

BOOK REVIEW

„European Perspectives on the Common European Sales Law” by Javier Plaza Penades and Luz M.Martinez Velencoso (eds.)

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1. Overview

As its title suggested, the book edited by J.Plaza Penades and L.M.Martinez Velencoso and published by Springer this year (2015), offers a complete analysis of the Draft of Common European Sales Law² (CESL) - as was amended³ -, from a range of European perspectives.

Taking into account that the authors belong to different Member States – Germany, Norway, Poland, Portugal, and Spain- this book „present a coherent view of the subject from the perspective of a number of scholars from different European countries, of whom will compare the text of the CESL with their own national law and other European legal texts”⁴.

Futhermore, the authors address very different topics from both national and comparative law perspectives, reflected the specificity of European law. On the other hand, they intend to offers to their readers „a serious comparative study of the CESL alongside other instruments, such as the CISG, and also pre-existing instruments including the Draft Common Frame of Reference (DCFR) and the Principles of European Contract Law (PECL).”⁵

2. The structure

This theoretical endeavour is traced the structure of the CESL, which reflected the main moments of the sale-purchase contract. As it is mentioned in the *preface*: „(t)he subjects that are regulated by the CESL may be divided into three groups: (i) aspects related to the conclusion of the contract and its content;

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² Annex I, *Common European Sales Law* of the „Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law”, COM(2011) 635 final of 11.10.2011.

³ European Parliament legislative resolution of 26 February 2014 on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law (COM(2011)0635 – C7-0329/2011 – 2011/0284(COD)).

⁴ Javier Plaza Penadés, Luz M. Martínez Velencoso (eds.), *European Perspectives on the Common European Sales Law*, Preface, Springer, 2015, pp. v-viii.

⁵ *Idem*.

(ii) aspects related to the performance of obligations by both parties; and (iii) aspects related to remedies in case of non-performance, including the issue of prescription of claims and other rights.”⁶

The book begins by analyzing the background of the regulation and emphasizes the academic achievement in the field of the European private law.⁷ One of the most important aspect of CELS, meaning the „rules of its applicability” forms the subject matters of the *Chapter 2*, entitled “Some Private International Law Issues”, by Guillermo Palao Moreno. This author presents the opt-in character of the CESL in both B2B and B2C contexts and he rightly suggests that the choice of the CESL removes the application of United Nations Convention on International Sale of Goods (CISG).

(i) The complex issues imply by the conclusion of the contract are addressed in the next three chapters,⁸ such as: the basic requirements for the conclusion of both the morally binding agreement and legally binding contract;⁹ the pre-contractual information required in the B2B contracts; the provisions that regulate conclusion of contract by electronic means; the provisions concerning the right to withdraw in distance provisions on the content of the contract;¹⁰ the integration of advertising into contracts¹¹ and on unfair contract terms¹².

(ii) The core of the contract, representing the obligations and remedies of the parties to a sale-purchase and related services contracts, forms the subject matter of the Chapters 9-12. Thus, the performance of the seller’s and the buyer’s obligations is resumed in Chapter 9¹³ and Chapter 10¹⁴, while Chapter 12¹⁵ approaches the obligations of the parties in the service contracts (linked directly to sale-purchase contracts). Moreover, the Chapter 11¹⁶ addresses the topic of the contract for the supply (license) of digital content and presents the relevant EU regulations and directives having an effect on this type of contract, in particular the

⁶ *Ibidem*, p.vi.

⁷ A.S. Gomes, *Chapter 1*, “The Proposal for a Regulation on a Common European Sales Law (CESL): An Introduction,” pp.1 et seq.

⁸ Chapters 3-5.

⁹ J.J. Szczerbowski, *Chapter 3* „Formation of Contract”, pp.37 et seq.

¹⁰ C. Azcárraga Monzonís and R. Guillén Catalán, in *Chapter 4*, „The Mandatory Nature of the Right of Withdrawal”, compare the provisions of DCSEL with those contained in the European Consumer Rights Directive (2011/83/EU) regarding the consumer right of withdrawal, pp. 45 et seq.

¹¹ F.I. Ruiz, *Chapter 5*, „The Integration of Advertising Statements into the Content of the Contract,” pp. 67 et seq.

¹² H. F. Marthinussen addresses, in *Chapter 6*, “Unfair Contract Terms”, the issue of unfair standard terms by presenting the rules contained in CESL in the light of the DCFR, pp. 93 et seq.

¹³ M. Paz García Rubiox “Non Conformity of goods and Digital Content and its Remedies,” pp. 163 et seq.

¹⁴ F.Oliva Blázquez, “Passing of Risk,” pp. 183 et seq.

¹⁵ M.J. Reyes López “Obligations and Remedies Under a Related Service Contract,” pp. 225 et seq.

¹⁶ J. Plaza Penadés, “Contract for the Supply of Digital Content”, pp. 207 et seq.

rules on copyright, consumer law and e-commerce. As it was underlined, „(t)his can be seen as the most novel part of the CESL and also a very important part”¹⁷.

One of the most sensitive issue, detailed in Chapter 10, is the passing of risk in sales involving carriage of goods, when the goods are sold in transit or when the goods are placed at buyer's disposal, which is analyzed in both B2B and B2C context, „ensuring a high level of consumer protection in this field”¹⁸.

Another very problematic topics regarding any contract, including sale-purchase, to consider is that of the non-performance and „fundamental non-performance” which constitutes the regime of breach of contract. The solution proposed by the authors, detailed in Chapter 7¹⁹ is the result of the outcomes of the uniform law, CISG, PECL and DCFR. According to the CESL, a case of non-performance of the contract is the lack of conformity, as is underlined in Chapter 9; and in this situation the recourse to the panoply of remedies typical for nonperformancemakes possible.

Lastly, it studies the hardship clause referring to the adaptation of the disproportionated contract due to an unexpected change of circumstances, in accordance with Article 89 of the CESL.²⁰

(iii) The final part of the book examines aspects related to the enforcement of contracts, like certain remedies for loss and on interest to be paid for late payment,²¹ the scope and manner of exercising a restitution claim of whatever was supplied under a contract that has been subsequently avoided or terminated.²²

Finally the Chapter 15²³ deals with the prescription related to the sale-purchase contract. CESL stipulates the prescription in an exhaustive maner, reevaluates „several new tendencies that have emerged from a number of national legal systems. Therefore this regulation could form the basis of its regulation in a future European Civil Code.”²⁴

3. Some concluding remarks

It is important to underline that the provisions of the CESL are based on a combination of concepts derived from common law and civil legal systems of various Member States. Therefore, in the future the application of these rules „will

¹⁷ Javier Plaza Penadés, Luz M. Martínez Velencoso (eds.), *European Perspectives on the Common European Sales Law*, Preface, Springer, 2015, p. viii.

¹⁸ Javier Plaza Penadés, Luz M. Martínez Velencoso (eds.), *European Perspectives on the Common European Sales Law*, Preface, Springer, 2015, p. vii.

¹⁹ M.Schmidt-Kessel and E. Silkens “Breach of Contract,” pp. 111 et seq.

²⁰ L.M. Martínez Velencoso, *Chapter 8* “Change of Circumstances,” pp. 137 et seq.

²¹ M. Lehmann, *Chapter 13*, “Damages and Interest,” pp. 243 et seq.

²² A.S.Rodríguez, *Chapter 14*, “Restitution,” pp. 263 et seq.

²³ L.M. Martínez Velencoso and A.O’Flynn, “The Rules on Prescription,” pp. 287 et seq.

²⁴ Javier Plaza Penadés, Luz M. Martínez Velencoso (eds.), *European Perspectives on the Common European Sales Law*, Preface, Springer, 2015, p. viii.

provide interesting insights into the mechanism of the reception of law into different legal cultures.”²⁵

As was stressed out in the end of the preface, „this Book seeks to offer a commentary on the main aspects of the CESL from the perspectives of scholars of different European countries, so that the intended impact of the CESL may be achieved in practice.”²⁶

²⁵ *Idem.*

²⁶ *Ibidem.*