

ABSTRACT

Limits of the CESL

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In this presentation, the central question to which an answer will be sought is: are the *limes* or borders of the CESL as clear as the limits of the Roman empire have been? It is argued that this issue is important from both a practical and theoretical perspective. The unclear scope of a supranational instrument such as the CESL hinders practitioners, and may lead to incoherence (i.e. logical inconsistencies) within a system of law.

The CESL contains three categories of scope rules: (i) rules on formal scope (territorial, personal and regarding the choice for CESL that must be made); (ii) rules on mandatory law and unregulated issues; and (iii) rules on substantive scope, where focus lies on the sale of goods. These scope rules will be tested on clarity. It will be argued that in varying degrees, none of these categories contain only clear rules. Some scope rules are extremely difficult to establish, some are virtually impossible to establish, some require the establishment of the otherwise applicable law, and some even contain inconsistencies in themselves. In conclusion, the CESL's objective of legal certainty, or, at least: the CESL's objective not having to establish the otherwise applicable law, will not be met.