

Mr Kenneth D. Collins

President of the

Committee on the Environment, Public Health and Consumer
Protection - European Parliament

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16 January 1998

Dear President,

RE: PROPOSAL FOR A DIRECTIVE ON THE SALE OF CONSUMER GOODS AND ASSOCIATED GUARANTEES

I am writing to you in the context of the European Parliament's first reading of the above-mentioned proposal and more specifically in view of the forthcoming vote that will take place in the Committee on the Environment, Public Health and Consumer Protection.

Sale of consumer goods is a subject of great importance to European companies and UNICE has time and again voiced its concerns about the possible consequences of the proposed instrument for industry. The additional cost generated to industry by this instrument, if adopted in its current form, would have serious repercussions on the competitiveness of European companies, on employment and on environment. Consumers would also be prejudiced by the resulting increase in the cost of consumer goods. A detailed UNICE position paper developing these arguments was sent to you on February 1996, but we would like to reiterate some of European industry's major concerns.

- *Article 3, paragraph 4*, currently grants the purchaser the right to choose between different remedies. This free choice of remedies does not take into account economic realities and seriously upsets the balance of rights between the contracting parties. UNICE believes that there is a risk that consumers will ask for the product to be replaced even when it could have been easily and promptly repaired. In this context, we believe that only if the product cannot be repaired within a reasonable time should the purchaser have the right to demand replacement of the product, or ask for other means of redress.
- Reversal of the burden of proof (*Article 3, paragraph 3*) linked to the subjective definition of lack of conformity, would be an enormous burden on retailers, who would find themselves in the impossible position of having to prove a negative fact. Virtually no Member State has this provision (so there can be no legal basis for harmonisation or approximation), nor is there any evidence of significant problems with the existing burden of proof arrangements.
- In cases of lack of conformity of a product, *Article 3, paragraph 5*, grants the seller a right to pursue remedies against his supplier in the chain. UNICE is of the opinion that this article

covering remedies between seller and previous supplier has no place in the proposed instrument.

UNICE trusts that the European Parliament will make sure that a fair balance between the interests of consumers and those of sellers/manufacturers is established.

Yours sincerely,

Zygmunt Tyszkiewicz
Secretary General