



The Consumer Council

Consultation: Common European Sales Law for the European Union
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Common European Sales Law for the European Union

1 Introduction

- 1.1 The Consumer Council is an independent consumer organisation, working to bring about change to benefit Northern Ireland (NI) consumers. Our aim is to make the consumer voice heard and make it count.
- 1.2 We have a statutory remit to promote and safeguard the interests of consumers in Northern Ireland and we have specific functions in relation to energy, water, transport and food. These include considering consumer complaints and enquiries, carrying out research and educating and informing consumers.
- 1.3 In taking forward our broad statutory remit we are informed by and representative of consumers in NI. We work to bring about change to benefit consumers by making their voice heard and making it count. To represent consumers in the best way we can, we listen to them and produce robust evidence to put their priorities at the heart of all we do.
- 1.4 The Consumer Council is a designated body for the purposes of supercomplaints, which means that we can refer any consumer affairs goods and services issue to the OFT, where we feel that the market may be harming consumers' best interests.
- 1.5 The Consumer Council appreciates the opportunity to participate in this consultation on proposals for a Common European Sales Law (CESL) for the European Union. We hope that you will find our comments useful and that our views will be reflected in the final decision making process.

2 Consumer Council views

2.1 The Consumer Council's views on the proposals for the CESL are set out in this paper. We acknowledge the Commission's intention is to help the current European economic problems by facilitating the expansion of cross-border trade for business and cross-border purchases for consumers. We have however concerns regarding the Commission's plans for a CESL with a set of uniform contract law rules which would run alongside the existing national law of each Member state.

2.2 Our comments are focused on the following issues:

- Research
- Consumer protection
- Consumer proficiency
- Consumer choice
- Businesses' awareness of consumer law

3 Research

3.1 The Consumer Council believes that further research is needed in order to provide clear evidence that the proposed CESL is necessary for the further development and economic growth of the Single Market. The research needs to clearly identify that the claimed benefits for consumers and business will be realised and will not lead to confusion for consumers or businesses.

4 Consumer protection

4.1 The Consumer Council believes that there is a risk that the CESL may reduce consumer protection and leave UK consumers worse off as currently they enjoy the same key rights when buying from other EU countries as they do from UK businesses. We feel it is important to resist any attempt to dilute solid national provisions.

- 4.2 We consider that the CESL could diminish the current consumer protection offered by the rule in the Rome I Regulation which provides that where a business directs its activity to consumers in a particular Member State, the consumer's own national mandatory rules apply where these provide a higher level of protection than the law of the contract.
- 4.3 We are also concerned that should businesses start using it for domestic transactions as well, it could leave consumers worse off when shopping in their own country too.
- 4.4 The Consumer Council believes that further clarification and evidence is needed as to how a CESL could provide the right of a consumer to require a business to deliver the goods if it has failed to do so and also how the redress system could be enforced.
- 4.5 We believe that the CESL will place additional burdens on consumer advisers and enforcement bodies requiring them to meet the extra cost and burden of having a sound knowledge of the new law, its implications and its comparison with national law, to advise their clients and enforce the CESL regulations. The impact of this would be lessened if there was confidence across consumer organisations that the proposals addressed a gap in provision or increased protection.

5 Consumer proficiency

- 5.1 Recent research carried out by the Consumer Council¹ into levels of consumer proficiency in Northern Ireland shows that there has been a decrease in the number of consumers who feel informed about their consumer rights (52 per cent in 2011 compared to 63 per cent in 2007).
- 5.2 There has also been a slight decrease (by 4 per cent) in the number of consumers who feel confident in expressing their rights as a consumer (69 per cent in 2011 compared with 73 per cent in 2007). More than 1 in 5

¹ Consumer Council for Northern Ireland Consumer Proficiency Research November 2011

consumers (22 per cent) were unsure about where to turn to for expert consumer advice.

- 5.3 These findings suggest that consumer proficiency and empowerment are unlikely to be enhanced by a Common European Sales Law. Instead it may create greater legal complexity, uncertainty and confusion for consumers. In future they would have to be aware of and understand two different legal systems, each offering slightly different rights and remedies as a consumer contract could be subject to either domestic law or the CESL.
- 5.4 Consumers would also have to be aware of the redress offered in the proposed Alternative Dispute Resolution and Online Dispute Resolution for business-to-consumer disputes in addition to the set of rules proposed in the CESL.

6 Consumer choice

- 6.1 The Consumer Council believes that there is a risk that the CESL may reduce consumer choice. The proposal includes the concept that the new law be 'optional', allowing people to choose to apply either the EU law or their national law. This could mean that the businesses who get to make that choice, will be likely choose the option that benefits them rather than the consumer. The option to use either the CESL or the national law may not be a realistic choice for some consumers. They may be limited to either accepting the use of the CESL or not buying from a trader who will not allow them to use the national law.

7 Businesses' awareness of consumer law

- 7.1 Research carried out by the Consumer Council in 2007 revealed a clear need for businesses to be trained on their awareness of legal obligations towards consumers in their own country.²

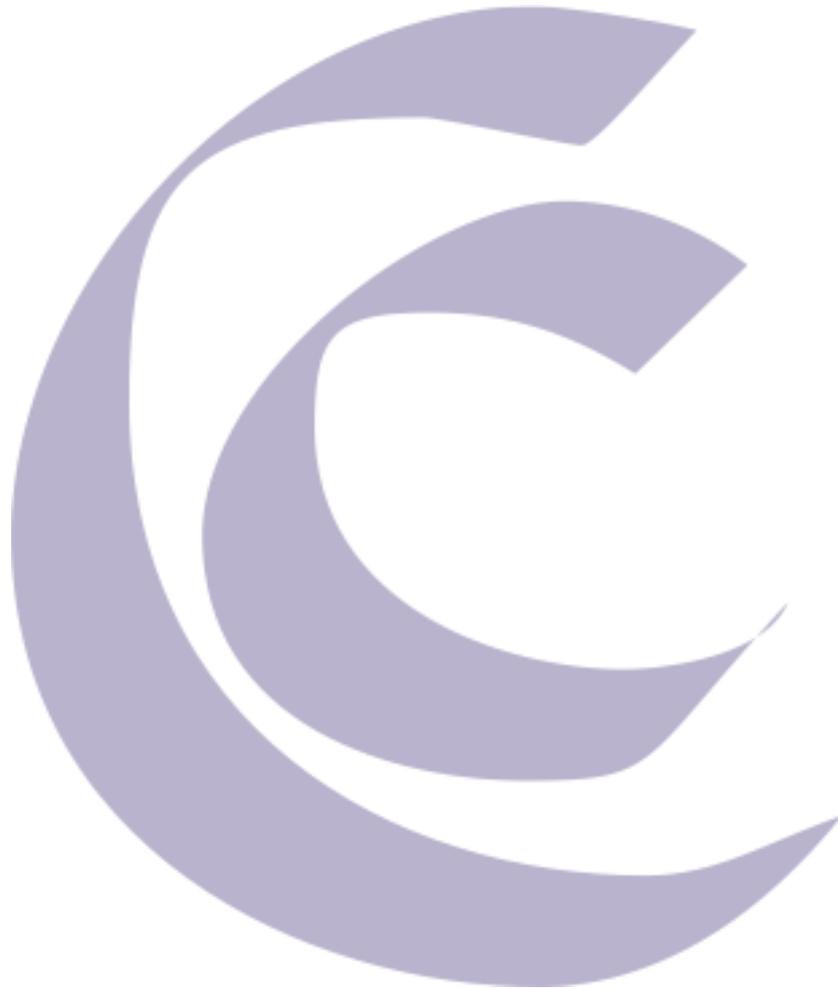
² Consumer Council for Northern Ireland What do Consumers Know Now? March 2007

- 7.2 This lack of awareness will not be solved by the CESL. On the contrary, by adding another layer of complex legislation, SMEs will have to invest more resources to learn about their obligations under the proposed optional regime while some are not even fully aware of the consumer legislation in their own countries.
- 7.3 The Consumer Council works with SMEs and large businesses in Northern Ireland to increase their knowledge of consumer law and enhance levels of customer care.
- 7.4 With 1 in 3 consumers buying online at least once a month we also believe that there is need for awareness-raising campaigns to be organised for businesses, especially SMEs, on the existing obligations towards consumers in their own country and the applicable law in cross-border situations.
- 7.5 Raising businesses' awareness and training may be more beneficial for both consumers and businesses instead of introducing an additional complex piece of legislation.

8 Concluding remarks

Please do not hesitate to contact the Consumer Council if you require any additional information. Our contact is Carol Edwards, Head of Consumer Education on 028 9067 4802 or by e-mail cedwards@consumercouncil.org.uk

Making the consumer voice heard and making it count



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