

Smits on Party Choice and the Common European Sales Law

Jan M. Smits, Professor of European Private Law at Maastricht University Faculty of Law - Maastricht European Private Law Institute (M-EPLI) and Research Professor of Comparative Legal Studies at University of Helsinki - Center of Excellence in Foundations of European Law and Polity has posted **“Party Choice and the Common European Sales Law, or: How to Prevent the CESL from Becoming a Lemon on the Law Market”** on SSRN. The paper can be downloaded [here](#). The abstract reads as follows:

Optional legal regimes, such as the Proposal for a Regulation on a Common European Sales Law (CESL), must derive their success from being chosen by parties. This contribution asks on what conditions it is dependent whether parties will choose for an optional regime such as the CESL. This requires a clear view of the added value of so-called vertical jurisdictional competition, of the preferences of business and consumers, and of the choices available to contracting parties when designing their contractual relationship. It is argued that in order to be an attractive competitor on the law market, the proposed CESL must meet three requirements. First, it must be significantly different from existing options by offering more innovative solutions, reflecting an alternative view of contractual justice or offering a wider scope of application. Secondly, parties should be able to easily recognize the benefits of a choice for the CESL, calling for innovative ways of marketing such as user-based rankings. Thirdly, the costs of making the CESL applicable must be low compared to other available options. Only if these requirements are met – which is not the case with the present Proposal – it is avoided that CESL turns into a lemon on the European law market.