



**COMMUNICATION FROM THE COMMISSION
"TOWARDS A SINGLE MARKET ACT -
FOR A HIGHLY COMPETITIVE
SOCIAL MARKET ECONOMY -
50 PROPOSALS FOR IMPROVING OUR WORK,
BUSINESS AND EXCHANGES WITH ONE ANOTHER"
- CONSULTATION -

- UGAL COMMENTS -**

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EXECUTIVE SUMMARY

Please find herewith the UGAL response to the public consultation on the publication of the European Commission's Communication "*Towards a Single Market Act*". UGAL promotes the following **nine proposals** as being the most important in the Single Market Act:

- **Proposal Number 4 & 44:** Mutual evaluation. Proper implementation and more uniform interpretation of EU legislation at national level are essential for a robust Single Market.
- **Proposal Number 5:** Electronic commerce. The European Commission should **begin a sizing exercise to assess the scale of payments frauds in e-commerce transactions**. This could promote more secure cross-border e-commerce.
- **Proposal Number 12:** SME access to capital markets. **The creation of an SME register with simple listing requirements** could facilitate SME access to finance.
- **Proposal Number 14:** Review of the accounting Directives. The review must have as its mandate, the **reduction of administrative burdens** on SMEs.
- **Proposal Number 20:** VAT strategy. The current system is **too complex** and does not favor cross-border transactions.
- **Proposals No 21 and 22:** Company registers, e-identification and e-authentication. Businesses should be able to **interact electronically with public authorities**. This would also facilitate access to company information.
- **Proposal Number 47:** Respect of the rules of the Single Market. Good quality legislation has no effect without its **proper implementation and interpretation**.

In addition, it is emphasized that:

→ The European Commission should **recognise the validity of SMEs joining a group structure**. This promotes sustainable growth and allows independent SMEs to improve their economic performance by facilitating competition with fully integrated chains. This business structure should be supported in future legislative developments.

→ UGAL **opposes any regulatory initiatives to regulate B2B relationships** in the food supply chain. UGAL is fully committed to the work of the B2B Platform on Contractual Practices within the High Level Forum for a Better Functioning Food Supply Chain, which seeks to develop an industrial policy in the agro-food sector. The European Commission must give due care not to prejudge the outcome of this group via Proposal 9.

→ UGAL **opposes any future proposal for a judicial collective redress** procedure for consumer complaints. There is no justification for such an initiative and it should be **deleted from the Single Market Act**.

→ **Legislation concerning corporate governance is premature**. UGAL recommends a better approach would be to **launch a stock-taking exercise of all existing national initiatives**, including codes of conduct.

A - PRELIMINARY REMARKS

- 1.1** It must be remembered that at the current stage of Single Market development, the principal role of the European Union should be to ensure a consistent implementation of existing European legislation. As the Commission acknowledges, a multitude of legal instruments already exist in the *Acquis Communautaire*. To truly re-launch the Single Market it is **paramount to fully assess the impact of these existing instruments on the Single Market and submit them to adequate review before proposing a multitude of further measures**.
- 1.2** During the re-launch of the Single Market, UGAL urges the European Commission to act in line with its **Better Regulation principles** according to which “*new regulatory initiatives should only be pursued where there is a need to do so, in a manner which is as straightforward as possible, based on dialogue with stakeholders, and in a way that keeps burdens on businesses and citizens to the minimum necessary*” (1).

The Single Market as a political priority

- 1.3** The Single Market must be treated as an absolute priority. As such, we urge President Barroso to provide added political leadership to, and renewed focus on, the group of Commissioners in charge of its re-launch. Particular political focus must be placed on an evidence based approach to new legislation. Although our legislative initiatives will potentially lead to increased burdens on businesses

Sustainable development

- 1.4** UGAL believes that sustainable development can play an important role in promoting the Single Market. As such, policies that promote economic and/or environmental sustainability must be taken into account when regulating markets.
- 1.5** Improved economic sustainable development should aim at building markets that are broad based, with a range of participants and low barriers to entry. In a retail context this should mean that markets are diverse, with a range of retail choices (including retail outlets close to home and easy to access).
- 1.6** The promotion of environmental sustainability will allow all European citizens to personally benefit from the Single Market. This is because the beneficial effects, economic and otherwise, of a “green” Single Market would result in better acceptance of the Single Market for all EU citizens.

→ UGAL is confident that increased emphasis on inter alia environmental sustainability would be a particularly important development for the new generation of environmentally aware consumers, with which the retail sector does business.

(1) COM(2009)15, *Communication from the Commission on the third strategic review of Better Regulation in the European Union*

- 1.7** UGAL welcomes the emphasis placed in the SMA on sustainable growth. Indeed the SMA is clear that SMEs offer high employment potential in the EU. However, SMEs are struggling. They lack access to finance and levels of SME foreclosure are rising. In the retail context, one of the only ways in which an SME can survive is by becoming part of a group.
- 1.8** Joining a group allows independent retailers/SMEs to improve their economic performance and actively compete with large, fully integrated enterprises. Such groups act to promote long term and sustainable growth by helping their members to i) increase the value of their own business and ii) improve the economic performance of their shops. Moreover, such organisations actively involve their members in the working of the group itself.
- 1.9** Such positive actions ensure that a member retailer can sustainably contribute to the local economy over the long term. Moreover being part of a larger group structure ensures a long term contribution to the wider European economy through inter alia utilising the wholesale function of that group.
- 1.10** Ultimately the group structure benefits consumers by ensuring a more diverse, sustainable and competitive marketplace. The consumer is the ultimate beneficiary as a more diverse, sustainable and competitive marketplace facilitates consumer choice and responds to consumer expectations.

➔ UGAL urges the European Commission to further recognize the validity of the way groups of independent retailers are structured and supports better recognition of such group structures in future competition law developments, notably in the sphere of better recognition of group structures in vertical and horizontal agreements.

B - PROPOSALS OF THE SINGLE MARKET ACT TO BE TREATED AS PRIORITIES

2. PROPOSALS No 4 AND 44 "MUTUAL EVALUATION"

- 2.1** UGAL welcomes the Commission's determination to develop the internal market for services on the basis of the 'mutual evaluation' process set out in the Services Directive (Directive 2006/123/EC).
- 2.2** In our view, the mutual evaluation process represents **one of the most important tools to ensure a proper practical operation of the regulatory framework applicable to retailers**. The mutual evaluation process has the potential to ensure that legislation delivers on its growth promises and UGAL notes its inclusion in the SMA.

Proper implementation of legislation is key

2.3 Good quality legislation has no effect without proper implementation and interpretation. Hence UGAL urges the Commission to stand firm in the face of member state 'gold plating' practices. The mutual evaluation process may facilitate this.

2.4 The rights of participants in the Single Market are defined by EU legislation. A special initiative enabling the rights of service providers and consumers to be asserted more effectively and practically in the Single Market could also potentially facilitate better implementation and interpretation of legislation.

2.5 UGAL notes that such an initiative must firstly be fully developed before being presented to stakeholders for their comments. Moreover, any such initiative must not lead to additional administrative or cost burdens being placed on businesses, including SMEs.

Proposal 44

2.6 Proposal 44 is linked to mutual evaluations and is a complimentary tool to promote the rights of participants in the Single Market.

→ The 'top 20' wish list approach, proposed by the European Commission, will serve as a practical measure to gauge the opinions of all stakeholders on the state of the Single Market.

→ The Single Market Forum is potentially a useful added tool to gauge the state of the Single Market with all stakeholders.

3. PROPOSAL No 5 "DEVELOPMENT OF ELECTRONIC COMMERCE"

3.1 E-commerce is a growing trend (2). Indeed electronic or online distribution channels are being developed by retailers to respond to consumer expectations. E-commerce can also have added consumer benefits as it facilitates price comparison and may exert a downward pressure on prices (3). As such we welcome its inclusion in the SMA.

3.2 Nevertheless, **UGAL recognises that demand for cross-border online trading is still limited.** This is because a number of obstacles to the online *cross-border* provision of retail goods and services exist.

(2) We note that 32% of individuals aged 16-74 in the EU bought or ordered goods or services for private use over the internet at least once in the last 12 months (source : Eurostat). Further, we recognise the fact that one third of EU citizens indicate that they would consider buying a product or a service from another Member State via the internet because it is better or cheaper (source: Commission staff working document, Report on cross-border e-commerce in the EU Feb 09 (SEC(2009) 283 final)). We also note that the number of people shopping on the internet has grown steadily, from 20% in 2004 to 26% in 2006 and 30% in 2007 (source: Eurostat).

(3) Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions – Retail market monitoring report: "*Towards more efficient and fairer retail services in the internal market for 2020*" – COM(2010) 355 final – 05.07.2010

Obstacles to e-commerce

3.3 Cultural differences are a major obstacle preventing **cross-border** electronic commerce growth. This is not surprising considering the different methods of marketing being used across the EU and the standard consumer preference toward domestic providers which offer a greater sense of security.

3.4 Language difficulties are also a basic problem. According to research carried out for DG SANCO on the distance marketing of consumer financial services, consumers might be unable or unwilling to purchase products or services marketed in a foreign language. **This also applies to the online provision of retail goods and services more generally.**

3.5 The lack of harmonisation in Member States' consumer protection and online payments legislation as well as the uncertainties over cross-border debt recovery (in light of the differences in legal systems and court efficiency throughout the EU) are also barriers to the (on and off-line) cross-border provision of retail services.

→ Appropriate efforts should be made to remove such obstacles, where possible.

3.6 A further basic problem is that many of the goods sold by retailers are **perishable**. Such goods are simply not suitable for online purchases with a cross-border delivery.

Promoting competition

3.7 As a means to promote competition, UGAL notes that independent groups of retailers should be free to use the internet to advertise and/or sell their goods. However, it remains difficult for UGAL members to fully take advantage of this distribution channel.

3.8 This is due to uncertain interpretation of rules (see paragraph 52 – 54) set down in the European Commission Guidelines on Vertical Restraints (2010/C 130/01).

→ To ensure adequate use of the internet as a distribution channel by groups of independent retailers, UGAL urges the European Commission to explicitly allow the central office of a group of retailers or franchisor, if and when necessary, to protect their activities, know-how, image and uniformity of the network to prevent active sales.

3.9 Protection could be by way of a head office imposing restraints on certain retail group members that relate to online sales of own brand products.

Legislative action

3.10 Due to the low volume of cross-border transactions, **a legislative intervention is not necessary**. Hence, **UGAL supports the European Commission's intention to publish a Communication** intended to discuss the barriers to the

development of e-commerce, offer possible courses of action and evaluate the E-commerce Directive (2000/31/EC).

→ UGAL proposes that the European Commission begins a sizing exercise of the scale of payments fraud in e-commerce transactions. This could eventually lead to an exchange of best practices facilitated by the European Commission on how retailers can effectively combat online payment frauds.

3.11 Regarding users' rights for online services, a code of online rights is scheduled for publication by the European Commission by 2012.

→ This initiative must be open to a full consultation from stakeholders and must avoid creating legal uncertainty. **Congruence must be maintained with the proposal for a Directive on Consumer Rights' (4) that is scheduled for adoption before 2012 and will regulate the sale of good and services to consumers in distance (including online) transactions.**

4. PROPOSAL NO 12 "MAKING INVESTORS MORE AWARE OF SMES"

4.1 UGAL supports the European Commission's proposal to increase investor awareness of SMEs. We agree with the European Commission in the SBA that SME access to finance is an important issue. It is also of importance for the industry we represent.

4.2 The European Commission is correct in its assessment that SMEs currently are not sufficiently visible to potential investors.

→ One way to remedy this would be through the creation of an SME register with simple listing requirements to facilitate access to capital markets. This is particularly important at the current time as the **lending capacity of banks is likely to remain restricted over the medium term and current listing requirements to specialist SME exchanges are too costly.**

SME Finance Forum

4.3 SME access to finance will be addressed in close association with the so-called SME Forum. Accordingly, this issue should be on the agenda at the next meeting of the recently created SME Finance Forum. We welcome the creation of the SME Finance Forum as a positive step in identifying ways to improve SME access to finance.

→ An up to date situation of SMEs access to finance is needed before any concrete action can be taken. As such, UGAL proposes that the European Commission launch a Flash Eurobarometer survey in advance of a future meeting of the SME Finance Forum. The survey should request views on facilitated access to capital markets. The results of the survey could then be used as a basis for discussion at the meeting of the said forum.

(4) COM(2008) 614/3

- 4.4 We hope that the suggestions contained herein will form part of the action plan for improving SME access to capital markets in 2011.

5. PROPOSAL No 14 "REVIEW OF THE ACCOUNTING DIRECTIVES"

- 5.1 UGAL notes the inclusion of a review of the Accounting Directives within the SMA.
- 5.2 UGAL support is subject to the review of the Accounting Directives having as its mandate, the reduction of administrative burdens on SMEs. It must be made absolutely clear that additional accounting burdens are unacceptable. Accordingly, we urge the European Commission to follow through with its mission to simplify financial reporting obligations and to reduce administrative burdens on SMEs.
- 5.3 The European Commission should recognise that SME's lack both the human and financial resources of the large integrated retailers with which they compete. Many SME retailers may lack the resources to engage an accountancy firm. As such, the employees of the SME itself will ensure compliance with accounting obligations. Staff time spent on complying with those administrative burdens is staff time lost to developing the business.
- 5.4 This situation places those smaller retailers at a disadvantage to large integrated retailers, who may have their own accountancy department or engage an external accountancy firm. For large integrated retailers, time spent complying with accounting obligations does not impact on the shop level performance of the retailer. Concretely speaking, **for smaller SME retailers, time spent complying with accountancy obligations means time spent away from the shop floor. This can have a negative effect on sales.**

→ Small improvements can have big results. Facilitating SMEs compliance with basic accounting rules is an efficient way to ease unnecessary burdens placed on SMEs thereby increasing their productivity and competitiveness.

6. PROPOSAL No 20 "FUNDAMENTAL REVIEW OF THE VAT SYSTEM"

- 6.1 UGAL acknowledges the Commission's intention to fundamentally review the VAT system as part of the SMA. The current VAT system is extremely complex, detailed and based upon a number of national, European and international rules, rates, derogations and exemptions. Fraud has also been on the increase under the current system.

- 6.2** This has led to a “VAT gap” of approximately EUR 100 million (5). In the current austerity period, lost revenue is unacceptable to all stakeholders. A simplified VAT system may help to reduce this lost revenue.

Administrative burdens

- 6.3** The current imperfect system is particularly burdensome to the SME retailers represented by UGAL. High levels of administrative burdens potentially lead to lower levels of EU business.
- 6.4** One such burden is the current internet based system of filing VAT refund requests that came into force on 1 January 2010. This system has led to delays in receiving VAT refund requests.
- 6.5** Further problems have been caused by a lack of standardization in the type and size of electronic files that national online authorities can accept online.

→ As a return to the paper based system is not foreseen, the European Commission must work on a solution to the above mentioned problems as part of its VAT review.

7. PROPOSALS NO 21 AND 22 "COMPANY REGISTERS, E-IDENTIFICATION AND E-AUTHENTICATION"

- 7.1** UGAL agrees with the European Commission that businesses should be able to interact electronically with public authorities. This is of particular benefit for the groups of independent retailers represented by UGAL whose members may not have regular contacts with their national public authorities or public authorities located in another jurisdiction.

Access to company information

- 7.2** One particular benefit of electronic interaction would be to facilitate access to those public authorities holding company information (such as Companies House in the United Kingdom).
- 7.3** Access to understandable and accurate company information is key in facilitating different forms of cross-border business. One particular benefit would be the ability of a group of independent retailers to independently assess the creditworthiness of a supplier located in another country.
- 7.4** An added benefit of promoting better access to company information held on registers by certain specific authorities (such as annual reports / accounts / information on company directors) is that such information can also be used in fraud prevention. This is particularly true when assessing those risks presented by smaller suppliers and start-ups. In particular, the presence of directors names on official registers (e.g. on lists of registered voters) can be used to

(5) Reckon LLP (London), ‘Study to quantify and analyse the VAT gap in the EU-25 Member States’, 21 September 2009

help confirm the identity of a potential business partner and thus guard against a simple fraud that potentially could negatively impact upon a group composed of one thousand independent retailers.

Electronic signatures

7.5 With regard to the revision of the Directive on Electronic Signatures (1999/93/EC), it should be noted that e-signatures do not appear to be widely used in commercial transactions across Europe. We doubt that this situation will change so long as levels of electronic commerce remain low (6).

8. PROPOSAL No 47 "RESPECT OF THE RULES OF THE SINGLE MARKET"

8.1 UGAL urges the European Commission to recognise that good quality legislation has no effect without the proper implementation and interpretation thereof. The transposition process for Directives is key in achieving this aim.

8.2 UGAL fully agrees with the European Commission's inclusion of a proposal to renew efforts on the transposition of Directives and to provide correlation tables containing national implementing measures.

8.3 A true Single Market cannot be achieved with 27 different implementations/interpretations of a European text. **Proper implementation and more uniform interpretation of EU legislation at national level are essential.**

8.4 As such the European Commission must continue to intensify its efforts to ensure that Member States implement legislation in a consistent manner.

→ UGAL notes that the existence of transposition working groups staffed by relevant Member State officials can help in this process.

8.5 Yet this does not go far enough. To attain a true Single Market, UGAL emphasises the need for the European Commission to stand firm in the face of Member State and political pressure to act, or not act, on certain issues.

C – ADDITIONAL REMARKS

9. PROPOSAL No 3 "COUNTERFEITING AND PIRACY"

9.1 UGAL wholeheartedly supports efforts to combat counterfeiting and piracy.

9.2 UGAL notes that the demand for many counterfeit or pirated goods is driven by high levels of national taxation on certain products such as alcohol and to-

(6) See also response to proposal 3 on electronic commerce

bacco. This link must be recognised in EU discussions on counterfeiting and piracy.

- 9.3** UGAL acknowledges that the market is suffering from counterfeit, or pirated, consumer goods that resemble genuine products to the detriment of consumers. The damaging effects of counterfeit consumer, or pirated, goods are well documented. Health risks to consumers are of particular importance in this context.
- 9.4** For the groups of independent retailers represented by UGAL, a particular risk may exist in the context of **counterfeit, or pirated, own brand goods**.
- 9.5** As highlighted later on in this paper, the relationship between retailer and consumer must be assessed in the long term. Trust is key in fostering this relationship. **A guarantee of quality when purchasing own branded goods is essential to building a high level of trust and maintaining the retailer's reputation with a consumer.**
- 9.6** Counterfeit, or pirated, goods jeopardise this relationship. Counterfeit, or pirated, goods do not meet the rigorous safety standards upheld by the retail sector. Nor do they meet the stringent internal certification schemes developed by retailers to protect consumers.
- 9.7** Counterfeit, or pirated, goods could therefore be damaging to the health of a consumer, or, on more fundamental level, the product will simply not meet consumer expectations. This in turn will damage a retailer's relationship with a consumer. **This is because a consumer who buys counterfeit, or pirated, goods might no longer trust the goods purchased from a specific retailer. This will ultimately damage the image of commerce, the retail industry and its dependants.**

Copycatting

- 9.8** Regarding so called 'copycat' goods, UGAL believes that consumers should never be misled.
- 9.9** UGAL opposes copycatting. If goods are copycatted (i.e. similarly packaged products displaying similar characteristics sold to unsuspecting consumers) then the long term relationship of trust between retailers and consumers may be broken.
- 9.10** UGAL notes that private label/own branded goods do not constitute copycatting. Indeed, these goods are legally protected brands (just like industrial brands) and are seen as an essential part of a retailer's product mix, together with those goods produced by industrial brands.
- 9.11** On the other hand goods produced by counterfeiters do not comply with relevant safety standards and should not be sold.

Prevention of counterfeiting and piracy

9.12 To prevent the rise of counterfeiting and piracy, improved protection of intellectual property (“IP”) rights is important. We recognise that improved protection of IP rights is an important part of the European Union’s Lisbon Agenda for building a European knowledge economy and the Global Europe Strategy.

9.13 A complementary initiative to protection of IP rights through the Lisbon Agenda is the Anti-Counterfeiting Trade Agreement.

→ UGAL agrees with the European Commission that international cooperation, establishment of enforcement practice and the creation of a modern legal framework could potentially bring counterfeiters and pirates to justice.

9.14 This agreement is particularly important in the light of recent OECD figures showing a 98% increase in seizures of counterfeit or pirated toys and a 68% increase in seizures of counterfeit or pirated foodstuffs (7).

10. PROPOSAL No 9 "SERVICES TO BUSINESSES"

10.1 The sentence on page 12 of the Single Market Act under proposal 9 stating: *“An initiative geared towards business-to-business relations would make it possible to protect the different operators in the supply chain while enabling the gradual emergence for a more efficient and fairer single wholesale and retail market while meeting consumers’ and manufacturers’ expectations regarding competitive prices.”* is unacceptable.

10.2 It only focuses on retailers yet all stakeholders looking at B2B practices have now recognised the need to review the functioning of the entire supply chain!

→ Until this sentence is accurately reworded and replaced with a broader initiative encompassing the entire supply chain, **UGAL opposes the initiative**. Appropriate protection must be afforded to all parties throughout the supply chain. Retailers also suffer from potentially unfair commercial practices within the supply chain and this fact must be recognised.

11. PROPOSAL No 29 "THE RIGHT TO TAKE COLLECTIVE ACTION"

11.1 UGAL warns that the implementation of a mechanism for judicial collective redress is the wrong approach.

→ Hence **UGAL strongly opposes any future proposal for a judicial collective redress procedure**. Any such initiative must not be considered a priority proposal that could help to re-launch the Single Market.

(7) Statistics recorded at the external borders of the EU
http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm

11.2 A more viable way to reconcile economic freedoms and freedoms of collective action *could be* the development of alternative dispute resolution schemes to respond to mass claims.

Collective redress in competition law

11.3 UGAL agrees with the case-law of the European Court of Justice according to which the right to claim damages guarantees the effectiveness of European competition rules.

11.4 This right is already fully implemented. It relies on public enforcement through the European Commission and through national competition authorities. It also relies on private enforcement by the victims of anti-competitive conduct.

11.5 This right is compatible with collective redress for a breach of competition law. It is a clear evidence based system that allows for harm to be proven as a result of anti-competitive conduct.

11.6 Once harm has been proven, victims can then be compensated for any proven anti-competitive conduct.

Judicial collective redress for consumer complaints

11.7 The above described system of collective redress in cases of anti-competitive conduct **will not work** in a consumer complaint context.

11.8 UGAL urges the European Commission to fully recognise the negative impact of judicial collective redress for consumer complaints in the USA. Negative elements include ill-intended consumers and law firms commencing unsubstantiated legal actions in order to threaten retailers. The objective of such threats is the attainment of 'easy compensation' from a retailer reluctant to enter into a long, drawn out and potentially damaging court procedure.

11.9 UGAL notes that judicial collective redress for consumer complaints is only appropriate in jurisdictions where levels of consumer protection are low and where substantive provisions of consumer protection law are **absent**, such as in the USA.

11.10 This is not the case in the EU. Consumer protection provisions in the EU set a gold standard. Moreover, specific complaints provisions already exist to enforce those provisions.

11.11 As such, the introduction of a system of judicial collective redress for consumer complaints would be **a completely disproportionate action that UGAL cannot support**.

11.12 UGAL notes that should a system of judicial collective redress for consumer complaints be introduced, then the existing systems for resolving competition complaints could be completely undermined. Previous enforcement decisions taken by national competition authorities may be open to further deliberation and the validity of European Commission rulings would be called into question.

This would create unacceptable legal uncertainty in a currently certain area of law.

Evidence is still needed for an intervention

11.13 The fact that consumers rarely conduct cross-border transactions will not be solved by a collective redress mechanism.

11.14 Currently there is no proof of need by consumers at EU or at national level for an intervention in the field of collective redress for consumer complaints. In this context, UGAL notes the outcome of the studies carried out by Civic Consulting that highlight a distinct lack of evidence for a collective redress system for cross-border cases.

→ In line with the principles of Better Regulation, a first analysis is needed whether or not existing instruments can be improved. This more practical approach is better than the rushed creation of a new layer of legislation increasing administrative burdens for businesses, SMEs and ultimately consumers.

11.15 When assessing collective actions, UGAL recommends that the European Commission takes into account the fact that a cross-border mechanism is not needed to solve purely national complaints.

11.16 Due to the Brussels 1 Regulation (Regulation 44/20010 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters), when a judgement is given on a national collective action, it becomes potentially binding in other jurisdictions. Accordingly, UGAL does not see the necessity of a pan-European system of judicial collective redress when a national solution, applicable EU wide already functions well.

12. PROPOSAL NO 38 "CORPORATE GOVERNANCE"

12.1 The positive effects of corporate governance on different stakeholders ultimately result in a strengthened economy. Good corporate governance is therefore a tool for socio-economic development and a means to strengthen the Single Market.

12.2 The promotion of effective corporate governance and clear corporate social responsibility are commendable objectives for the European Commission to pursue. As such, UGAL would, in principle, welcome future work in this field in the form of non-binding, non-legislative measures.

12.3 UGAL wholeheartedly supports the fact that businesses should recognise its obligations towards employees, shareholders and society at large. To that end, a small number of **UGAL member organisations have already implemented a number of schemes** such as specialised websites, specific projects and benefit schemes to achieve this objective.

Representation

- 12.4** One of the benefits of the structure of groups of independent retailers is precisely that diversity is maintained. A good example is board composition. **Board composition necessarily involves representation from a diverse range of local retailers.** This lends itself to strong corporate governance, acting in the shareholder interest and a high level of local corporate and societal responsibility.

Commission action

- 12.5** Currently, a wide range of companies are implementing voluntary initiatives aimed at improving corporate governance and corporate social responsibility. In many cases, the results of these actions are still being analysed. In this context, **a legislative intervention would be premature.**
- 12.6** At the current time, it would be more beneficial to foster exchange of best practices, establish clear benchmarks and educate stakeholders on what is currently being done by leaders in the field. This course of action would better promote the objectives of the European Commission in this field vis-à-vis all stakeholders.

→ Above all, an exchange of experiences through the organisation of a dedicated conference on corporate governance, organised in Brussels, by the European Commission, would likely act as inspiration to all interested parties.

→ In parallel we recommend that the European Commission carry out a stock-taking exercise of all existing national codes of conduct in this field in order to facilitate benchmarking.

13. PROPOSAL No 39 "MARKET SURVEILLANCE AND PRODUCT SAFETY"

- 13.1** UGAL welcomes the aim of the European Commission to develop a coherent and effective legal framework for product safety and market surveillance.
- 13.2** UGAL considers product safety as extremely important and insists that suppliers adhere strictly to existing product safety regulations (8).
- 13.3** However, it should be the operator who introduces the goods on the market first, i.e. the producer located in the EU or the importer importing the goods into the EU, who should be considered responsible for this safety and also of the accuracy of the labelling of that product. UGAL rejects any widening of retailer obligations in this context. In particular, retailers should not be held responsible for errors caused by producers.
- 13.4** In the case of non-food products, the safety of a product depends largely on the design of the product or on its manufacturing process. It would neither be

(8) This occurs in particular in the context of contractual agreements and the general duty to exercise diligence and limit risks to reputations.

appropriate nor possible in practice to pass on the legal responsibility for product safety to retailers and thus the entire distribution chain (as we have seen for instance in the case of the chemicals legislation). As many thousands of products are sold in each sales outlet, it is out of the question that retailers check every product for its conformity. UGAL also **opposes the proposal that retailers should supervise their suppliers** within the EU.

14. PROPOSAL NO 46 "ALTERNATIVE DISPUTE RESOLUTION"

14.1 A potential ADR regime complements the fact that consumers and retailers do not exist in isolation. Rather, the relationship is one of long term mutual understanding, benefit and trust. Effective complaints resolution is an essential part of this relationship.

→ **An independent, transparent and effective** ADR scheme might be a more constructive approach to complaints resolution. That said, UGAL cautions that the development and implementation of any such scheme must first be subject to an **extensive cost/benefit analysis and its practicality must be fully tested in advance.**

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*Established in 1963, **UGAL** – the **Union of groups of independent retailers of Europe** – is the European association that acts as an umbrella organisation for the main groups of independent retailers in the food and non-food sectors.*

These groups are set up like wholesale businesses by independent retailers and craftsmen. Their aim is not only to provide their members with the best purchasing conditions. What they are also seeking is to jointly contribute technical and material resources, together with all the services and the human capacity required to guarantee the operation and development of modern commercial and distribution enterprises for retailers to effectively respond to consumer expectations.

To achieve this, these groups seek economic performance through networks of points of sale – consisting of SMEs usually working under a common brand name.

UGAL represents nearly 300.000 independent retailers, who manage more than 540.000 sales outlets. This represents a total employment of more than 5.000.000 persons.

More information about UGAL under www.ugal.eu