

**SPEECH BY THE CHAIRMAN OF UNICE'S
"CONSUMER/MARKETING" WORKING GROUP
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AT THE WORKSHOP ON UNFAIR COMMERCIAL
PRACTICES IN BRUSSELS ON 22-23 JANUARY
2003**

SUBJECT: **NEED FOR REFORM**

A. General comments

UNICE is grateful for the invitation and looks forward to a constructive discussion and exchange of views with all interested parties.

UNICE remains highly committed to consumer protection and consumer confidence which, together with competitiveness of companies, are two essential pillars for creating an effective internal market in Europe. UNICE has followed the present debate from the outset with great interest and issued position papers in January 2002 and September 2002. It has also actively participated in the discussions at ECOSOC, the EP and other organisations. That is why UNICE wants to continue working on this subject with the Commission, asking at the same time to be more closely involved in future consultations, especially on future impact assessment studies.

UNICE endorses the objectives set out by the Commission's proposal especially in the imminent context of an enlarged Europe to further complete the internal market for both business and consumers. Business does not challenge the objectives; we all seem aligned on WHAT we want to achieve: simplified rules and proper enforcement; however we are not aligned on HOW and WHEN to achieve these objectives.

The follow-up Communication has added clarification but has failed to answer many questions which are important to allow stakeholders to provide useful perspective.

B. Commission's case for reform: too modest a level of cross-border trade

Today's session brings us to the crucial question as to whether companies and consumers need a reform such as the one proposed. That is to say whether there is justification for EU intervention to establish a common regulatory framework for commercial practices in Europe?

In the eyes of the Commission, the level of cross-border shopping in Europe still remains too low and prices divergences too wide.

It claims that the main cause is the existence of different national laws on commercial practices and different enforcement systems. Consumers and some companies do not trade

across frontiers because of national differences in marketing/consumer protection regulations.

UNICE and its member federations have serious doubts about the need for a major reform as suggested by the Commission. We still feel that the data shared are not convincing enough to build the case for a major reform.

We do not believe that new rules will help to promote cross-border shopping or sales. We all know as consumers that there are more important drivers which influence our shopping behaviour than rules and legislation: consumer choice, price, quality, language, experience, convenience, easy access to after-sales service, close to where we live. Rules will not be a panacea for creating consumer interest in shopping abroad. The GFA report, presented today, also confirms the importance of what they describe as “non-policy induced obstacles”.

We should facilitate and promote cross-border shopping, not to try to induce it.

We do not believe that new rules will create more price convergence for consumers. Difference in consumer prices is in the first instance a reflection of differences in macro-economic conditions which explains the linkages between wages and prices in each member state. We already experience price divergences within a given member state and even within a region.

UNICE does not believe we need a totally new approach to create harmonisation of marketing practices in Europe.

If you ask a small company which never operated outside its national borders whether it prefers to operate under one single set of rules instead of under 15 different laws, that company will of course prefer the single set of rules. Is this a sufficient excuse to embark on an new approach to fully harmonise all laws on commercial practices? No. Why, because, in reality we know there is already quite some legislation in place trying to harmonise marketing practices and that even with harmonisation we will continue to see differences between member states which continue to force our companies to take into account that Europe is not one single country.

Do we need reform to increase consumer protection across markets in Europe? I must admit that it is difficult to say no to this question; we all love to be better protected but how far do we want to go; what is a fair balance here? We often hear reference to a high level of consumer protection, but what does this mean? The sky cannot be the limit; we have not heard yet what these limits would look like, while it is very important for business to understand these in order to make a proper assessment of what is proposed here.

Furthermore, the GFA report on page 109 acknowledges that it is difficult to assess the implications of current proposals as long as we do not know more about what harmonisation we want to establish.

If we make a comparison across regions around the world, we see that in Europe consumer protection and consumer confidence in the internal market have been progressively and substantially enhanced during the last 10 to 15 years. Equally, the latest internal market report shows that the internal market has improved remarkably in the past few years*. Consumers enjoy more choice of services and products, better prices and enhanced and more transparent information. Competition has increased in a wider market. Circulation of goods and services across frontiers is easier and more frequent.

The GFA report shows that consumer confidence in foreign markets “is surprisingly high” (page 52); a majority of consumers (46% and more) feel confident buying across frontiers.

* See the latest Internal Market Scoreboard (November 2002).

We believe that most of the rules needed to create harmonisation of marketing practices in Europe with more respect for the consumer are already in place; these need to be reviewed to see whether they still meet the needs of business and consumers instead of starting a totally new exercise.

Let us review the directives on guarantees, on misleading advertising, on price indication, on contract law and understand what does not work, and then fix it.

Alternatively only, if we would all feel that these directives do not work, let us think of a new approach but then ensure that any new proposal suggested will replace other directives.

However, as we proceed along these lines, let us be aware of the possible confusion we will create with the new candidate member states whom we first requested to incorporate all these existing consumer protection directives into their national legislation. Perhaps we had better ask the applicant countries to wait until we have clarified our plans.

In conclusion, UNICE does not believe in the need for an immediate major reform as suggested by the Commission; let us focus first on improving what is in place before we engage in new efforts with unpredictable consequences.

C. Need for an extended impact assessment

UNICE welcomes the fact that the Commission's Legislative Programme for 2003* includes the fair trade proposal in the list of proposals that will be subject to an extended impact assessment in 2003. As we can read from the 2003 programme, it will consist in the examination of the principles of subsidiarity and proportionality in operational terms and the analysis of the balance between the economic, social and environmental components of sustainable development.

Quoting from the said document: "The purpose of the extended impact assessment is to carry out an in-depth analysis of the potential impacts as well as to consult with interested parties and relevant experts according to the Commission's minimum standards for consultation".

Today, the GFA work has been presented for the first time. We understand from the GFA report that it will serve as basis for a future extended impact assessment that will be carried out as soon as the Commission has further clarified and specified what to focus on in any future proposal. We welcome this.

UNICE, as the leading independent organisation representing 34 central industrial and employers' federations from 27 countries, speaking for more than 16 million companies, requests the Commission to ensure that they are consulted when this extended impact assessment is carried out.

We were never approached for the GFA report which we only saw for the first time online last Friday, the date of its publication.

We also want to call upon the Commission to make sure that in future impact assessments a sufficiently broad range of business organisations at both European and national level are consulted to allow them to make a correct assessment. We noticed that GFA carried out its report in a rather short timeframe during the summer leave period (July-August 02) and has received input from only 16 business organisations, strictly national ones which represented

* See page 16 and 17 of the Commission's Legislative and Work Programme for 2003 at <http://europa.eu.int/eur-lex/en/com/cnc/2002/act0590en02/1.pdf>

just 5 member states (UK, D, S, F, A). There was no input from any of the South European member states.

We urge to Commission to ensure that future work on impact assessment embraces all relevant stakeholders and that sufficient time is given to the consulted stakeholders to prepare their views.

D. Need for regulatory simplification

Commissioner Byrne has stated on several occasions that the consumer policy reform suggested represents one of the first examples of and a test case for the development of the governance and better regulation ideas in a concrete policy area.

For UNICE, simplification of rules and reduction of regulatory burden on companies, especially for SMEs, is key to the operation of the internal market. This is very much in line with the Commission's better regulation target of reducing the existing EU legislative arsenal by 25% by 2005.

As a general rule, UNICE is supportive of harmonisation of commercial rules provided they bring about simplification of rules, increase legal certainty and ensure a level playing-field.

We fear that the current proposal will only add another layer of rules on top of what is already in place, thereby adding complexity without further simplification. European companies cannot afford a reform that results in a multiplication of rules, legal uncertainty and increased compliance costs.

E. Conclusions

UNICE recognises there is room for further improvement of the internal market. However, it is difficult to understand how the mixed approach proposed by the Commission is going to improve the functioning of the internal market for business and consumers while allowing for regulatory simplification.

On the basis of the information provided up to now, UNICE cannot support the reform suggested by the Commission; the current proposal is not sufficiently clear about its implications and scope and leaves serious doubts about how its implementation in the various Member States would trigger more harmonisation.

UNICE would be more in favour of well-targeted and defined harmonisation measures (e.g. proposed regulation on sales promotions) which are intended to tackle well-defined problems and to eliminate real and well established trade barriers hindering commercial transactions across frontiers.

Finally, UNICE repeats that more emphasis should be placed on ensuring that what is already in place is properly implemented and enforced across the EU. This approach will allow us to create a solid basis for building consumer protection across all EU member states with special consideration for the candidate countries which are in the process of adjusting their legislation to the EU acquis.

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