



30.1.2015

NOTICE TO MEMBERS

Subject: Petition No 2148/2013 by Gredo Förster (German) on the right to terminate an energy supply contract

1. Summary of petition

The petitioner believes that energy consumers should have to terminate their supply contracts. He calls on the European Parliament to adapt Directive 2011/83/EU on consumer rights to that effect. Currently, the notice period for consumers is 2 weeks after signature of the contract. The petitioner considers this deadline too short.

2. Admissibility

Declared admissible on 5 September 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 30 January 2015

The Commission's observations

According to Article 2 (1) of the Consumer Rights Directive a consumer means "*any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession*".

This definition is commonly used in all European Union legislation aimed at a higher consumer protection. A similar definition is laid down e.g. in Directive 2005/29/EC on unfair commercial practices¹ or Directive 93/13/EEC on unfair terms in consumer contracts etc.

¹ OJ L 149, 11.6.2005, p. 22.

It has been a political choice of the EU legislator to address problems faced by consumers (natural persons acting outside their trade) and establish rules aiming at their high protection that would balance their weak position vis-à-vis the seller or supplier. This has been considered necessary for the establishment and functioning of the internal market, and has been enshrined in the EU Charter on Fundamental Rights, which requires in its Article 38 that EU policies ensure a high level of consumer protection.

However, according to Recital 13 of the Consumer Rights Directive "*Member States should remain competent, in accordance with Union law, to apply the provisions of this Directive to areas not falling within its scope. Member States may therefore maintain or introduce national legislation corresponding to the provisions of this Directive, or certain of its provisions, in relation to contracts that fall outside the scope of this Directive. For instance, Member States may decide to extend the application of the rules of this Directive to legal persons or to natural persons who are not consumers within the meaning of this Directive, such as non-governmental organisations, start-ups or small and medium-sized enterprises.*"

The Commission's experience confirms that some Member States have used such an option in relation to other consumer protection legislation, e.g. in the field of unfair commercial practices.

Therefore, it is for the German national authorities (the government and the parliament) to take into account this petition and consider whether it would be appropriate to extend the scope of the German provisions of the Civil Code transposing the Consumer Rights Directive to legal persons or to natural persons who are not consumers taking into account specific features of national law and the case law of the German Federal Constitutional Court.

Conclusion

The German legislative authority may, in accordance with Union law, extend the application of the rules of the Consumer Rights Directive to legal persons or to natural persons who are not consumers within the meaning of the Consumer Rights Directive.