALES LAW**

3.1 Moreover, the CESL will only apply to cross-border sales. So a bookseller would adhere to the national law if non-cross border transactions are involved, but would then have a choice to opt in or out of the CESL if the retailer sells to another business or a consumer in another member state.

3.2 The Booksellers Association thinks that contract law has worked pretty well in the UK. It has been developed over very many years. Booksellers are pretty familiar with phrases like “*fit and merchantable quality*” and “*fit for purpose*”. We see no reason to change to a European framework that adopts a very different approach.

### **4 THE CONTENT OF THE COMMON EUROPEAN SALES LAW**

4.1 Furthermore, our understanding is that under the CESL consumers have an extended right to terminate the contract as a remedy for non-conformity. This right would run up to two years from the date on which the consumer believed that the goods were faulty.

4.2 This seems to us a pretty high level of protection for the consumer. Too high, in fact, and this perception is likely to deter booksellers from signing up to the CESL. The pendulum needs to be brought back to support the retailer more.

4.3 Rome 1 notwithstanding, there also seems to be some uncertainty as to where cases concerning cross-border disputes might be held – in the country of origin, or the country of destination? If you are a bookseller in the UK and a dispute has to be heard in another member state, legal costs of engaging professional advice are likely to increase.

4.4 Finally, we note that under the proposals, e-books sold by a bookseller from the UK to, say, a consumer in another member state will be subjected to the CESL proposals, but online services will be excluded. That seems to be wrong.

### **5 CONCLUSION**

5.1 As far as booksellers are concerned, the proposals seem to be bad news. We can't quite see how these proposals will add to Growth and Jobs in the sector.

5.2 It does seem to us that there are more important things to worry about – particularly piracy, fraud, sorting out the banking system and how to get the economies of Europe moving again.

5.3 We are grateful to the Ministry of Justice for giving us an opportunity to give our views and look forward with interest to learning about the Government's position after the consultation process has ended.

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