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6 June, 2012

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Dear Ms McMahon,

Common European Sales Law for the European Union – Call for Evidence

Thank you for the invitation to comment on the Ministry of Justice's call for evidence on the European Commission's proposals for a 'Common European Sales Law ("the CESL")'.

While the principle outlined behind the CESL are clear, we feel the proposals lack any clear supporting evidence which indicate that harmonising consumer law across all EU countries will be sufficient to secure the Commission's objectives of removing the barriers to cross border trade.

We state this as there are many reasons why consumers may choose not to shop across borders. For example: language barriers, differing technical standards, difficulty of exercising withdrawal rights, lack of brand recognition, payment systems, card costs of currency conversion and delivery costs.

Equally, there are many reasons other than simply regulation that businesses do not trade cross border including: different languages across the EU, variations in taxation and VAT rates, variations in technical requirements, logistical issues and transportation costs, payment issues and different implementation of EU laws. Businesses, especially small and medium sized enterprises, need to be informed and confident that they are legally protected when dealing with cross border customers. For example, that there is protection in place to recover costs if the customer removes the ability for the business to collect payment or that there is adequate protection should a dispute arise.

It is possible, in our opinion, that a CESL is highly unlikely to reduce costs and burdens for UK traders and we remain concerned that it could instead add an additional layer of legislation and complexity which would increase costs and uncertainty for all parties and which would ultimately have an adverse impact on consumers.

British Vehicle Rental and Leasing Association

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The introduction of a new regime would involve the cost of training of businesses, as well as their advisers, practitioners and the judiciary on how it would be used and interpreted. It may be difficult to provide unambiguous guidance and advice when the meaning of the provisions of the instrument itself is not necessarily clear.

Car rental is often purchased on a cross border basis, especially when consumers are going on holiday or on a business trip. It is common for car rental to be reserved in advance or purchased at the destination. Customers often feel confident to reserve a car rental as they are present when the service is collected and sometimes paid for rather than the entire transaction being conducted at a distance. This type of contract is similar to a hotel booking scenario as the goods or service is consumed where it is purchased rather than a pure cross border sale or service where the goods or service is consumed where the customer resides. It is important to make this distinction as the car rental and hotel industry can demonstrate this market works very well without further legislative interference.

This market also works well as in the majority of cases the customer is dealing with a global brand which carries its own status and credibility which gives the customer the confidence that they can approach the UK arm of the rental company for assistance when a problem arises.

Web shopping providers, such as Amazon, could play a valuable role in helping smaller manufacturers get their product out to a wider market including facilitating cross border shopping for these retailers. As a larger organisation they can help support consumers and manufacturers without the need for a complex regulatory environment.

The above examples we believe help to demonstrate that market forces, dynamics and larger companies can help support and encourage consumers to shop cross border rather than a complex legislative instrument.

We are interested to know whether any lessons can be learned where successful cross border shopping has taken place. For example, when UK car prices were higher than in many other European countries UK car buyers looked to buy cars cross border to benefit from the lower prices on offer. We would encourage the Government to look at this experience and see what problems occurred to ensure there are any lessons which could be learnt. For example, we understand that one area of concern with cars bought cross border related to warranty repairs as UK law states that when a problem occurs the goods should be returned to the retailer which will not be viable when the consumer is buying goods from another country.

There is a real risk that by adding another layer and complexity to legislation it will interfere with the protection already offered to consumers and deter consumers from shopping across borders.

We also question how the CESL will interact with Rome II, as the UK has opted out. Would the sales law still be applicable? Given that Rome II stipulates that the law which is applicable relates to where the goods are supplied we question how this would work with the CESL and the UK opt out.

In light of our comments above and in its current form, the BVRLA is unable to fully support the proposals for a Common European Sales Law due to the increased costs it is likely to place on businesses and due to the fact there is lack of robust evidence to support and justify the a change to the UK law.

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We hope that our views go some way to helping the UK government form a lobbying position to negotiate in Europe.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jay Parmar". The signature is fluid and cursive, with a large initial "J" and "P".

Jay Parmar
Legal and Policy Director

Cc:

Bona-fides BVRLA, the industry and its members

- The BVRLA is the trade body for companies engaged in the leasing and rental of cars and commercial vehicles. Its members provide rental, leasing and fleet management services to corporate users and consumers. They operate a combined fleet of 2.5 million cars, vans and trucks, buying nearly half of all new vehicles sold in the UK.
- Through its members and their customers, the BVRLA represents the interests of more than two million business car drivers and the millions of people who use a rental vehicle each year. As well as lobbying the Government on key issues affecting the sector, the BVRLA regulates the industry through a mandatory code of conduct.
www.bvrla.co.uk