

DI/JPC/DBC/nd/22.3/2/1

Mr David Byrne
Member of the
European Commission - Health and Consumer Protection
rue de la Loi, 200
B-232 - 8/120
1049 Bruxelles

23 November 2001

Dear Commissioner Byrne,

RE: EUROPEAN COMMISSION COMMUNICATION ON EUROPEAN CONTRACT LAW [COM(2001)398]

UNICE welcomes the “*open, wide-ranging and detailed debate*”¹ on the need for further-reaching Community action in the area of contract law, in response to the conclusions of the European Council held in Tampere where a report on this issue was requested for 2001².

Nevertheless, UNICE would like to draw to the Commission’s attention that consultation is valuable only if the period for consultation is sufficient. In the case of this communication, the consultation period was ill-timed since it spread over the summer break and, de facto, was too short. In addition, the Commission seeks specific information, including concrete examples of problems encountered by operators in the functioning of the internal market resulting from the co-existence of different national contract laws. In this context, UNICE is not presently in a position to provide a detailed response to the Commission’s consultation.

However, UNICE would like to take this opportunity to reiterate its request that priority be given to reducing excessive regulatory burdens on business in the EU, especially for SMEs. Smaller companies in particular find it increasingly hard to exploit the benefits of the internal market in full. To achieve this, the key issues are to:

- Simplify national and Community legislation, remove unnecessary additional layers of regulation between the EU and Member State levels;
- Justify all new action at EU level, and test all new EU legislation and regulation on the basis of impact assessment, cost-benefit analysis, proportionality, and its job-creation or job-destroying potential.

Reserving the right to provide the Commission with more detailed comments at a later stage, UNICE would like to highlight certain principles which are essential to European business when concluding cross-border contracts:

- Freedom to contract should be maintained outside those areas already regulated by EU Directives;
- Where Member States have ratified the United Nations Convention on contracts for the international sales of goods, business already has a set of guiding principles on which to build when it finds this useful for cross-border trade;

¹ COM(2001)398; paragraph 71

² Tampere European Council, 15 and 16 October 1999; Presidency Conclusions; paragraph 39

- The impetus for convergence stems from a market need that is met by the framing and use of standard terms of contract peculiar to a sector's need. The market has proved itself capable of forming contracts specific to often highly technical individual markets while remaining flexible (e.g. ISDA Documentation). The market is better placed to provide such "standards".

A similar letter is being sent to Commissioners Liikanen, Vitorino and Bolkestein.

We hope that the above comments will be helpful in assessing the need and possible direction of any action in this field. We remain at your disposal should you need further information.

Yours sincerely,

(original signed by)
Daniela Israelachwili
UNICE Acting Secretary General