

EUROPEAN PARLIAMENT

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28 August 2007

Dear Hoogersbrugge

Consumer status of homeowners

I have now heard back from the European Commissioner for Consumer Affairs regarding the consumer status of homeowners with reference to the EU Directive on Unfair Terms in Contracts (I enclose a copy of the Commissioner's response for your information). As ever, these matters are not cut and dry. The Commissioner says that the European consumer protection measures "may" provide some protection. However, the implementation is not a matter for the European Commission but the Member State. Neither does the language of the Directive clearly indicate that it applies to real property contracts. Everything is down to interpretation and at the end of the day it looks like the matter will need to be tested in court. In that respect the Commissioner does mention a judgement in English law at the Court of Appeal (*Khatun & Others v Newham LBC* [2004] EWCA Civ 55) where the judgement clarified that both the Directive and the English implementing act apply to contracts relating to land. I hope this is of some help.

Yours sincerely

David Martin MEP

Encl

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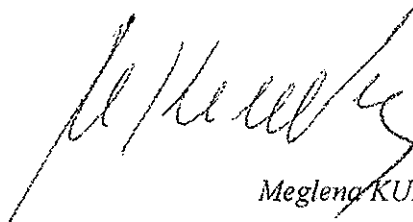
Dear Mr Martin,

I sympathise with the problems encountered by your constituent with alleged unfair terms included in contracts for the purchase of real estate. In my view, the existing European consumer protection measures may provide some protection. However, the implementation of these measures is the responsibility of the Member States.

In particular, the Unfair Contract Terms Directive¹ prohibits standard contract terms which create significant imbalances between the rights and obligations of the consumer and those of the seller. This general requirement is supplemented by a list of terms which may be regarded as unfair. The Directive aims at protecting consumers in respect of all types of contracts. However, the language of the Directive does not clearly indicate that it applies to real property contracts. This problem has been widely debated in various Member States during the transposition and implementation of the Directive.

In respect of English law, I would like to draw the attention of the Honourable Member to the recent judgment by the Court of Appeal (*Khatun & Others v Newham LBC* [2004] EWCA Civ 55). The judgment clarified that both the Directive and the English implementing act apply to contracts relating to land. However, only the responsible national authorities may establish whether this case is relevant in the circumstances experienced by your constituent.

Yours sincerely,



Meglena KUNEVA

¹ Council Directive 93/13/EC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993

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