



Mrs Meglena Kuneva
Commissioner for Consumer Protection
European Commission
200 rue de la Loi
B-1049 Brussels

17 September 2008

Dear Commissioner Kuneva,

RE: FORTHCOMING PROPOSAL FOR A DIRECTIVE ON CONSUMER CONTRACTUAL RIGHTS

We would like to thank you for your 10 July response to our letter on the forthcoming directive on consumer contracts and your invitation to meet to discuss this further.

We appreciate your efforts to clarify the objectives of the directive and reaffirm our support for its aim of making cross-border trade easier for companies, particularly for SMEs, while ensuring an optimal level of consumer protection. We also agree that targeted full harmonisation of a certain number of consumer contract rules is the way forward.

However, we would like to point out that we have different views on the impossibility of using an Internal Market clause in the future directive for political reasons and the contradiction with the recently adopted Rome I regulation. We would welcome further clarification on this point.

As far as political reasons are concerned, your letter only refers to the claimed opposition of a number of Member States but does not take account of the official position of the European Parliament which, in its report on the Green Paper on the Revision of the Consumer Acquis, advocates *“for targeted harmonisation of consumer legislation combined with an Internal Market clause”*. The role and the views of the European Parliament as co-legislator in this debate should not be disregarded.

Concerning the contradiction with the Rome I regulation, we do not believe this to be an impediment. Indeed, because of recital 40 and article 23, nothing prevents the EU legislator from adopting rules that would derogate from application of the conflict of law rules it contains. This can be the case when such rules are included in “instruments laying down provisions designed to contribute to the proper functioning of the Internal Market” which is the primary objective of the forthcoming directive.

We also underline that the Commission has shown strong support for such a clause on several occasions. More precisely, in your speech on the adoption by the European Parliament of the afore-mentioned opinion on the Green Paper, after acknowledging that

minimum rules will remain in several areas, you stated that *“The Commission agrees with the Parliament that the mutual recognition clause should apply in these areas in order to make sure that additional requirements imposed by Member States do not create unjustified Internal Market barriers”*.

In addition, in the Small Business Act, the Commission commits to using “a smart mix of tools including mutual recognition to achieve policy outcomes and ensure that policy results are delivered while minimising the costs and burdens”.

The undersigned organisations fully subscribe to these statements. We consider this clause based on mutual recognition to be of paramount importance for two main reasons: first to make sure that targeted full harmonisation truly works for the aspects covered by the directive, i.e. Member States do not keep or introduce divergent rules on those matters and traders can rely on the compliance with the transposing rules of their country of establishment to sell their products across the EU. Secondly, this clause would serve to mitigate the negative effects and burden of having to comply with multiple, up to 27, national legal orders that companies selling across frontiers, especially SMEs, would have to face.

We thus urge the Commission to provide in the future directive such a clause or a similar system based on mutual recognition as described in your above-mentioned statement.

In the absence of such a clause, the legal uncertainty and fragmentation of the Internal Market will persist. The objective of creating a more integrated Internal Market for consumers and business alike will thus not be reached.

The undersigned organisations have been supportive of this directive from the outset, but on the condition that it would not result in additional burdens and costs. It is of particular importance that the directive facilitates access to the Internal Market, given the difficult circumstances that the EU economy and European companies face at the moment.

We trust that our comments will be taken into account before adoption of the directive. Our Secretariats will be in contact to find the most suitable date for the meeting you have invited us to participate in.

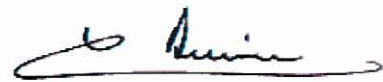
Yours sincerely,



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