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An agreement on the choice of the Common European Sales Law (CESL)

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**Abstract:**

Differences between national contract laws governing the transfer of goods within the EU make cross-border trade complex and costly. These obstacles are said to be one of the main disincentives for the market actors from Member States to enter into cross-border transactions. In order to overcome these barriers, the European Commission launched a proposal (COM(2011) 635 final) for a Regulation on a Common European Sales Law (CESL) on 11 October 2011. The regulation is designed as an optional instrument. This entails that the contract is subject to the Common European Sales Law only if the parties decide so by making an effective and valid agreement to apply the CESL. However, it is not clear what conditions have to be met in order to make valid agreement and what the consequences of its invalidity are. To tackle this problem, a complex preliminary question needs to be answered: which set of rules (the CESL itself or the national law) is to be taken into account when ascertaining the validity and consequences of invalidity of the agreement. This paper aims to address both these issues.