

From Here to Eternity: The Proposal for a Regulation on a Common European Sales Law (CESL)

Reiner Schulze (ed.), *Common European Sales Law (CESL) – Commentary* (Baden-Baden/München/Oxford: C.H. Beck/Hart/Nomos, 2012), EUR 189, 816 pp.

RUBEN DE GRAAFF, YVO RAMPERSAD, PIETER DE TAVERNIER, JEROEN VAN DER WEIDE*

1. Background and Objectives of the CESL

Against the background of a serious debt crisis, European leaders are desperately seeking to promote growth in their local economies. According to European Union (EU) Justice Commissioner Viviane Reding, the Single Market is ‘our best lever of growth’.¹ To improve the establishment and the functioning of the internal market, the European Commission launched a Proposal for a Regulation on a Common European Sales Law (CESL) on 11 October 2011.² The CESL is economically driven:³ the instrument should promote and facilitate cross-border activity.⁴ This objective is attained by creating a self-standing uniform set of contract rules on sales law,⁵ which should be identical throughout the EU and which would exist alongside the pre-existing rules of national contract law.⁶

* Staff members of the Institute for Private Law, Leiden Law School.

1 V. REDING, ‘The Common European Sales Law - Breaking the Mould to Help Businesses and Customers’, available at <http://europa.eu/rapid/press-release_SPEECH-12-164_en.htm> (last visited on 17 July 2013).

2 European Commission, *Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law*, Brussels 11 October 2011, COM(2011) 635 Final (115 pp.).

3 Rather than social or political even though, following Art. 114(3) Treaty on the Functioning of the European Union (TFEU), the CESL is intended to provide a ‘high level of consumer protection’, see S. WHITTAKER, ‘Identifying the Costs of the Common European Sales Law’, *Common Market Law Review* 2013, p. 85.

4 Explanatory Memorandum to the Regulation, p. 4; Art. 1 Regulation (hereinafter ‘RegCESL’).

5 For the discussion whether the CESL should be a ‘28th’ contract law regime in Europe, or a ‘2nd’ contract law regime for its Member States, or an autonomous ‘1st’ regime of contract law, see, for instance, G. DANNEMANN & S. VOGENAUER (eds), *The Common European Sales Law in Context. Interactions with English and German Law*, Oxford University Press, Oxford 2013, pp. 24-26 (hereinafter ‘DANNEMANN & VOGENAUER, 2013’).

6 Explanatory Memorandum to the RegCESL, p. 11.

The CESL should apply on a voluntary basis, upon the express agreement of the parties,⁷ to a cross-border (sales) contract.⁸ It would constitute an optional instrument,⁹ available for contracts between a trader and a consumer (B2C) or between different traders (B2B), albeit only if at least one of the traders, seller or buyer, qualifies as a small or medium-sized enterprise (SME).¹⁰ The CESL largely builds upon existing instruments, such as the Draft Common Frame of Reference (DCFR), the Principles of European Contract Law (PECL), the UNIDROIT Principles of International Commercial Contracts (PICC), and the Convention on the International Sale of Goods (CISG).¹¹

The Regulation (RegCESL) itself consists of the text of the Regulation (Preamble and 16 provisions) and two Annexes. Annex I contains the actual text of the CESL.¹² Annex II contains a Standard Information Notice, to be supplied by the trader to the consumer before they agree to use the CESL. According to Article 5 RegCESL, the instrument may be used for (a) sales contracts, (b) contracts for the supply of digital content, or (c) related service contracts.¹³ If parties use the CESL, their legal relationship would be governed by 186 provisions divided into 8 parts and 18 chapters, starting with Introductory provisions (including General principles and Application) and ending with Prescription, thus reflecting the ‘life cycle’ of a cross-border sales contract.

Some issues are not addressed in the CESL, such as representation, plurality of debtors and creditors, change of parties including assignment, set-off and merger, property law including transfer of ownership, intellectual property law, and the law of torts.¹⁴ These matters are governed by the rules of the national law outside the CESL that is applicable under the Regulations Rome I (*OJ* EU, L 177/6) and Rome II (*OJ* EU 2007, L 199/40) or any other relevant conflict of law rule.

7 Article 8 RegCESL; see, for this agreement, R. SCHULZE (ed.), *Common European Sales Law (CESL) – Commentary*, C.H. Beck/Hart/Nomos, Baden-Baden/München/Oxford 2012, pp. 57–62 (hereinafter ‘SCHULZE *et al.*, 2012’ or the ‘Commentary’).

8 Article 4 RegCESL; see SCHULZE *et al.*, 2012, pp. 34–40; DANNEMANN & VOGENAUER, 2013, pp. 41–42.

9 Article 3 RegCESL; see SCHULZE *et al.*, 2012, pp. 30–34.

10 Article 7 RegCESL; see SCHULZE *et al.*, 2012, pp. 53–57; DANNEMANN & VOGENAUER, 2013, pp. 39–40.

11 See H. EIDENMÜLLER *et al.*, ‘The Proposal for a Regulation on a Common European Sales Law: Deficits of the Most Recent Textual Layer of European Contract Law’, *The Edinburgh Law Review* 2012, pp. 305–310 (hereinafter ‘EIDENMÜLLER *et al.*, 2012’).

12 In this review, we refer to Annex I as ‘CESL’ and to the Regulation as ‘RegCESL’. Wendehorst is critical of this division within the Instrument: *cf.* SCHULZE *et al.*, 2012, p. 13.

13 Article 5 RegCESL; see SCHULZE *et al.*, 2012, p. 49; DANNEMANN & VOGENAUER, 2013, p. 42.

14 See EIDENMÜLLER *et al.*, 2012, pp. 308–309.

2. Latest Developments¹⁵

With the CESL, for the first time in history of the EU, a (draft) uniform set of contract rules for traders and consumers to purchase goods, digital content, and related services in the internal market has been launched. The proposal contains several innovative features.¹⁶ In contrast with the CISG,¹⁷ which excludes B2C contracts from its scope of application,¹⁸ the CESL recognizes the consumer as a main actor in international contracting. Within the CESL, more than 100 clauses are devoted to contracts between businesses and consumers. Furthermore, the CESL shows the importance of standardized contracts. In this respect, the drafters of the CESL had to find a compromise between the strict judicial fairness control of standard terms in B2B contracts under German law and the more liberal tradition prevalent in other EU Member States. Moreover, the CESL demonstrates the importance of the digital world for cross-border contracting. It contains many detailed provisions about such distance contracts, including specific provisions for the supply of digital content.¹⁹

-
- 15 See on the most recent developments Eric Clive's blog, available at <<http://www.law.ed.ac.uk/epln/>> (last visited on 17 July 2013).
 - 16 Cf. Reiner Schulze in his Brussels speech on 17 December 2012, 'What Scholars Say: A Commentary on CESL', available at <http://www.cbce.eu/fileadmin/user_upload/document/CESL_conference/Schulze_speech.pdf> (last visited on 17 July 2013).
 - 17 For a comparison between CESL and CISG, see I. SCHWENZER, 'The Proposed Common European Sales Law and the Convention on the International Sale of Goods', *Uniform Commercial Code Law Journal* 2012, pp. 457-481; U. MAGNUS (ed.), *CISG vs. Regional Sales Law Unification. With a Focus on the New Common European Sales Law*, Sellier, München 2012, 237 pp.; O. LANDO, 'CESL or CISG? Should the Proposed EU Regulation on a Common European Sales Law (CESL) Replace the United Nations Convention on International Sales (CISG)?', in O. Remien *et al.*, *Gemeinsames Europäisches Kaufrecht für die EU? Analyse des Vorschlags der Europäischen Kommission für ein optionales Europäisches Vertragsrecht vom 11. Oktober 2011*, C.H. Beck, München 2012, pp. 15-20.
 - 18 Article 2(a) CISG; see I. SCHWENZER & P. HACHEM, in I. Schwenzler (ed.), *Commentary on the International Sale of Goods (CISG)*, University Press, Oxford 2010, Art. 2, para. 4 *et seq.*
 - 19 Recently, the Legal Affairs Committee of the European Parliament (JURI) expressed the opinion that the CESL should be amended to make it clear that the regime can be used to cover cloud computing transactions. The Committee has proposed a new recital to be included in the Regulation: 'Cloud computing is developing rapidly and has great potential for growth. The Common European Sales Law provides a coherent set of rules adapted to the distance supply and in particular supply online of digital content and related services. It should be possible for those rules to also apply when digital content or related services are provided using a cloud, in particular when digital content can be downloaded from the seller's cloud or temporarily stored in the provider's cloud'. See Amendment 8 in the following report: K.-H. LEHNE & L. BERLINGUER, *Draft Report on the Proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law*, 2011/0284(COD), 6 March 2013.

However, even though the CESL marks a milestone in the development of European contract law,²⁰ there is a strong and widespread feeling that the instrument is not fit to be implemented without taking criticism into consideration. Recently, a group of leading academics has expressed strong concerns about the CESL: ‘European private law needs intensified political and legal debates as well as the necessary time for these debates and for re-thinking the issues raised by the CESL [...]. Without a thorough revision a Common European Sales Law will not become a success’.²¹

Furthermore, academics, consumer organizations, and economic players are divided about the efficiency of the instrument.²² Will the CESL actively boost trade within the EU? Does more choice for consumers lead to better choices?²³ Should the European Commission not further initiatives to draft model contracts, tailored to individual sectors (self-regulation), rather than harmonizing the contract law of the Member States?²⁴

Moreover, the CESL is subject to fierce ongoing debate over the competence of the EU to enact this instrument.²⁵ Several national parliaments and governments (e.g., Germany, the United Kingdom, Belgium, and The

20 Cf. EIDENMÜLLER *et al.*, 2012, p. 311: ‘The DCESL is a document of considerable significance; it deserves special attention and a broad and critical discussion’.

21 EIDENMÜLLER *et al.*, 2012, p. 357.

22 See, for instance, ‘Common European Sales Law: (No) Value Added for Consumers and Companies?’, available at <http://www.akeuropa.eu/en/common-european-sales-law-no-value-added-for-consumers-and-companies-63.html?cmp_id=35&news_id=1364> (last visited on 17 July 2013). On 12 June 2013, the European Consumer Organisation BEUC rejected the proposal: ‘This optional tool would increase legal complexity, introduce great legal uncertainty, undermine existing rules on private international law and as well as consumer protection standards in a number of countries.’ See the letter of the Presidents of BEUC and Ecommerce Europe to the Permanent Representative of Austria to the EU, available at <<http://www.consumatoridiritimercato.it/wp-content/uploads/2013/06/CESL-letter-to-Perm-Rep-Austria.pdf>> (last visited on 17 July 2013).

23 J. CARTWRIGHT, ‘“Choice Is Good”. Really?’, *European Review of Contract Law* 2011, pp. 335-349.

24 See A.G. CASTERMANS, ‘Towards a European Contract Law through Social Dialogue’, *European Review of Contract Law* 2011, pp. 360-368.

25 About this debate, see for instance P. DE TAVERNIER & J. VAN DER WEIDE, ‘Common European Sales Law and EU-Competence: A Never Ending Game?’, available at <<http://leidenlawblog.nl/articles/common-european-sales-law-and-eu-competence-a-never-ending-game>> (last visited on 17 July 2013); G. LOW, ‘Unitas via Diversitas: Can the Common European Sales Law Harmonize through Diversity?’, available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1991070> (last visited on 17 July 2013); E. VAN SCHAGEN, ‘The Proposal for a Common European Sales Law: How Its Drafting Process Might Affect the Optional Instrument’s Added Value for Contract Parties and Its Success’, in A. Keirse, M. Loos (eds), *Alternative Ways to Ius Commune. The Europeanisation of Private Law*, Intersentia, Antwerpen 2012, pp. 87-101.

Netherlands) have expressed serious doubts about the compliance of the CESL with the principles of subsidiarity and proportionality.²⁶

Meanwhile, the European Commission's proposal is still making its way through the legislative process. At this moment, the CESL is being discussed in different committees of the European Parliament (EP).²⁷ Although it has been backed by the EP's Legal Affairs Committee (JURI) last February and by the EP's Internal Market and Consumer Protection Committee (IMCO) last July, the scope and content of the instrument are still very much open to debate. JURI co-rapporteurs Klaus-Heiner Lehne and Luigi Berlinguer suggested some 205 amendments to the text, while advising it to be restricted to distance contracts, notably online contracts.²⁸ Although it is not the lead committee on the proposal, IMCO voted on a large number of amendments as well, while expressing its preference for a harmonizing Directive rather than an optional instrument.²⁹ Therefore, it seems unlikely that the Regulation will be adopted in its current form and with its current scope.

-
- 26 See, for instance, the Reasoned Opinion by the Belgian Senate on the Proposal, available at <http://www.europarl.europa.eu/meetdocs/2009_2014/documents/imco/dv/888/888688/888688en.pdf> (last visited on 17 July 2013), and the Reasoned Opinion of the House of Commons, available at <<http://www.parliament.uk/pagefiles/54364/23%2011%2011%20Reasoned%20Opinion%20on%20Common%20European%20Sales%20law.pdf>> (last visited on 17 July 2013); cf. for this discussion V. REDING, 'Das optionale Gemeinsame Europäische Kaufrecht in der politischen Diskussion - Standpunkte, Perspektiven und Einschätzungen', in J.-U. Hahn (ed.), *Gemeinsames Europäisches Kaufrecht, Moderner Ansatz oder praxisferne Vision?*, C.H. Beck, München 2012, pp. 3-6.
- 27 On 19 March 2013, the Legal Affairs Committee of the European Parliament held its fifth, and probably its last, public hearing on the CESL. It heard from umbrella organizations such as the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), the European Consumers' Organisation (BEUC), Ecommerce Europe, the Council of Bars and Law Societies of Europe (CCBE) representing the main likely users of the instrument and also the well-known Professor Hugh Beale. See on this hearing E. CLIVE, 'Public Hearing on the Common European Sales Law', available at <<http://www.epln.law.ed.ac.uk/2013/03/20/public-hearing-on-common-european-sales-law>> (last visited on 17 July 2013).
- 28 K.-H. LEHNE & L. BERLINGUER, Draft Report on the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law, 2011/0284(COD), 6 March 2013, available at <<http://www.europarl.europa.eu/committees/en/juri/draft-reports.html>> (last visited on 17 July 2013).
- 29 See E. CLIVE, 'The best can be the enemy of the good', available at <<http://www.epln.law.ed.ac.uk/>> (last visited on 16 July 2013), and E. GEBHARDT & H.-P. MAYER, Opinion of the Committee on the Internal Market and Consumer Protection for the Committee on Legal Affairs on the proposal for a regulation of the European Parliament and of the Council on a Common European Sales Law, 2011/0284(COD), 11 July 2013, available at <<http://www.europarl.europa.eu/committees/nl/imco/opinions.html>> (last visited on 17 July 2013).

3. The Commentary: Preliminary Observations

The German legal scholar Reiner Schulze³⁰ decided not to await the end of this process. Last year, he published an impressive Commentary on the CESL, covering more than 800 pages.³¹ This result has been achieved by a hard-working international team of authors from various EU Member States. Among them are Gerhard Dannemann (Berlin), Geraint Howells (Manchester), Eva-Maria Kieninger (Würzburg), Denis Mazeaud (Paris), Thomas Pfeiffer (Heidelberg), Hans Schulte-Nölke (Osnabrück), Evelyne Terryn (Leuven), Christiane Wendehorst (Vienna), and Fryderyk Zoll (Kracow). In the Commentary, Schulze and the other 14 scholars ‘have not only explained every Article and every clause of this future European sales law, but have also evaluated its possible impact on contracting in legal practice as well as its strengths, problems and weaknesses’.³²

With the exception of the Explanatory Memorandum and the Preamble of the Regulation, in the Commentary every single provision of both the Regulation and the CESL itself is commented on in detail. The comments on the individual provisions generally follow the same structure: (A) Function, (B) Context, (C) Explanation, and (D) Criticism. Under section A, the function of a provision is described. Section B concerns the context of the provision, which shows references to other European and international sets of rules, such as the DCFR, PECL, and CISG. Section C contains a detailed explanation of the significant terms and elements of each provision. Finally, section D refers, where appropriate, to criticisms of the particular provision and suggestions for improvement.

4. The Proof of the Pudding

The *Common European Sales Law (CESL) – Commentary* gives a thorough and generally well-organized overview of the proposed instrument. If the CESL is to be adopted, jurists across the EU will have to apply a common European set of rules that cover a significant field of private law. As the Editor emphasizes in his

30 Professor Schulze is a professor for Civil Law and History of Law at the University of Münster, Germany and a member of multiple groups that focus on European private law, such as the Common Principles of European Contract Law (CoPECL) Network of Excellence, the Joint Network on European Private Law.

31 We have already mentioned the book of Dannemann and Vogenauer (n. 5), which is an in-depth analysis/commentary of considerable interest to the same readership since it melds CESL, DCFR, academic discourse, and reference to judicial practice. Furthermore, a German commentary on the CESL is going to be published later this year: M. SCHMIDT-KESSEL (ed.), *Der Entwurf für ein Gemeinsames Europäisches Kaufrecht. Kommentar*, Sellier, München August 2013, ca. 602 pp.

32 R. SCHULZE, ‘What Scholars Say: A Commentary on CESL’, Brussels 17 Dec. 2012, p. 1, available at <http://www.ccbe.eu/fileadmin/user_upload/document/CESL_conference/Schulze_speech.pdf> (last visited on 17 July 2013).

Preface, they will then have to go beyond the particular concepts they are familiar with and interpret the rules of this new law autonomously and in accordance with its underlying objectives and principles. The Commentary aims to offer guidance to legal practitioners, as Schulze writes:

The Commentary (...) will offer guidance in legal practice and legal education (...) [T]he Commentary pursues a double aim: to prepare legal practice for the new European sales law and to consider this future law in the light of the needs in practice.³³

Without a doubt, the book is interesting for academics. However, is it also helpful to legal practitioners? Let us try to measure the Commentary against what it holds itself to do, by using a fictitious case as an example. After all, the best proof of the pudding is in the eating.

Let us assume the CESL enters into force in the year 2014. In the course of that year, the Dutch vintner Steven Tulp buys a large shipment of Il Lungo Ripasso 2011 from the Azienda of the Italian family Flamini, situated in the heart of Valpolicella. They have validly concluded their contract of sale under the CESL. Following advice of the Flamini family, Steven Tulp has stored the bottles, in order to sell them to a club of regular customers, early in 2016. By that time, he tries the wine himself, but he is not at all pleased by its quality. Tulp consults his lawyer to discuss his options. Because the lawyer wanted to be well prepared before the introduction of the CESL, he already bought a copy of the Commentary.

The lawyer reads the comprehensive comments of Fryderyk Zoll on the buyer's remedies and advises Tulp to terminate the contract (Art. 114 CESL).³⁴ In his opinion, the wine does not comply with the contract.³⁵ Moreover, the non-performance is fundamental: The Flamini family will not be able to deliver new bottles of Il Lungo Ripasso 2011 with the usual quality. Because Tulp bought the wine some years ago, his lawyer wants to find out how the CESL regulates the commencement and length of the period of prescription applicable to the right to terminate the contract. He knows that the Dutch Civil Code provides for such a specific provision,³⁶ but he cannot find a similar rule in the CESL. Further research leads him to Article 178 CESL: 'A right to enforce performance of an

33 SCHULZE *et al.*, 2012, p. V.

34 *Ibid.*, pp. 490-492.

35 *Cf.* Art. 100(a) and (g) CESL.

36 Article 3:311 Burgerlijk Wetboek (BW). This Article reads as follows: 'A right of action to set aside a contract for failure to perform it or a right of action to correct such failure is prescribed on the expiry of five years from the beginning of the day following the one on which the obligee becomes aware of the failure and, in any event, on the expiry of twenty years after the failure

obligation, and any right ancillary to such a right, is subject to prescription by the expiry of a period of time in accordance with this Chapter’.

The lawyer wonders. Termination could hardly qualify as a right to *enforce* performance: The action is intended to achieve precisely the opposite. He decides to make use of the comments by Peter Møgelvang-Hansen in the Commentary:

Although the way in which the word *enforce* is inserted might lead one to read it as a qualification of the rights to performance within the scope of the Chapter, a more reasonable interpretation is to understand it as a short reference to the effects of prescription underlining that prescription does not mean that the right in question is extinguished but ‘only’ that ‘the creditor loses all remedies for non-performance, except withholding performance’ (*cf.* Art 185[1]).³⁷

This analysis seems to indicate that termination is also subject to the prescription periods of Chapter 18. However, Møgelvang-Hansen comes to the conclusion that ‘the prescription rules concern enforcement of rights to performance of an obligation under CESL (...), be they contractual or non-contractual, monetary or non-monetary’, and he provides a list that does *not* include Article 114.³⁸

Fortunately, the lawyer is provided with an answer by the European Law Institute (ELI). The ELI suggests making reference to remedies for non-performance (except withholding performance) in Article 178, because:

It is still unclear within the CESL whether remedies for non-performance are subject to prescription.³⁹

What is unclear under the CESL remains unclear in the Commentary at this point.⁴⁰

occurred’. *Cf.* H. WARENDORF, R. THOMAS & I. CURRY-SUMNER, *The Civil Code of the Netherlands*, Kluwer Law International, Alphen aan den Rijn 2009, p. 513.

37 SCHULZE *et al.*, 2012, pp. 723-724.

38 *Ibid.*, p. 724.

39 J. THOMAS *et al.*, *Statement of the European Law Institute on the Proposal for a Regulation on the Common European Sales Law COM(2011) 635 Final*, European Law Institute, Vienna 2012, p. 321, available at <http://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/S-2-2012_Statement_on_the_Proposal_for_a_Regulation_on__a_Common_European_Sales_Law.pdf> (last visited on 17 July 2013).

40 The ELI has proposed a correction to the text, which has been taken over by co-rapporteurs Lehne and Berlinguer in their report to the Committee on Legal Affairs of the European Parliament. They propose the following wording for Art. 178 CESL: ‘A right to enforce performance of an obligation, and any right ancillary to such a right, *including any remedy for non-performance except withholding performance*, is subject to prescription by the expiry of a

Now, let us assume that Steven Tulp was hurt because one of the bottles of wine exploded in his hands. According to Article 159 CESL, Tulp is entitled to damages for loss caused by the non-performance, with ‘damages’ being ‘a sum of money to which a person may be entitled as compensation for loss, *injury* or damage’ (emphasis added).⁴¹ The right to damages for personal injuries is subject to a special, long period of prescription [30 years, Art. 179(2) CESL].

This suggests that Tulp’s right to damages is included into the scope of contractual liability under the CESL.⁴² The lawyer wonders: does he have an additional cause of action under national tort law? He reads Recital 27 of the Regulation:

Furthermore, the issue of whether concurrent contractual and non-contractual liability claims can be pursued together falls outside the scope of the Common European Sales Law.

Unfortunately, the Commentary does not contain a separate Chapter on the Preamble of the Regulation. Christiane Wendehorst does address the question under Article 11 CESL:

At the end of the day, it should be the ideas of *effet-utile* on the one hand and of *subsidiarity and proportionality* on the other that count, ie we have to ask whether the uniformity of results which the CESL (P) seeks to achieve throughout the EU would require the CESL (P) rules to be exclusive in a particular area or whether parallel regimes of an entirely different nature, in particular tort and property, must be tolerated.⁴³

Her answer shows that this is another issue for further debate, on which the Commentary cannot provide for much guidance at this stage.

5. Why Buy This Book?

It is difficult for a commentary on a proposal to go beyond technicalities in this early, even pre-introductory phase. With the instrument still being drafted and amended, one may question to what extent the Commentary offers guidance to legal practitioners about the CESL. Although the authors, using their own writing

period of time in accordance with this Chapter’. Cf. *Draft Report on the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law*, 2011/0284(COD), 6 March 2013, Amendment 192.

41 Article 2(g) RegCESL.

42 Critical about this development: EIDENMÜLLER *et al.*, 2012, pp. 340-341.

43 SCHULZE *et al.*, 2012, p. 70.

style and way of analysing, make many useful critical remarks, they are also constrained by the very text they are commenting on. Their comments have to follow and explain the structure and wording of the current proposal, which is still very much open to debate. Many issues regarding the nature⁴⁴ and content⁴⁵ of the proposed instrument are awaiting clarification.⁴⁶

Subject to these reservations, we do think that Schulze's Commentary will be helpful for academics interested in the evolution of European contract law. It serves the interested scholar who wants to know more about the background of specific provisions and their relation to other, international instruments.⁴⁷ It can be considered a profitable legal source to discover the innovative features of the CESL, such as the importance of standardized contracts, of digital contracts, and of the consumer as a significant actor in international trade and sales law. On these topics, the Commentary provides many useful remarks.⁴⁸ Some suggestions may still be useful for those involved in the current legislative process. Finally, the book may serve as a 'mirror' for those who seek a better understanding of the sales law they apply in practice or in legal education.⁴⁹

6. Conclusion

From here to eternity. Will the European Commission, for the first time in history of the EU, finally succeed in implementing a uniform set of contract rules on sales

44 Take for instance the political debate about a possible limitation of the CESL to distance contracts, notably online contracts. See above, para. 2.

45 For example, the period of prescription applicable to the right to terminate a contract under the CESL. See above, para. 4.

46 Take for instance the several amendments aimed at an appropriate balance between the seller's rights and the buyer's rights to terminate for non-performance, which has been a controversial issue from the start. Cf. E. CLIVE, 'More on the Suggested Amendments to the Common European Sales Law', available at <<http://www.epln.law.ed.ac.uk/2013/02/25/more-on-the-suggested-amendments-to-the-common-european-sales-law>> (last visited on 17 July 2013).

47 Cf. the useful comparison of prescription periods under the CESL, the PECL, UNIDROIT PICC, United Nations Convention on the Limitation Period in International Sale of Goods of 14 Jun. 1974 (LPISG), and the Product Liability Directive by Møgelvang-Hansen: SCHULZE *et al.*, 2012, pp. 726-727. See about prescription under the CESL: M. MÜLLER, 'Die Verjährung im EU-Kaufrecht', in M. Schmidt-Kessel (ed.), *Ein einheitliches europäisches Kaufrecht. Eine Analyse des Vorschlags der Kommission*, Sellier, München 2012, pp. 529-551; A. VAQUER & E. ARROYO, 'Prescription in the Proposal for a Common European Sales Law', 22 pp., available at <<http://www.europarl.europa.eu/document/activities/cont/201207/20120704ATT48278/20120704ATT48278EN.pdf>> (last visited on 17 July 2013).

48 Such as the idea that other instruments, developed in the commercial practice, should be added to the CESL: R. SCHULZE, 'What Scholars Say: A Commentary on CESL', Brussels 17 Dec. 2012, p. 2, available at <http://www.cbbe.eu/fileadmin/user_upload/document/CESL_conferece/Schulze_speech.pdf> (last visited on 17 July 2013).

49 *Ibid.*, p. 3.

law?⁵⁰ Reiner Schulze and his academic colleagues deserve congratulations on publishing their Commentary on the CESL in such a short period of time. They have given a thorough and generally well-organized overview of the proposed instrument, including many useful suggestions for improvement. However, it is obvious that a second edition of the *Common European Sales Law (CESL) – Commentary* will be needed, once the CESL has been adopted by the European Parliament and the Council. With this first edition, Reiner Schulze and his team have shown themselves to be perfectly prepared for that challenge.

50 Cf. DANNEMANN & VOGENAUER, 2013, p. 15: ‘There are [...] three possible scenarios. Under the first scenario, the Proposal for a Regulation will be dropped for good, with the result that the DCFR will receive renewed attention. Under the second scenario, the Proposal will be adopted as it stands and the DCFR will play a much more marginal role. Under the third and arguably most likely scenario, the scope of the Proposal will suffer a fate that resembles that of the first Proposal for a Consumer Right Directive: it will be severely limited, perhaps to online consumer sales, in order to meet the concerns of the Member States and at the same time allow the Commission to claim a political success’.