

**7 November 2012**

## **CLEPA Position on a Common European Sales Law**

### Background:

The purpose of the proposal for a Common European Sales Law (“CESL”) is to encourage cross border trade by enterprises in EU Members States.

The need to comply with foreign contract law is said to be a major obstacle to cross border trade. In particular, in b2c transactions the need for businesses to comply with the mandatory consumer protection rules of individual member states and in b2b transactions the need to negotiate the applicable law are each said to be significant deterrents.

The solution offered is a Common European Sales law to be made available as an optional alternative legal regime in each EU Member State covering the sale of goods, digital content and services in both b2c and b2b transactions.

### CLEPA’s Position:

CLEPA welcomes any proposal which will encourage growth in the internal market and particularly in the Automotive sector. However, it is believed that this proposal will not help the expansion of cross border trade in the EU. Instead CLEPA believes it risks imposing greater legal and financial burdens on business which could hinder economic development.

- In order to have a meaningful effect this proposal will require the agreement and support of the business community. In order to achieve that it must have a commercial benefit for individual businesses. Enterprises, whatever their size, will not choose to opt for a Common European Sales Law unless it will have an overall positive impact on their businesses. Unfortunately, it is not obvious to CLEPA what benefits would be derived by business and in particular CLEPA’s members, from adopting the CESL;
- CLEPA does not believe differing contract laws or the need to negotiate the applicable law in contracts is a primary factor in discouraging cross border trade. There are already other legal regimes providing model laws for cross border activity, such as those offered by UNCITRAL, (the United Nations Commission on International Trade Law) some of which have been available for 30 years or more, and yet it seems these are habitually avoided by contracting parties in b2b transactions. CLEPA would recommend that before the CESL is progressed, further research is undertaken to see how many EU businesses actually make a positive choice to use existing model laws.
- The proposed CESL also fails in one of its aims, namely, to avoid the need for parties in b2b transactions to negotiate the applicable local law. The CESL is intentionally

incomplete which will require local laws to fill in the gaps. This will mean that contracting parties will continue to have to choose which of the parties' national laws will apply. Therefore, rather than simplifying the transaction of business across borders, the CESL creates additional rules and generates further complication and bureaucracy which SME's, in particular, will find difficult to understand and assimilate into their business practices.

- Unlike other important initiatives aimed at harmonising consumer protection laws, particularly in the areas of health and safety e.g. Dir. 85/374/EEC, the proposed CESL enhances the rights of consumers primarily on an economic level. However, it appears this will only be achieved by placing greater potentially liability, cost burdens and economic pressures on businesses at a time when many are struggling to recover from recent difficulties.
- In particular, the prescription periods proposed, of up to ten years for normal consumer products (such as cars), are much longer than is the norm today, particularly in the Automotive Component sector, and are not currently factored into suppliers' cost bases and pricing. As a result, it is likely that, if introduced via the CESL, these extended prescription periods will flow down the supply chain and have a detrimental effect on profitability and, in an already low margin sector such as the Automotive Components sector, reduce the prospects for growth. It should also be noted that consumers already have the option to purchase extended warranties on products at a relatively modest additional cost.
- Of particular concern to CLEPA is the adverse impact the proposed prescription periods are likely to have on the Independent Aftermarket sector. The IAM sector is still mainly involved with the supply of Automotive Components for repairs undertaken outside of vehicle manufacturers' warranty periods. As a consequence, the long prescription periods are likely to weaken the IAM sector and reduce the competition between the IAM and the original equipment suppliers to the detriment of consumers. This is not in line with the goals of the EU Commission for a competitive legal framework for the automotive parts and repair business.
- Finally, whilst emphasis has been placed on the optional nature of the proposed CESL, many of CLEPA's members, particularly the SME's, may not be able to rely on this. CLEPA believes that there is a real possibility that the 'opt in' approach is likely to become the default position for the component supply chain if vehicle manufacturers decide to adopt the CESL in their standard terms and conditions.

## Conclusion

It is the view of CLEPA that the proposed CESL fails to achieve the aims set for it and instead raises the prospect of increased liabilities and costs both for the members of CLEPA and for business generally, with a potential adverse effect on sustainability and growth.