

EN

EN

EN

**COMMISSION STAFF WORKING DOCUMENT**

**accompanying the proposal for a directive on consumer rights  
Impact Assessment Report**

## **1. INTRODUCTION**

Lead DG: Health and Consumer Directorate-General

Other services involved: no other service involved in the legislative proposal. The Health and Consumer Directorate-General did however liaise with relevant services through the Impact Assessment Interservice Steering Group.

Agenda Planning and CLWP: the legislative proposal was foreseen by the Commission Agenda Planning for 2008, with reference 2008/SANCO/001.

### **1.1. Executive summary**

The problem addressed in this impact assessment is the incomplete business to consumer (B2C) internal market. Consumers are not yet reaping the benefits of a fully integrated retail market with increased choice and lower prices. There are several practical and structural barriers to the proper functioning of the B2C internal market, such as, for example, linguistic, logistical and regulatory barriers.

A significant regulatory barrier is that created by the fragmentation of the national laws regulating consumer transactions. These laws transpose a number of directives, constituting the EU Consumer Acquis. The main cause of the fragmentation is the minimum harmonisation clauses contained in the consumer directives. These clauses explicitly recognise the right of Member States to maintain or adopt stricter consumer protection rules in their national law. As a consequence Member States have made extensive use of the possibility to ensure a higher level of protection for consumers in their country. The problem of legal fragmentation is exacerbated by two more issues: the fact that the EU regulatory framework is not perfectly coordinated; and the fact that some of the rules in the Directives are outdated; these two issues have been partly addressed by national regulators; this piecemeal uncoordinated approach has generated more fragmentation at EU level. This impact assessment focuses exclusively on the issues pertaining to the effects of fragmentation, notably on consumers and businesses.

The internal market effects of the fragmentation are twofold. Firstly, they result in a reluctance by businesses to sell cross-border to consumers. The effects of the fragmentation are felt by business because of the conflict-of-law rules, and in particular the Rome I Regulation, which obliges traders not to go below the level of protection afforded to foreign consumers in the consumer's home country. A trader wishing to sell cross-border into another Member State will have to incur legal and other compliance costs to make sure that he is respecting the level of consumer protection in that country. Such costs are eventually passed on to consumers or, worse, businesses refuse to sell cross-border. In both cases consumer welfare is below the optimum level.

Secondly, the effects of fragmentation translate into low levels of consumer confidence in shopping cross-border. The shortfalls in consumer confidence have a number of causes including the insufficient knowledge by consumers of their rights, their perception that they would be less protected if they buy from foreign traders and that enforcement and mediation would be more difficult to carry out abroad. This consumer perception problem is currently difficult to solve. Indeed, the legal fragmentation and the related uneven level of consumer protection across the EU make it difficult to conduct pan-European education campaigns on consumer rights, mediation or other alternative-dispute resolution (ADR) mechanisms.

Based on the outcomes of extensive consultation exercises, different policy options (POs) ranging from status quo to far-reaching legislative proposals have been constructed. Some POs, such as the introduction of a dual regime for domestic and cross-border B2C transactions have been discarded at an early stage. Indeed such options have not been supported by the

great majority of stakeholders and they would run against the key objectives of the Review. The results of the analysis indicate that the status quo (PO 1) with the resulting fragmentation would have negative effects on the internal market. The non-legislative measures (PO 2) consisting of awareness-raising and self-regulation would have minor positive effects on consumers, but in practice the regulatory fragmentation would mitigate their benefits for businesses; the negative aspects of fragmentation would not be remedied. PO 2 could also be implemented as an add-on to legislative options 3, 4 and 5 with the result of reinforcing the benefits of these options.

The legislative changes introduced in POs 3, 4, and 5 are based on full harmonisation. These policy options can be depicted as three concentric circles. PO 4 comprises PO 3 together with some other regulatory issues. PO 5 comprises PO 4 and some other regulatory changes.

The four legislative changes proposed in PO 3 would bring limited positive effects in terms of better functioning of the internal market and better regulation. The benefits would be limited to the clarification or "tidying-up" of the legislation.

The medium legislative changes encapsulated in policy option 4 include a total of 20 legislative changes (i.e. the four changes of PO 3 + sixteen additional changes), which amongst others would (i) define delivery and determine who bears the risk of loss or deterioration, in particular when the goods are shipped to the consumer, (ii) adjust and simplify the scope of the distance and off-premises rules in order to remove some inconsistencies and to fill in the current gaps, (iii) harmonise the information requirements and the rules on the right of withdrawal in distance and off-premises contracts, (iv) harmonise the order of remedies (i.e. repair and replacement before reduction in price and contract rescission) in the case of defective goods and (v) introduce harmonised black and grey lists of unfair contract terms at EU level instead of the current purely indicative lists.

Benefits brought by PO 4 are overall expected to outweigh the costs. The proposal would strongly contribute to the better functioning of the internal market through harmonisation and streamlining. Harmonisation will improve the functioning of the internal market and reduce the burden on business wishing to sell cross-border. Simplification of the regulatory framework will make it easier for traders to conclude cross-border contracts. Whilst in most cases the effects of the policy option are the same for all businesses, in a few cases the changes proposed would be particularly beneficial for SMEs. The option would overall increase consumer confidence in cross-border and domestic shopping, particularly through lower prices and better choice for consumers. The policy option would strongly improve the quality of legislation and the level of consumer protection legislation, particularly in distance and off-premises transactions, as it would remove inconsistencies and loopholes by setting common rules and definitions.

The additional legislative changes envisaged as part of PO 5 are far-reaching proposals (such as rules on recurrent defects or on the availability of spare parts) generating administrative and compliance costs to businesses which do not outweigh the benefits to consumers and therefore do not fulfil the twinned objectives of the Review (i.e. reducing business compliance costs and enhancing consumer confidence).

PO 6 combines an internal market clause with either PO 3 (sub-option 1) or PO 4 (sub-option 2). Such an internal market clause would derogate from Rome I allowing traders trading cross-border to choose freely the law applicable to the contract. During the public consultation process, the Internal Market clause was supported by business, but met with considerable opposition from the great majority of Member States and consumer organisations.

While this policy option would remove regulatory barriers in the internal market and result in a significant reduction of the burden for businesses, it would transfer the problem of legal uncertainty to consumers resulting in negative impacts on consumer confidence: consumers would be subject to different levels of protection when they buy from foreign traders. The option would create problems for courts and mediators who would have to apply a foreign law; it would not improve the quality of the legislation and would be inconsistent with the approach followed by the Rome I Regulation.

For the reasons outlined above, policy option 4 (medium legislative changes) is proposed as the most appropriate solution to the problems identified in the review process. Only this option would allow us to meet the twinned objectives of the review which must be seen as mutually reinforcing and not antagonistic: i.e. making it easier for business to sell cross-border to consumers and enhancing consumer confidence in cross-border shopping. This does not rule out the simultaneous application of non-legislative add-ons identified in PO 2.

## **1.2. Organisation and timing**

The legislative proposal for a Directive on Consumer Rights (Follow up of Revision of the Consumer Protection Acquis) was foreseen by the Commission Agenda Planning for 2008, with reference 2008/SANCO/001.

The proposal is included in the Commission's simplification rolling programme.

The review of existing Community legislation relating to consumer protection (hereafter the "Consumer Acquis") was first foreseen in the Consumer Policy Strategy 2002-2006.<sup>1</sup> The Commission launched the Review of the Consumer Acquis in 2004 with the Communication on European Contract Law and the revision of the Acquis: the way forward, which outlined the need to improve the quality and consistency of existing Community legislation in relation to consumer contracts.<sup>2</sup>

Subsequently, the First Annual Progress Report on European Contract Law and the Acquis Review - 2005 summarised the progress of the European Contract Law (ECL) initiative and the review of the acquis and outlined the review process.<sup>3</sup> It also formed the basis for the Council Conclusions adopted on 29 November 2005, which welcomed the Review exercise.

On 8 February 2007, the Commission adopted the Green Paper on the Review of the Consumer Acquis, summarising the Commission's initial findings and initiating a public consultation.<sup>4</sup> The consultation period lasted till 15 May 2007. The Green Paper initiated the consultation dialogue that is detailed in the next section. The Commission was assisted by an external contractor, the Consumer Policy Evaluation Consortium.

The Health and Consumer Directorate-General set up an Impact Assessment Interservice Steering Group in July 2007. The following services participated in the Interservice Steering Group: the Directorate-General for Competition, the Directorate-General for Enterprise and Industry, the Internal Market and Services Directorate-General, the Directorate-General for Freedom, Security and Justice, the Information Society and Media Directorate-General and the Secretariat-General of the European Commission.

---

<sup>1</sup> Consumer Policy Strategy 2002-2006 (COM(2002) 208 final) of 8.6.2002

<sup>2</sup> Commission Communication on European Contract Law and the revision of the acquis : the way forward (COM(2004) 651 of 11.10.2004)

<sup>3</sup> First Annual Progress Report on European Contract Law and the Acquis Review (COM (2005) 456 of 23.09.2005)

<sup>4</sup> Green Paper on the Review of the Consumer Acquis (COM(2006) 744 Final of 08.02.2007. The Green Paper and the results of the consultation are available at [http://ec.europa.eu/consumers/rights/cons\\_acquis\\_en.htm](http://ec.europa.eu/consumers/rights/cons_acquis_en.htm)

### 1.3. Consultation and expertise

As part of the stakeholder dialogue on the consumer acquis initiated by the Green Paper, the Health and Consumer Directorate-General held a full-day stakeholder conference on November 14, 2007. Its aim was to collect stakeholders' practical experiences and views on the state of play in respect of EU consumer protection legislation, with a view to identifying regulatory problems, improving the functioning of the EU retail market and discussing different issues that had been addressed in the replies to the Green Paper consultation. The conference was attended by almost 200 participants.

The consultation dialogue and evidence gathering was carried out with the assistance of an external contractor, the Consumer Policy Evaluation Consortium (CPEC). CPEC assisted the Commission in analysing the responses to the Green Paper (more than 300 responses from consumer and business associations, Member States, the European Parliament, the European Economic and Social Committee and groups of stakeholders) and in conducting preliminary work on the problem assessment of the impact assessment.<sup>5</sup> In addition, CPEC assisted the Commission in the analysis of the impacts of the proposals.

In this context, stakeholders were consulted extensively from December 2007 to March 2008. The consultation yielded important information on the problem definition and assessment of the policy options. Stakeholders' views were incorporated into the definition of the policy options. Throughout the stakeholder consultation process, the Commission minimum standards for stakeholder consultation were upheld.

On 20 December 2007, two questionnaires (the first one targeted at businesses, the second targeted at consumers) were sent out to numerous consumer and business stakeholders by the contractor. In addition to the aforementioned questionnaires, the contractor incorporated the results of two Eurobarometer polls commissioned by DG SANCO on consumer and retailer attitudes.

More than 20 face-to-face meetings with key business actors were conducted by the contractor under the supervision of the Commission. These interviews were conducted with traders and industry associations in January and February 2008. In addition, the Commission services met with several industry associations in various Member States.

An expert panel comprising legal and economic experts and consumer representatives was set up to advise on the policy options and their likely impacts. The expert panel met twice in the course of the impact assessment.

A full-day stakeholder workshop targeted at businesses was organised on 6 February 2008 with the purpose of discussing the effects of changes to EU consumer legislation affecting companies. More than 40 business representatives attended the workshop.

A consumer focus group was organised on 13 February 2008 with more than 20 consumers. Participants were identified with the assistance of the Belgian European Consumer Centre. The purpose of the focus group was to assess the impacts of the current consumer protection rules on consumer behaviour and to estimate the effects of the envisaged legislative changes on their confidence in cross-border shopping.

---

<sup>5</sup> Preparatory Work for the Impact Assessment on the Review of the Consumer Acquis: Analytical Report on the Green Paper on the Review of the Consumer Acquis submitted by the Consumer Policy Evaluation Consortium, 06.11.2007, accessible at [http://ec.europa.eu/consumers/rights/cons\\_acquis\\_en.htm](http://ec.europa.eu/consumers/rights/cons_acquis_en.htm)

A one-day workshop was organised by the contractor on 29 February 2008 within the framework of the European Consumer Consultative Group (ECCG) associating representatives of consumer organisations. The purpose of the workshop was to discuss the effects of changes to EU consumer legislation affecting consumer protection and consumer confidence, particularly in cross-border transactions. The ECCG members from Luxembourg, Italy, the Netherlands, Germany, Sweden, EUROCOOP and BEUC attended.

In addition, the Commission services held bilateral meetings with BEUC, the European consumers' organisation and BEUC representatives participated in the consumer focus group, the expert panel and the ECCG sub-group meeting.

The Commission held two separate consultations on the Distance Selling and Doorstep Selling Directives to take stock of the effectiveness of these Directives in the current market place. All interested parties were invited to submit replies to the Commission, respectively by 21 November 2006 and 4 December 2007.<sup>6</sup>

Finally, other DGs were associated in the impact assessment process through the Impact Assessment Interservice Steering Group on the review of the acquis. The Steering Group was first convened in July 2006 and met six times in the course of the impact assessment.

#### **1.4. The Impact Assessment Board**

The draft Impact Assessment was submitted to the Board on 15 May 2008 and discussed at the Board meeting of 4 June 2008. The Board issued a favourable opinion on 6 June 2008 with five main recommendations aimed at clarifying certain issues and their presentation. This has led to the following changes in the text:

- the problems and their underlying drivers have been further clarified: paragraph 2.2 describes in more depth the size of the problem and the extent to which the fragmentation of the legal framework generates costs to business and undermines consumer confidence in the internal market; paragraph 2.3 presents further evidence of cross-border Internet trade, highlighting the differences between Member States and taking into account localisation issues; paragraph 2.4 clarifies the possible causes of the price differences between Member States and paragraph 7.1 on monitoring has been modified accordingly;
- subsidiarity issues have been further developed in paragraphs 2.7 and 4.2.1 in order to explain why a legislative reform applying both to domestic and cross-border transactions would meet both the subsidiarity and proportionality tests and allow simplification and reduction of administrative burdens on business;
- the relationships between the two major components of the general objective (i.e. to reduce business reluctance to trade cross-border by decreasing compliance costs and to enhance consumer confidence in the internal market) have been clarified in paragraph 3.1;
- the assessment of administrative costs has been refined: The type of costs (one-off or recurrent costs) are clearly identified, as is the degree to which different types of business will be affected;
- the economic and social impacts including distributive effects are discussed more thoroughly. Furthermore, the presentation of the different policy options in paragraph

---

<sup>6</sup> The outcomes of both consultations are available at <http://ec.europa.eu/consumers/rights>

4 has been simplified and the more detailed assessments of each policy option (PO1 to PO6) can now be found in Annexes 5.1 and 5.2 of the Report.

## 2. PROBLEM DEFINITION

### 2.1. Introduction

The problem addressed in this IA is the incomplete "B2C" internal market, to the extent this is caused by inadequacies in the EU consumer protection laws. Consumers are not yet reaping the benefits of a fully integrated retail market with increased choice and lower prices (see 2.4 on comparative prices in the EU). There are several practical and structural barriers to the proper functioning of the B2C internal market, such as, for example, linguistic, logistical and regulatory barriers. A significant regulatory barrier, which generates significant compliance costs, is that created by the fragmentation of the national laws regulating consumer transactions. These laws transpose a number of directives, constituting the EU Consumer Acquis. According to Eurobarometer 2008, the additional costs of compliance with different national laws regulating consumer transactions are seen by 60% of traders as a fairly or very important obstacle to B2C cross-border trade. Such compliance costs resulting from the legal fragmentation of the EU Consumer Acquis are rated by respondents to the 2008 Eurobarometer survey as being more important than additional costs arising from language differences, costs in ensuring an efficient cross-border after-sales service, delivery costs, or cross-border complaint-resolution.

#### The Consumer Acquis

The Consumer Acquis comprises the following Directives:

- Council Directive 85/577/EEC of 20 December 1985 on contracts negotiated away from business premises ("door-to-door" selling). It provides consumers with a right of withdrawal and the duty of the trader to inform the consumer about it.
- Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. It contains an indicative list of contract terms which may be regarded as unfair. Terms, which are found to be unfair, are not binding on the consumer.
- Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on distance contracts (including contracts concluded via the Internet) whereby traders are obliged to provide consumers with information before and after the conclusion of the contract. The Directive also provides for a withdrawal right and time limits for delivery and for reimbursement of the money paid where the consumer withdraws from the contract.
- Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on the sale of consumer goods and associated guarantees, obliging the trader to deliver goods to the consumer which are not defective. The Directive provides for a guarantee of conformity for a duration of two years and a set of remedies if the goods are defective.
- Council Directive 90/314/EEC of 13 June 1990 on package travel obliging traders to give certain information to travelers before and after concluding the contract and granting other rights to travelers.
- Directive 94/47/EC of the European Parliament and of the Council of 26 October 1994 on timeshare , whereby traders selling timeshare contracts must respect certain information

requirements and grant a right of withdrawal to consumers.

- Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on price indication, requiring the indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices.

The main cause of the fragmentation are the minimum harmonisation clauses contained in the consumer directives (see 2.4.1 below) In this context, this IA will focus exclusively on the issues pertaining to this problem, and will examine its effects on consumers, businesses and national authorities.

## **2.2. The internal market effects of the fragmentation are:**

- a) A reluctance by businesses to sell cross-border to consumers. The effects of the fragmentation are felt by business because of the conflict-of law rules, and in particular the Rome I Regulation ("Rome I"),<sup>7</sup> which obliges traders not to go below the level of protection afforded to foreign consumers in their country.

As a result of the fragmentation and Rome I, a trader wishing to sell cross-border into another Member State will have to incur legal and other compliance costs to make sure that he is respecting the level of consumer protection in the country of destination. These costs reduce the incentive for businesses to sell cross-border, particularly to consumers in small Member States. Such costs are eventually passed on to consumers in the form of higher prices or, worse, businesses refuse to sell cross-border. In both cases consumer welfare is below the optimum level.

- b) Low level of consumer confidence in shopping cross-border. The shortfalls in consumer confidence have a number of causes but according to the best available data (see 2.6 below) they mainly stem from the fact that consumers are insufficiently aware of their rights. Many consumers believe that they would be exposed to a lower level of consumer protection when buying abroad<sup>8</sup>. They also believe that there is a higher risk something will go wrong when they buy cross-border (e.g. non-delivery or delivery of defective goods bought over the Internet) and in this case it will be more difficult to seek and obtain redress. This is a problem of perception, which does not necessarily reflect the reality (e.g. the consumer may be better-off under the law of the foreign trader than under his own law), and because of the fragmentation is difficult to solve. Indeed, the legal fragmentation and the related uneven level of consumer protection across the EU make it difficult to conduct pan-European education campaigns on consumer rights, mediation or other alternative-dispute resolution (ADR) mechanisms.

In a nutshell, the fragmentation of the legal framework generates compliance costs for business wishing to trade cross-border which in turn reduce consumer welfare in the sense

---

<sup>7</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations. Article 6(2) of Rome I states that the choice of law made by the parties to the contract may not have the result of depriving the consumer of the protection afforded to him by such provisions that cannot be derogated from by contract by virtue of the law which, in the absence of choice, would have been applicable on the basis of paragraph 1 (this law, under certain conditions, is the law of the country where the consumer has his residence).

<sup>8</sup> Generally, this is consumers' misperception. As mentioned above, Article 6 of Rome I will oblige traders not to go below the level of protection afforded to foreign consumers in their country.

that consumers cannot fully reap up the benefits of the internal market. This is the main driver of the problem that this IA addresses. This fragmentation has a direct negative effect on business willingness to trade cross-border and an indirect negative effect on the low level of consumer confidence. Consumer confidence is affected by factors of a practical nature (such as language or geographical proximity) or other factors which are affected by the legal fragmentation, such as consumers' insufficient knowledge of their rights or consumers' difficulties in enforcing them (see 2.6 below).

### **2.3. Evidence of low level of B2C cross-border trading**

In order to illustrate the effects of barriers to the Internal Market this sub section shows the current levels of cross border trading and comparative prices.

The current levels of B2C cross-border trading within the Internal Market are relatively low, but there is considerable potential.

#### *Distance Selling*

The cross-border potential of distance selling is not fully exploited by consumers, who could take more advantage of the considerable price differences between the Member States (see below). Cross-border Internet purchases were made by only 6% of consumers surveyed in 2005 (up from 3% in 2003). This compares with the 23% who bought goods or services via the Internet from domestic sellers. The scale of cross-border purchases, as well as its significance compared with domestic shopping is even lower for contracts concluded via phone or post (mail order). This trend is confirmed in 2008: while the number of consumers having used distance sales methods for domestic purchases has increased for all distance sales methods compared to 2005, this number has remained flat for cross-border distance purchases. This discrepancy between trends in cross-border and domestic sales is particularly significant for Internet sales: while the number of consumers using the Internet for domestic purchases has increased by 7 percentage points in 2005-2008, from 23% to 30%, this increase was only 1 percentage point over the same period for cross-border Internet purchases, from 6% to 7% (see Table 1, Annex 2).<sup>9</sup>

Distance shopping differs greatly from one Member State to the other. According to the 2008 Eurobarometer (298), distance shopping (largely linked to Internet shopping) is widespread in the Nordic countries (Sweden, Denmark, Finland), the Netherlands and the United Kingdom (almost 80% of the consumers in these countries entered into a distance transaction) while it is far less common in Lithuania, Romania, Greece, Portugal and Bulgaria (the consumers who bought at a distance in these countries were between 14% and 24%). The overall results also reveal that it is much less common for consumers in new Member States to make purchases via the Internet than it is for residents of the other countries. The Internet penetration rate plays a considerable role in these discrepancies.

It can be assumed that within each Member State, the obstacles to distance shopping (mainly via the Internet) also depend on localisation issues (cities versus rural and remote areas which may face higher transaction costs or greater information asymmetry). However, the most striking differences in distance shopping are by far between the new and old Member States (the rates vary between 81% and 14%). Obstacles resulting from the localisation of consumers (in a Member State or to a lesser extent in a rural/remote area) could be addressed by other actions at EU or national level than the Review of the EU consumer contract law.

---

<sup>9</sup> Special Eurobarometer No. 193 (2003), No. 252 (2005) and No. 298 (2008)

## *Direct Selling*

The cross-border potential of direct selling is constrained by a number of factors including the stricter additional regulations imposed upon this industry at national level, language and cultural differences, and the ‘nature’ of the selling method (e.g. the seller will in most cases visit the consumer). Sales figures of the sector (as provided by the Federation of European Direct Selling Associations) rose by 34.8% from 2002 to 2005 corresponding to a compound annual rate of growth of 10.5%.

In 2008, 8% of consumers reported purchasing goods via this sales method domestically, up from 7% in 2005 (see Table 1, Annex 2). However, the number of consumers using this sales channel for cross-border purchases remained flat, at 1%. Responding to increased business opportunities in many Member States, agents are more inclined to actively seek business opportunities abroad (mostly, but not only, in border regions).

### **2.4. Comparative prices within the EU**

As indicated above, cross-border retail competition is weak, and there is only limited pressure on traders to harmonise retail prices across Europe. It should be noted that price differences are caused by many factors, such as tax differences, exchange rates, different consumer tastes and purely domestic barriers to competition. This IA does not purport to show that the fragmentation of EU consumer contract law is the main cause of these price differences but rather that consumers could take further advantage of these differences.

The price differences are striking for particular products that can be normally be bought online either domestically or cross-border. A small scale online survey of three products was undertaken (see Table 2, Annex 2). The products were: Euphoria perfume by Calvin Klein, 50 ml; an MP3 player (iPod nano 8GB); and a sports shoe (Nike Dart V), all of which are products that are sold globally and not characterised by large differences in taste across countries. Even though it was only possible to identify prices in a small number of countries there were significant variations. The largest excess prices were: 28.2%; 58.7% and 24.6% respectively for the three products. The weighted averages of excess prices were: 16.9%, 10.1% and 6.7% respectively.

In order to further illustrate the price differences that exist in the Internal Market, the Commission compared the prices of electronic goods which are potential candidates for cross-border purchases (the findings are presented in Table 3, Annex 2). Price differences (including the value-added tax but not delivery costs) compared to the best EU price were computed for this category<sup>10</sup> and it was found that the variations in prices are significant for some countries, depending on the product category. For example, Lithuania was found to have the best price, while Austria had the highest price in consumer electronics (34% higher than Lithuania and 30% higher than Germany).

### **2.5. Business reluctance to trade cross-border impacting on consumer welfare**

#### *2.5.1. The cost of fragmentation*

The fragmentation of the EU consumer regulatory framework is a source of compliance costs. The main cause of the fragmentation is the minimum harmonisation approach on which the EU consumer law is based.

The Directives under review are based on the principle of ‘minimum harmonisation’, meaning that they explicitly recognise the right of Member States to maintain or adopt stricter

---

<sup>10</sup> Average final prices as paid by consumers including sales taxes

consumer protection rules in their national law. As a consequence Member States have made extensive use of the possibility to ensure a higher level of protection for consumers in their country.<sup>11</sup> For example, as a result of the *acquis*, consumers entering into a distance contract are, for example, given a right of withdrawal to be exercised during a cooling off period. The length of the cooling off period and the modalities for the exercise of the right of withdrawal vary from one Member State to another.

Regulatory fragmentation is one of the main obstacles to cross-border trade identified by the traders in the Eurobarometer 2008 (Flash Eurobarometer 224) on Business attitudes towards cross-border sales and consumer protection. According to the survey results, the additional cost of complying with different national laws regulating consumer transactions – which is in the scope of the current review of the EU Consumer *Acquis* – was identified overall as an important barrier by a majority of respondents (60%). Even when legal obstacles are presented individually and not cumulatively (e.g. differences in failure to provide information or differences in the treatment of costs of return), they are still identified as important barriers by business (respectively 51% and 48% - See Annex 1 – Table 5).

According to the 2008 Eurobarometer, 75% of the traders who do not currently sell cross border, almost half indicated that they would start doing it if regulations were harmonised. This figure clearly indicates that retailers would be much more open to engage in cross border sales if the risks of failing to comply with various national regulations could be eliminated by establishing EU level rules in this regard. The cost of fragmentation is a heavy burden on business. The estimated administrative costs imposed by the EU consumer law to businesses selling only domestically is 5526 Euro for distance sellers and 6625 Euro for direct sellers.

These costs would increase to 9276 Euro for distance sellers and 10375 Euro for direct sellers wishing to sell to consumers located in one or two other EU countries. The estimated administrative costs for a business wanting to sell in all 27 Member States are 70526 Euro for distance sellers and 71625 Euro for direct sellers (see summary table in section 6.2. and Annex 7).

#### 2.5.2. *Inconsistencies between directives and regulatory lacunae*

The problem of legal fragmentation is exacerbated by two further factors: the fact that the EU regulatory framework is imperfectly coordinated; and the fact that some of the Directives making up the EU consumer law have in recent years become obsolete or outdated. This is mainly due to the fact that the various directives were adopted over a long period of time (e.g. the Doorstep Selling Directive was adopted in 1985).

There are moreover inconsistencies and overlaps between the Directives (e.g. definitions, information duties, and withdrawal rights). Some Member States have remedied such inconsistencies and obsolescence, for example by codifying in a systematic fashion their consumer laws; but there are cases where Member States have not done so, and in the cases where this has been done, the piecemeal approach across Member States has simply resulted in more fragmentation.

Traders wanting to sell in the latter Member States are confronted with a situation of increased complexity and uncertainty. For example, traders using e-auctions are subject to a right of withdrawal if they sell goods to consumers in Germany but they are exempted from

---

<sup>11</sup> Even though some Member States made use of the minimum clauses, it does not always mean that in practice there is a higher level of consumer protection. Other factors such as level of enforcement, reliability and effectiveness of control bodies, application of the law by businesses, self-regulation, etc. contribute to the overall level of consumer protection in a country.

such a right when they sell to consumers in France using the same method of sale. For more details on the specific problems in relation to the consumer acquis, see Annex 1.

### 2.5.3. *Overlaps with other EU consumer legislation*

The complexity of the EC consumer law is further increased due to its linkages with several other EU laws. This is the case with the Unfair Commercial Practices Directive (UCPD)<sup>12</sup> which contains some basic information requirements.<sup>13</sup> The UCPD applies, amongst others, before the conclusion of a doorstep selling contract, providing further information requirements. The Directive also provides definitions of terms already defined in the Directives under review such as consumer and trader.

## 2.6. **Low level of consumer confidence**

The level of consumer confidence in cross-border shopping is low. The results of the Eurobarometer 252 indicate that consumer confidence in EU cross-border shopping is rather low. Two-thirds of Europeans think there are more potential problems when making cross-border purchases rather than domestic purchases. 68% of EU citizens consider there is a greater risk of falling victim to scams and fraud when purchasing from suppliers located in another EU country than from providers in their home country. A clear majority (56%) of Europeans agree, while almost one-quarter (24%) disagree, that providers from other EU countries are less likely to respect consumer protection laws than suppliers from their home country.

Furthermore, EU citizens have greater confidence in in-person cross-border shopping than in distance shopping. Many respondents (45%) would feel less confident buying goods or services via the Internet from other EU Member States. 35% of Europeans are as confident in buying goods and services during holidays, on a shopping or business trip elsewhere in the EU as at home. Nevertheless, 44% of Europeans still feel less confident when purchasing in another EU Member State on a shopping or business trip.

There are three main causes for this problem.

- Reasons of a practical and regulatory nature (e.g. language, geography, tax regimes etc.) which are unrelated to EU consumer law;
- Reasons of a practical and regulatory nature, which are affected by EU consumer law (e.g. delivery and complaint handling problems);
- Other factors that are linked to EU consumer law, such as insufficient knowledge of the law by consumers, difficulties in obtaining redress and poor enforcement.

### 2.6.1. *Reasons of a practical and regulatory nature unrelated to EU consumer law*

From the European Consumer Centres (ECC) questionnaire responses, it appears in particular that consumers are concerned about the fact that the supplier is located far away, i.e. it being difficult to contact the trader and possible language problems.<sup>14</sup> Several participants to the consumer focus group indicated that language was a problem, especially when having to deal

---

<sup>12</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (OJ C 149, 11/06/2005 p. 22)

<sup>13</sup> They include the main characteristics of the product, the geographical address and the identity of the trader, the price inclusive of taxes, and the arrangements for payment, delivery, and performance and the existence of the right of withdrawal where this right applies.

<sup>14</sup> Report by the European Consumer Centres, The European Online Marketplace: Consumer Complaints 2005.

with after-sales services. Other concerns include the validity of the guarantees in the user's country, the intervention and receptiveness of the local after-sales service, possible recourse in the event of a dispute or complaint, i.e. in sum, a lack of physical and psychological proximity<sup>15</sup>.

#### 2.6.2. *Reasons of a practical nature affected by EU consumer law*

The regulatory problems which consumers perceive when they shop cross-border are based on the consumer organisations survey, the European Consumer Consultative Group (ECCG) workshop, the ECC survey and the consumer focus group.<sup>16</sup>

The ECCs consider that cross-border factors, which are perceived by consumers as problems of a practical nature, constitute the most important factors inhibiting consumers from engaging in cross-border shopping.

The most important of these factors include the following:

- use of the after-sales service,
- complications with regard to delivery: e.g. non-delivery or delay of delivery and damage,
- application of guarantees/requests for refunds,
- complaints' handling problems.

Even though the first three factors are perceived by consumers as being of a practical nature, they all have a regulatory dimension and are relevant under the Consumer Sales Directive or the Distance Selling Directive. For example, the lack of an EU-wide definition of delivery and diverging national rules on the passing of risk (in the event of loss or deterioration of goods during transport) may affect consumer confidence. Apart from being a source of confusion for consumers, fragmentation makes it more difficult for mediators to settle a dispute out of court. Other complications which consumers may face with delivery (i.e. delivery of a damaged product or partial delivery) are tackled by the legal guarantee for defective goods, which is provided for by the Consumer Sales Directive. Similarly, the application of consumers' rights in respect of defective goods (e.g. refunds in case of defective goods which cannot be repaired or replaced) is covered by national laws transposing this Directive.

The consumer complaints' handling problems as well as problems with the use of the after-sales services, in the majority of cases, are related to the application of the legal and commercial guarantees for defective goods or the exercise of the right of withdrawal, which is provided for by the national laws transposing the Distance Selling Directive. The issue of non-delivery of goods in transit and the financial consequences for the consumer are also practical issues which are dealt with by diverging national laws, in the absence of harmonised EU legislation in this field.

From the ECC questionnaire response, it appears that consumers are most concerned about after-sales services, as they fear that they would not be able to resolve problems with a trader in a different country. This was further confirmed by the consumer focus group. Consumers are also concerned about delivery problems. Those problems are confirmed by the European Online Marketplace report on Consumer Complaints, which highlighted the increasing

---

<sup>15</sup> Qualitative Study on Cross-border Shopping in 28 European Countries, Optem / Eurobarometer, 2004

<sup>16</sup> Survey of consumer organisations carried out by CPEC, January-February 2008. Meeting of the ECCG, Sub-group meeting on the Review of the Acquis, 29 February 2008. Report by the European Consumer Centres, The European Online Marketplace: Consumer Complaints 2005. Consumer focus group conducted by CPEC, Focus group on the impact of consumer protection legislation on consumers, conducted on 13 February 2008.

number of complaints in relation to e-commerce, the vast majority of which involved the non-delivery of goods (see Table 4, Annex 2).<sup>17</sup>

Further information on the consumer complains could be found in Annex 3: "Scale and nature of cross-border complaints".

### 2.6.3. *Lack of legal knowledge and difficulties of cross-border redress/enforcement*

A survey by the ECC<sup>18</sup> revealed that, within the obstacles related to legislation/enforcement<sup>19</sup>, the lack of knowledge/information with regard to consumer protection laws in other Member States was seen as the most important obstacle to cross-border shopping.

According to Eurobarometer 252, 71% of Europeans think it is harder to resolve problems such as complaints, returns, price reductions, guarantees, when purchasing from providers located in other EU countries compared to the ones based in their home country.

There is an uneven level of consumer protection across the EU<sup>20</sup> which makes it difficult to conduct pan-European education campaigns on consumer rights, carry out mediation or other alternative-dispute resolution mechanisms. This problem is particularly acute in the light of new market developments. The ambiguities and weaknesses in EU consumer law exacerbate these problems. It is for example unclear to what extent B2C transactions made through new sales channels or products (e.g. internet auctions, internet sales on an organised scheme run by a third party's electronic platform or home-parties/social "networking" in the direct selling industry) are covered (see Annex 1) by consumer protection laws.

Some Member States may have updated the consumer protection rules in various ways to bring them up to the date to market developments and close the regulatory loopholes.

For example, in Germany, the Distance Selling Directive has been interpreted as subjecting Internet auctions to a right of withdrawal and information requirements; in France, home-parties or other events where the visit of the trader was solicited by the consumer are covered by the rules on contracts concluded away from business premises (direct selling). Some other Member States have not done so or have done so in different ways. Consumers are, therefore, subject to different levels of protection in the various Member States.

## 2.7. **Does the Union have the right to act?**

Article 153(1) and (3)(a) of the Treaty provides that the Community is to contribute to the attainment of a high level of consumer protection by the measures it adopts pursuant to Article 95 of the Treaty and having as their object the establishment and functioning of the internal market.

As a result of the fragmentation of national consumer laws, a trader wishing to sell cross-border into another Member State will have to incur legal and other compliance costs to make sure he is respecting the level of consumer protection of the country of the consumer, as required by Rome I. This is a regulatory barrier to the completion of the internal market.

---

<sup>17</sup> The European Online Marketplace: Consumer Complaints 2005

<sup>18</sup> The European Online Marketplace: Consumer Complaints 2005

<sup>19</sup> The response possibilities within the group were: Lack of information/knowledge about consumer protection laws in other Member States; Lower standards of consumer protection laws in other Member States; Consumers do not know where to turn to in the event of a complaint; A lower degree of enforcement possibilities; Other.

<sup>20</sup> For a more detailed analysis see the Comparative Analysis of the European Consumer Acquis [http://ec.europa.eu/consumers/rights/docs/consumer\\_law\\_compendium\\_comparative\\_analysis\\_en\\_final.pdf](http://ec.europa.eu/consumers/rights/docs/consumer_law_compendium_comparative_analysis_en_final.pdf)

This problem cannot be solved by the Member States individually since it is the very uncoordinated usage of the minimum harmonisation clauses by the Member States that is at the root of the problem. Likewise, addressing new market developments, regulatory gaps and inconsistencies in EU consumer laws in an uncoordinated manner generates more fragmentation and exacerbates the problem.

Only a coordinated EU intervention can contribute to the completion of the internal market by solving this problem.

The different options for an EU intervention are presented in section 4 on Policy Options where the subsidiarity and proportionality tests have been applied. In particular paragraph 4.2.1 explains how such tests have been applied to the legislative approaches which make no distinction between domestic and cross-border transactions.

**3. THE POLICY OBJECTIVES**

**3.1. Objective Tree**

Overall objective: To contribute to the better functioning of the B2C Internal Market and achieve a high common level of consumer protection
<b>Related Specific Objective:</b>
– To stimulate cross-border competition thus provide consumers with wider range of goods and services at lower prices.
<b>Related Operational Objective:</b>
– To improve consumer protection legislation by simplifying it and making it more coherent.



General objective 1: To reduce business reluctance to trade cross-border

**Related Specific Objective:**

- To decrease compliance costs for business

**Related Operational Objectives**

- To decrease the legal uncertainty to businesses by eliminating regulatory fragmentation<sup>21</sup> and by reducing the administrative and compliance costs to businesses in meeting the requirements of consumer protection legislation.
- To increase the volume (number) of cross border B2C transactions.

General objective 2: To enhance consumer confidence in the internal market

**Related Specific Objectives**

- To provide consumers with uniform level of protection when they trade cross-border
- To ensure a high level of consumer protection.

**Related Operational Objectives**

- To decrease the legal uncertainty to consumers
- To increase incentives for consumers to shop cross-border

The attainment of these objectives should result in traders being encouraged to develop their business cross-border and consumers being able to benefit from extended choice and potentially lower prices.

The Policy Options and sub-options will be assessed in the light of these general objectives which should be regarded as mutually reinforcing and not antagonistic. For example, the introduction of an EU-wide standard withdrawal form would reduce compliance costs for business, simplify the regulatory framework and at the same time, enhance legal certainty for consumers. Conversely, if one Policy Option or sub-option contributes to one of the general objectives (i.e. enhancing consumer confidence) but falls short of achieving the other general objective (i.e. reducing business reluctance to trade cross-border by decreasing compliance costs), the overall assessment of such option will be less positive or negative and will finally not be chosen.

## **4. THE POLICY OPTIONS**

### **4.1. Introduction**

This section describes the policy options. These include, as required by the impact assessment guidelines, the Status Quo and a non-legislative option together with four legislative policy options. Given the many individual legislative sub-options under consideration (more than 20), clusters or Policy Options (POs) have been constructed on the basis of overall consensus on their ‘acceptability’ and ‘certainty’, based on the outcomes of two extensive consultation exercises (See Section 1).

---

<sup>21</sup> Fragmentation here refers to differences between the existing legislative instruments that could apply to particular transactions

These policy options are:

- Policy option 1 (PO 1) Status Quo or baseline scenario, including the effects of Rome I and forthcoming legislation.
- Policy option 2 (PO 2) Non legislative approaches, including information campaigns and financial contributions and the effects of Rome I.
- Policy option 3 (PO 3) Minimum legislative changes (harmonisation of basic concepts where benefits clearly outweigh costs), including the effects of Rome I.
- Policy option 4 (PO 4) Medium legislative changes (*including PO 3 plus* and the effects of Rome I).
- Policy option 5 (PO 5) Maximum legislative changes (*including PO 4 plus* far-reaching proposals granting new consumer rights as well as the effects of Rome I).
- Policy option 6 (PO 6) Minimum legislative changes (PO 3) or Medium legislative changes (PO 4) combined with an internal market clause applying to the non-fully harmonised aspects (such as general contract law aspects outside the scope of the Consumer Acquis).

The legislative changes introduced in POs 3, 4, 5 and partly in PO 6 *are based on the principle of full harmonisation*. Even where a change implies, for example, a mere clarification of the current provisions, Member States which have ‘gold-plated’ such provisions in their national legislation as a result of the minimum harmonisation approach of the consumer protection Directives<sup>22</sup> would no longer be allowed to do so. Businesses on the other hand, would still be allowed to offer more generous conditions as part of their commercial practice.

Policy options 3, 4 and 5 can be depicted as three concentric circles. PO 4 comprises PO 3 and the other issues specifically regulated by PO 4. PO 5 comprises PO 4 and some other regulatory changes. PO6 combines an internal market clause with either PO 3 (sub-option 1) or PO 4 (sub-option 2).

The various legislative sub-options that are included in the policy options are the result of an extensive consultation and research phase which aimed to ‘shortlist’ those proposals that seemed most desirable and feasible, for inclusion in the Impact Assessment.

The Impact Assessment was preceded by two years of consultation starting with the Green Paper in February 2007 (for more details see 1.2 and 1.3 on stakeholder involvement), sector-specific consultations on the Distance Selling and the Direct Selling Directives, the monitoring of consumer complaints via the ECC-net (for more details see paragraphs 2.6.1, 2.6.2 and 2.6.3 on the problem definition) and simultaneously a comparative law analysis of the implementation of the Consumer Acquis in all 27 Member States. The research phase focused on identifying potential horizontal problems in relation to the existing Consumer Acquis (i.e. to address the overall complexity, inconsistencies and overlaps between the directives and to deal with fragmentation problems) as well as exploring vertical and sectoral issues (e.g. the inadequate scope of the Consumer Acquis in the light of changes in the marketplace). This ‘mapping’ exercise allowed to identify areas of the Consumer Acquis in which legislative interventions were needed and to determine areas which required further data gathering.

---

<sup>22</sup> Member States have introduced or maintained in the area covered by such Directives, more stringent provisions to ensure a higher level of consumer protection.

It was this twofold approach combining public consultation and comparative law analysis of the Directives, that made it possible for the Commission to identify key issues for stakeholders, e.g. where the different implementation at national level caused unnecessary administrative costs for business or where the advent of new technologies and developments in the marketplace created regulatory gaps.

Once these main areas of concern were identified, the Commission developed alternatives for the sub-options. For example, as regards the passing of risks in consumer sales, one option would have consisted in transferring the risk to the consumer only at the moment he has possession of the good. Another option would have been that the risk passes already at the moment when the trader hands it over to the delivery company and hence before the consumer acquires possession.

These different alternative ways have been tested with stakeholders in the following manner:

- Questionnaires on the impacts of the different policy options addressed to business and consumer stakeholders in December 2007.
- Policy solutions (including the various sub-options) were presented to business stakeholders at workshops organised in February 2008<sup>23</sup> with the purpose of finding out about their preferences, as well as obtaining their expert opinion on the likely impacts. In particular, the participants were asked to assess the following:
  - rate the regulatory burden deriving from the current legal situation;
  - rate the significance and relevance of the changes under consideration;
  - rate the impact of the changes under consideration on the regulatory burden.
- A similar approach was adopted during the workshop organised within the context of the European Consumer Consultative Group (ECCG) in February 2008. Representatives of consumer organisations were asked to rank the proposed legislative changes in order to assess the following:
  - whether the legislative changes under consideration would increase or reduce overall EU consumer protection and national consumer protection levels;
  - whether the changes under consideration would increase consumer confidence in general and in cross-border shopping in particular;
  - rank the changes in order of significance.
- A number of bilateral meetings were organised with stakeholders to collect information on their business practices, the challenges that in their view needed to be addressed to facilitate business and their views on some of the policy solutions. The interviews were adapted to the particular business and knowledge of the stakeholder.
- A bilateral meeting was organised with BEUC representing European consumer organisations.

The outcome of the different consultations is presented in the detailed assessment sheets in Annex 5.

On the basis of the outcome of the questionnaires, workshops and interviews the Commission was finally able to carry out a cost/benefit analysis of the various sub-options.

---

<sup>23</sup> Participants of the business stakeholder meeting are listed in Annex 6

## 4.2. Discarded Policy Options

### 4.2.1. *Discarded sub-options as a result of the Green Paper on the Review of the Consumer Acquis*

The Green Paper consulted on a number of issues pertaining to the need for a revision of EU consumer contract law. The Green Paper has attracted a very high number of responses (more than 300) from a wide range of stakeholders. The highest number of contributions came from the business sector.

- Applying new EU legislation to cross-border contracts only?

This question was put forward in the Green Paper (question A2). 81% of the respondents<sup>24</sup> (including all European SME organisations) supported the option to apply the horizontal instrument to all consumer contracts irrespective of whether they concern domestic or cross-border transactions as it is the case in the existing EU Directives under review as well as in the most recent consumer protection Directive (i.e. the Unfair Commercial Practices Directive No. 2005/29/EC).

Only 5% of all contributors (including 7% of business and none of the 27 Member States) supported the alternative option to apply the horizontal instrument to cross-border contracts only. This option may appear *prima facie* to be more in line with the subsidiarity principle since the new EU legislation would not interfere with the regulation of domestic consumer contracts. Such an option would, however, create two sets of rules which, according to the majority of the respondents, would constitute a major shortfall.

This would create further fragmentation and would make it more difficult for consumers who are already insufficiently aware of their rights to become familiar with the regulatory framework. It would further undermine their confidence in cross-border shopping. It would also create administrative burden on business which would have to offer two different standard contracts and would have to determine on a case by case basis which standard contract to apply to every individual transaction. It would also increase other compliance costs such as the costs of the management of business processes.

Overall, stakeholders stated that a dual regime distinguishing between domestic and cross-border consumer contracts would go against the objective of simplification of the EU regulatory framework and would create competitive distortions between businesses trading only domestically and those trading both domestically and cross-border.

- Vertical revisions of all individual Directives?

In principle, the existing directives could be amended separately in order to adapt them to market and technological developments. The gaps specific to the individual directives could be filled in and particularities to these directives could be addressed.

However, the vertical revisions would take much longer and not be able to achieve the simplifying effect of the horizontal legislative proposal. The EU would have to address the same issues in the course of the different legislative procedures. The Commission would also have to make sure that the same issue is transposed

---

<sup>24</sup> Green Paper on the Review of the Consumer Acquis (COM(2006) 744 Final of 08.02.2007. The Green Paper and the results of the consultation are available at [http://ec.europa.eu/consumers/rights/cons\\_acquis\\_en.htm](http://ec.europa.eu/consumers/rights/cons_acquis_en.htm)

consistently by the Member States for each of the directives. The volume of legislative acts would not diminish and the same common concepts would continue to be contained and regulated in the various directives.

This is the reason why the vertical approach to the revision has not been supported by the great majority of respondents (86%) to the Green Paper (see the outcome of question A1).

- Including general contract law issues within the scope of the Review?

Several possible proposals have been considered, but not included in the policy options that will be reviewed in detail, these include: the introduction of general contractual remedies; the introduction of the right to damages; the extension of the scope of unfairness test to be applied to contract terms; and the introduction of a general clause of good faith and fair dealing. These issues have been subject to the public consultation on the Green Paper on the Review of the Consumer Review and legislative changes on such issues have found little support<sup>25</sup>. From the consultation, it emerged that these issues are not specific to consumer law; given their relation to the general contract laws of the Member States they should not be part of the Review.

- Including software and data within the scope of the Review?

Furthermore, the outcome of the public consultation on the Green Paper has shown that the extension or adaptation of the guarantee for lack of conformity to software and data, including particularly those affecting digitised product require further data gathering<sup>26</sup>. For these reasons, such aspects have not been considered in the Impact Assessment study.

#### 4.2.2. *Discarded Policy Options: Include all the eight consumer protection Directives constituting the consumer acquis in the Review.*

Four Directives have not been included within the scope, i.e. the Timeshare Directive, the Travel Package Directive, the Price Indication Directive and the Injunctions Directive.

The first two Directives deal with specific consumer contracts while the other two do not regulate contract law matters.

As for the Timeshare Directive, the Commission identified a number of consumer and competition problems, which are sector specific and require a rapid regulatory solution. To this end, the Commission adopted a proposal for a revision of the timeshare directive on 7 June 2007. This proposal, which was preceded by an IA, mainly addresses sector-specific issues ("vertical" issues). Given the specificity of timeshare and the very limited number horizontal issues affected by the revision of the directive, the Commission saw no point in including the Timeshare Directive in this IA.

Similar considerations apply to the Travel Package Directive, which also contains sector-specific provisions. This was confirmed by the public consultation launched by SANCO on 26 July 2007, the summary of which was published on SANCO website. Given the very

---

<sup>25</sup> See the report on the outcome of the public consultation on the Green Paper on the Review of the Consumer Acquis available on SANCO's website: [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/acquis/acquis\\_working\\_doc.pdf](http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/acquis_working_doc.pdf)

<sup>26</sup> See Sections 3 and 4.16 of the report on the outcome of the public consultation on the Green Paper on the Review of the Consumer Acquis available on SANCO's website: [http://ec.europa.eu/consumers/cons\\_int/safe\\_shop/acquis/acquis\\_working\\_doc.pdf](http://ec.europa.eu/consumers/cons_int/safe_shop/acquis/acquis_working_doc.pdf)

limited points in common with the rest of the consumer acquis, the Commission excluded the Travel Package Directive from this IA.

The Price Indication Directive does not deal with contract law issues; it is a marketing law obliging traders (independently of whether a contract has or has not been concluded) to indicate the selling price and the price per unit of measurement on all the products which they offer to consumers. Given the different nature of the subject matter and the very limited common aspects to the rest of the consumer acquis, the Commission excluded the Price Indication Directive from this IA.

The Injunctions Directive does not regulate consumer contracts but deals with a means of enforcement. Given its different nature its review will not be part of this IA.

### **4.3. Policy options subjected to Impact Assessment**

#### ***PO 1 Status Quo: maintaining the minimum harmonisation of the Acquis***

The Status Quo means that no action is undertaken to review the Consumer Acquis. It includes actions that are already underway or likely to happen in the absence of a review. This means that the key issues as identified in the problem definition will persist and some additional factors will be added.

In particular, the Status Quo implies that the minimum harmonisation approach will continue to exist and Member States will have the possibility to further increase the differences between national legislative frameworks as they can further adapt their legislation.

The inconsistencies and gaps in EU consumer laws will also persist, such as for example the use of different definitions for the same concept, or the lack of definition of certain important concepts.

#### ***PO 2 Non legislative approaches***

The non-legislative option includes two ‘soft’ measures, namely EU funding for awareness raising and self-regulation. PO 2 could both act as an ‘add-on’ to the legislative policy options 3, 4 and 5 or be implemented as standalone measure(s).

- EU-Level Awareness Raising Campaigns.

EU-level awareness raising campaigns could be organised in order to increase the knowledge of consumers and other stakeholders on consumer protection legislation. Given the current regulatory fragmentation, this policy option could be difficult to use as a standalone option. Should the policy option be used as a complement to any of POs 3, 4 and 5, the campaigns could focus on raising the awareness of the target audience on the upcoming changes to the Consumer Acquis, thus creating a positive environment and a greater understanding of the benefits. The full harmonisation principle enshrined in POs 3, 4 and 5 would reinforce the campaigns, since the message would be unambiguously the same across the EU.

Member States could be encouraged to organise exchanges of experiences and good practices in the areas of enforcement and redress.

The rationale for these campaigns relates to the overall low levels of awareness of consumers, but also of businesses, on consumer protection laws and to the problems caused by external factors, such as insufficient access to justice and redress, as well as poor enforcement. Some of the problems encountered do not strictly relate to differences in national frameworks or to technical and legal problems of the Consumer Acquis, but simply to the lack of knowledge that such differences and problems existed. In addition, there is still an overall ‘natural’ reluctance towards

cross-border shopping and cross-border trade which is often a result of cultural differences and ‘fear of the unknown’. Awareness-raising campaigns could address the shortfalls in information and certainty in the market, both from the demand and the supply-sides.

- Self-regulation

In some areas a soft law instrument in the form of self-regulation could be developed, focusing on specific market sectors (e.g. m-commerce) where such an instrument could have an added value.

The initiative would have to be driven at the EU level (e.g. by relevant European business representations), to ensure endorsement of the code across a wide geographical area and participation by as many actors as possible. There is already an abundance of examples (with varying degrees of success) and best practices where this has been achieved at national level (France, the Netherlands and the UK), where businesses representations from different sectors, have agreed terms and conditions with national consumer associations (e.g. the FEDSA and ICC codes of conduct on direct selling that go beyond the requirements of the Doorstep Selling Directive as they, for example, do not include a threshold and make no distinction between solicited and unsolicited visits; the Organisation for Timeshare in Europe has similarly adopted a code of conduct which incorporates an alternative dispute resolution system to resolve consumer complaints and discipline member companies that contravene the code)

Relevant business associations, in collaboration with consumer organisations and Member States could thus be encouraged to:

- Jointly identify problem areas.
- Collect good practices which may already exist in sectors or Member States.
- Draw up a code of conduct or other form of voluntary agreement which would apply across the EU.
- Ensure compliance and disciplinary measures, as well as dispute resolution in the cases of problems

### ***PO 3 Minimum legislative changes***

The third option includes four ‘uncontroversial’ legislative proposals which would fit in a possible horizontal instrument. The policy option has a strong focus on:

- Improving legislation / addressing inconsistencies

The policy option addresses inconsistencies in legislation by proposing common definitions for concepts such as ‘consumer’ and ‘trader’, which would ‘tidy up’ current (minor) differences.

- Addressing gaps

The policy option introduces a common definition for the concept of ‘durable medium’, which was not yet included in the directives under review<sup>27</sup>.

- Further harmonisation and streamlining.

---

<sup>27</sup> It is noted that a definition of durable medium already exists in Directive 2002/65 concerning the distance marketing of consumer financial services and in the Timeshare proposal.

The policy option introduces further harmonisation by proposing certain information requirements to intermediaries selling on behalf of a consumer.

The proposed EU legislation would continue to apply both to domestic and cross-border consumer contracts. As already shown in 4.2.1, proposing two sets of rules would be burdensome for business and confusing for consumers and would therefore go against the objectives the Review.

Table 1 in Annex 4: "The Policy Options" presents the main characteristics of each legislative proposal included in PO 3.

#### ***PO 4 Medium legislative changes***

The fourth policy option includes 16 additional legislative changes which would both fit into a horizontal instrument and address some vertical aspects. In addition, it should be reminded that Policy Option 4 *includes all elements of PO 3*.

The policy option has a strong focus on:

- Tidying up legislation / addressing inconsistencies

The policy option addresses inconsistencies in national laws by proposing EU-wide common definitions for the concepts of delivery and passing of risk, distance contract and off-premises contract. The proposals also focus on closing certain 'loopholes' in legislation to take into account changes in the marketplace (e.g. distance and off-premises contracts) and to reduce possible abuse by rogue traders on the one hand, and keeping legislation sufficiently 'flexible' on the other hand by introducing some exemptions. The policy option introduces some new elements in the Consumer Acquis, such as fully harmonised rules on information requirements and on the modalities and effects of withdrawal.

- Addressing gaps and updating existing legislation

The policy option addresses the extension of the scope of distance and off-premises rules and proposes some clarifications (for example on mobile telephone "M"-commerce and e-auctions) and limited exemptions to ensure that goods and services, for which some provisions such as the right of withdrawal would be meaningless or damaging, are not covered by the new rules.

- Further harmonisation and streamlining.

Further harmonisation of existing EU legislation would be pursued through, for example, the introduction of common rules on the length of the withdrawal period, the modalities and effects of withdrawal, information requirements and on the length of the legal guarantee or the order in which remedies for such a guarantee may be invoked.

As explained above, the proposed EU legislation would continue to apply both to domestic and cross-border consumer contracts. The Policy Option also puts forward the further harmonisation of the requirement for consumers to timely notify the seller in case of a lack of conformity.

For more details on Policy Option 4, see Table 2 in Annex 4.

#### ***PO 5 Maximum legislative changes***

Policy Option 5 includes three additional legislative proposals granting new consumer rights. In addition, Policy option 5 includes all elements of Policy option 4.

The Policy option has a strong focus on addressing gaps.

This Policy option gives additional consumer protection in relation to recurrent defects and a right to be informed as to the availability of spare parts. Under policy option 4, the consumer would not enjoy these rights and Member States would be prevented from granting them.

The issue of payment when consumers seek a refund ("charge-back") in case of non-delivery or the exercise of his right of withdrawal would also be regulated. For more details on policy option 5, see Table 3 in Annex 4.

### ***PO 6 legislative changes combined with an internal market clause applying to the non-fully harmonised aspects***

In its Green Paper on the Review of the Consumer Acquis, the Commission sought the views of stakeholders on the degree of harmonisation of the legislative options.

In this context, an alternative to full harmonisation was put forth in the form of a minimum harmonisation approach combined with an Internal Market clause. This approach has been discussed during the consultation process.

Such an Internal Market clause could have taken the form of a mutual recognition clause or of a clause on the country of origin principle for the aspects falling within the scope of a future Directive and not subject to full harmonisation. A mutual recognition clause would give Member States the possibility to introduce stricter rules in their national law, but would not entitle a Member State to impose its own stricter requirements on businesses established in other Member States in a way which would create unjustified restrictions to the free movement of goods or to the freedom to provide services. A clause based on the country of origin principle would give Member States the possibility to introduce stricter consumer protection rules in their national law, but businesses established in other Member States would only have to comply with the rules applicable in their country of origin.

Both variants of the Internal Market clause met considerable opposition from several categories of stakeholders. The majority of Member States are opposed to both mutual recognition and the country of origin principle. Only five Member States would accept mutual recognition for certain aspects, while another Member State argues in favour of the country of origin principle. The majority of consumer associations (61%) oppose mutual recognition or the country of origin principle on the grounds that it would lead to a "race to the bottom" and to more legal uncertainty, in particular in cross-border transactions. Regulatory fragmentation combined with the Internal Market clause would achieve legal certainty for traders, but not for consumers, who would be subject to different laws with different levels of protection.

Finally, an Internal Market clause which would systematically subject the contract to the law chosen by the parties (which will normally be the law designated as applicable under the trader's standard contract terms) or to the law of the country of origin (i.e. the country where the trader is established) goes against the newly-adopted Rome I Regulation on the law applicable to contractual obligations. Indeed the clause would contrast with Article 6(1) of the Rome I Regulation, which provides that the law applicable to consumer contracts, in the absence of a choice made by the parties, is the law of the country where the consumer has his habitual residence (i.e. the law of the country of destination). It would also be in contrast with Article 6(2) of the Regulation which provides that the law chosen by the parties (e.g. the law of the country of the trader) cannot deprive the consumer of the protection granted by the law of his country of residence. Such an Internal Market clause would not be acceptable by the great majority of Member States, as evidenced by the public consultation on the Green Paper.

The Internal Market clause is supported by the majority of businesses since it would ensure maximum legal certainty for companies wishing to trade cross-border. The precise impact of

such a clause would depend on its scope which in turn would depend on the number of issues subject to full harmonisation.

## **5. ASSESSMENT OF IMPACTS**

### **5.1. Introduction**

This section considers each of the policy options in turn and concludes with a comparative assessment indicating the preferred option. POs 3, 4 and 5 are, as shown in section 4, described and assessed on an incremental basis. This means that POs 3, 4 and 5 are each assessed on the basis of the additional legal changes brought by each of them; in other words, this incremental assessment covers exclusively the elements of change that are introduced specifically by that option. For example, the rating of PO 4 does not take into account the fact that this option includes PO 3. This is aimed at showing the advantages of disadvantages of the additional regulatory changes introduced by each of these options.

Unlike the other regulatory options, PO 6 is not assessed on an incremental basis, but on a cumulative basis. For example, the rating of PO 6 takes into account the fact that this option includes either PO 4 or PO 3. This is due to the fact that this option results from the combination of full harmonisation and an internal market clause. A stand-alone assessment of the internal market clause would be meaningless because its evaluation greatly depends on the number and nature of issues being harmonised. The detailed individual assessments of each of the legislative proposals (and alternative 'sub options') can be found in Annex 5: "Assessment of Policy Options: Assessment Sheets".

### **5.2. Assessment criteria**

The six POs have been assessed by considering each of the legislative proposals included in terms of:

- a) Economic effects, including: compliance / administrative costs of public authorities; increased / reduced costs for businesses such as administrative and compliance costs or costs for handling complaints and returns, legal advice, etc; consumers and other indirect effects for example on prices; consumer and business awareness and confidence; effects on SME and, effects on the internal market and competition.
- b) Social effects, including the level of consumer protection, consumer empowerment, employment, etc.
- c) Legislative effects (i.e. need to change EU legislation, effects as a result of other legislative instruments, and particularly Rome I)
- d) Environmental effects, including effects on sustainable development due to transport costs, if relevant.
- e) Effects on fundamental rights (this is a required consideration in IA, relevant rights include consumer protection itself (Article 38 of the Charter) and protection of personal data.

The assessment of each Policy option is presented in an assessment grid which rates and summarises the expected effects. Additional issues that have been taken into account include:

- Lower prices as a result of enhanced competition

- Greater consumer choice
- Higher quality products
- Business growth as a result of increased cross-border trading
- Benefits resulting from the simplification brought about by proposed measures (in line with aspects of ‘Better Regulation’)

Stakeholder views on each Policy Option, as indicated through the consultation exercise, surveys, workshops, interviews, are presented in Annex 6.

### 5.3. Assessment of PO 1 Status Quo

Summary of PO1
The Status Quo means that no action is undertaken to review the Consumer Acquis. It includes actions that are already underway or likely to happen in the absence of a review. No further harmonisation of the Acquis and related national protection legislative frameworks. Rome I applies.

Status quo	Contributing to the better functioning of the IM	Minimising the burden of EU legislation for business	Enhancing consumer confidence	Improving the quality of legislation	Comments
Overall assessment of this option	-	-	-	-	

### 5.4. Assessment of PO 2 Non legislative approaches

Summary of PO 2
<p>The non-legislative option includes two ‘soft’ measures, namely awareness raising and self-regulation. Policy option 2 could both act as an ‘add-on’ to the legislative options 3 4 and 5 or be implemented as a stand alone package. As an 'add-on' it will accentuate the impacts of the legislative options. The impacts of this option as stand alone package are assessed below. It must be borne in mind, that self-regulation could theoretically overcome a number of internal market problems if some difficult conditions were met (e.g. the codes would have to be based on the highest common standards, and cover the whole of the EU). In practice, the current regulatory fragmentation makes self regulation difficult to work at EU level.</p> <p>Rome I applies.</p>

Non-legislative approaches	Contribution to the better functioning of the IM	Minimising the burden of EU legislation for business	Enhancing consumer confidence	Improving the quality of legislation	Comments
Overall assessment of this option	0	0	+	-	

### 5.5. Assessment of PO 3 Minimum legislative changes

Summary of PO 3
<p>Policy Option 3 includes a total of four legislative proposals which could fit in a possible horizontal instrument. The policy option focus on a limited number of inconsistencies and gaps in EU legislation related to the basic definitions. It provides harmonised definitions of key concepts of "consumer", "trader" and "durable medium". Such clearer and up to date definitions aim at simplifying the legislation by removing current overlaps and legal uncertainty. Furthermore, this option addresses a consumer protection lacuna related to the intermediaries acting on behalf of consumers by introducing an information requirement.</p> <p>Rome I applies.</p>

Nature of the "legislative change"	Contribution to the better functioning of the IM	Minimising the burden of EU legislation for business	Enhancing consumer confidence	Improving the quality of legislation	Comments
Definition of 'consumer' and 'trader'	0	0	0	+	Adoption of a single definition of consumer and trader, which is the one currently used in the Unfair Commercial practices Directive
Definition of durable medium (for the purposes of communication of information from the trader to the consumer and vice versa)	++	++	0	++	Durable medium should be any instrument, which enables the consumer or the trader to store information (e.g. email, paper in writing)

Nature of the "legislative change"	Contribution to the better functioning of the IM	Minimising the burden of EU legislation for business	Enhancing consumer confidence	Improving the quality of legislation	Comments
Information requirements for intermediaries acting on behalf of consumers	0	0	+	0	Intermediaries should be obliged to inform the consumer that they act on behalf of another consumer, failing which the transaction will be deemed a B2C transaction
Overall assessment of this option	+	++	+	++	

The detailed explanations of the content of the legislative changes as well as the detailed assessments of its impacts can be found in Annex 5.

#### 5.6. Assessment of PO 4 Medium legislative changes

Summary of PO 4
<p>The 16 legislative changes proposed under PO4 (11 are of a horizontal nature and five address vertical aspects) combined with the four legislative changes proposed under PO3, address all the relevant consumer protection issues which traders have to take into account when designing their marketing materials, drafting their standard terms and operating their business with consumers, particularly for distance transactions (e.g. e-commerce transactions) and contracts negotiated away from business premises (e.g. doorstep selling). The full harmonisation of those issues, which include for example, the rules relating to unfair contract terms, the right of withdrawal and the information requirements for distance and off-premises contracts will considerably reduce the administrative costs for traders when trading cross-border. Such legislative changes are also relevant for consumer confidence in cross-border shopping. For example, new harmonised rules on the passing of the risk of loss or deterioration of transported goods when consumers have acquired the material possession of the goods aim at increasing consumer confidence in cross-border shopping.</p> <p>Furthermore, clearer and up to date definitions, such as the new proposed definitions of distance and off-premises contracts aim at simplifying the legislation by removing current loopholes and overlaps and therefore at ensuring competition between businesses on equal terms while achieving the same high level of consumer protection for all forms of distance and off-premises contracts. In addition, the policy option includes an update of the legislation to new market developments as a result for instance of the recent years' widespread use of new technologies.</p> <p>As explained above, this policy option is assessed on an incremental basis. As a result, this</p>

table assesses exclusively the changes introduced specifically by PO4 on top of the ones already included in PO 3. The overall assessment of PO 4 takes into account the cumulative effect of the 16 legislative changes all based on full harmonisation and the application of Rome I.

NO	Nature of the "legislative change"	Contribution to the better functioning of the IM	Minimising the burden of EU legislation for business	Enhancing consumer confidence	Improving the quality of legislation	Comments
1	Definition of delivery and passing of risks	+	0	+++	+	Parties can freely define the moment of delivery while the risk of loss or deterioration of goods in transit always passes when the consumer acquires the material possession of goods (Sub-option 2)
2	Definition of 'distance contract'	+	+	+	++	Clarifying relationships between distance and direct selling, closing gaps and removing legal uncertainty resulting from the current definition
3	Definition of 'off-premises contract'	++	+	+++	+++	Clarifying relationships between distance and direct selling, closing gaps and removing legal uncertainty

						resulting from the current definition
4	Introducing a grey and a black list of unfair contract terms with legal effects instead of a purely indicative list	+++	++	+	+	
5	Setting the length of the withdrawal period	++	+	+++	++	14 calendar days for distance and off-premises contracts (Sub-option 1)
6	Setting the start of the withdrawal period and its extension	++	++	-	+	Different starting points for distance and off-premises contracts (Sub-option 2)
7	Introducing a common set of rules for exercising the right of withdrawal	++	++	0	+	Rules on how the withdrawal should be communicated to the trader
8	Introducing a common set of rules on the effects of withdrawal	+++	+++	-	+++	Rules on costs and reimbursement following withdrawal,
9	Introducing common rules on the content and form of information to be provided to the consumer	+++	++	++	+++	
10	Introducing an	+	++	0	+	Introduction of

	obligation for consumers to notify the seller within a reasonable period of a lack of conformity					the obligation (Sub-option 1)
11	Clarifying rules on the order in which remedies may be involved	+	+	0	+	Status quo + clarification of the existing rules (Sub-option 2)
12	Addressing online auctions	+	+	+	++	E-auctions excluded from the right of withdrawal but subject to information requirements (Sub-option 2)
13	Addressing M-commerce and T-commerce	0	++	0	+	Rules on pre-contractual information adjusted to M-commerce and T-commerce
14	Exemptions from the scope of the distance selling directive	0	+	+	+	Full exclusions (car rentals) combined with partial exclusions.
15	Exemptions from the scope of the doorstep selling directive	+	0	+	++	Exclusion of emergency services, craftsman services, home-delivery schemes and foodstuffs (Sub-option 2)
16	Clarifying relationships	0	0	0	0	Sub-option 1 (status quo) to be

	between rules applicable to distance and direct selling					read in combination with the new definitions of distance and off-premises contracts (see points 2 and 3 above) which clarify the relationships between the two types of contracts.
	Overall assessment of this option	+++	+++	++	+++	

The detailed explanations of the content of the legislative changes as well as the detailed assessments of its impacts can be found in Annex 5

### 5.7. Assessment of PO 5 Maximum legislative changes

<p><b>Summary of PO 5</b></p> <p>The fifth Policy option includes PO4 and three additional legislative proposals which would both fit into a horizontal instrument and address some vertical aspects. Two of those additional legislative proposals strengthen the consumer protection in relation to faulty products, i.e. the extension of the legal guarantee in the event of recurring defects the obligation of the seller to inform the consumer on spare parts. An alternative sub-option mainly based on the status quo complemented by a clarification has also been subject to a cost/benefit analysis (see Annex 5).</p> <p>The third legislative change aims at improving payment systems possibly by ensuring that consumers can obtain refunds when they have paid by cards (the so-called "charge-back" rights) for example where the consumer has not received the goods or has exercised his right of withdrawal.</p> <p>These represent 'far-reaching' proposals that are subject to high levels of uncertainty in terms of impact but where it is assumed that the costs imposed on business might possibly outweigh the benefits for consumers (see table below). As indicated above, this policy option is assessed on an incremental basis. As a result, this table assesses exclusively the three changes introduced specifically by PO5.</p>
--

Nature of the "legislative change"	the IM functioning of the better	Contribution to business legislation for	Minimising the burden of EU legislation for	Enhancing consumer confidence	Improving the quality of legislation	Comments
Introducing new rules with regard to the extension of the legal guarantee in the event of recurring defects	+	+		++	++	If any defect in the goods is not remedied the guarantee period would be extended (Sub-option 1)
Introducing new rules with regard to the obligation of the seller to inform the consumer on spare parts	--	--		+++	+	New information obligation on the availability of after sales services and spare parts (Sub-option 1)
Improving payment systems / introducing rules to ensure that consumers can obtain refunds ("charge-back" rights)	0	++		++	0	
Overall assessment of this option	0	-		+++	+	

The detailed explanations of the content of the legislative changes as well as the detailed assessments of its impacts can be found in Annex 5

### 5.8. Assessment of PO 6 Full Harmonisation with an Internal Market Clause

Summary of PO 6
<p>This policy option includes the legislative proposals covered by PO 3 or PO4 and an internal market clause applying to the non-fully harmonised aspects. The public consultation on the Green Paper showed that this option would be strongly opposed by the great majority of Member States and consumer stakeholders (see supra pages 25 and 26). It would also involve a major policy change a few months after the co-legislators adopted the Rome I Regulation, which contains a review clause which allows the Commission to evaluate its practical application.</p> <p>Two sub-options have been envisaged but between these two sub-options, many other</p>

variants and corresponding impacts are possible:

- In sub-option 1, the Internal Market clause could apply in combination with PO 3; in this case, the key aspects of consumer contract law would not be fully harmonised (e.g. the right of withdrawal and the pre-contractual information requirements) but would be subject to an Internal Market clause. For such key aspects, consumers would be subject to the law chosen by the trader (i.e. a foreign law) and the courts having jurisdiction under the Brussels I Regulation (i.e. the courts of the country where the consumer resides) would have to apply a foreign law they are unfamiliar with. The same considerations would apply to mediators and enforcement agencies.
- In sub-option 2, the Internal Market clause would apply in combination with PO 4; in this case, the key consumer contract law aspects would be fully harmonised and the Internal Market clause would apply only to some other contract law issues. These issues vary from one national legal system to the other; they mainly relate to general contract law matters which usually arise only in the case of litigation. Compliance with such rules normally does not require the adaptation of the traders' standard contract terms and therefore is not a source of administrative burden for businesses. Examples of these issues are the rules on the formation of contract (e.g. offer and acceptance, mistake or misrepresentation), and the general contract law remedies (e.g. termination or rescission or damages). These are issues which are outside the scope of the Review of the Consumer Acquis.

There is no need to assess the combination of the Internal Market clause with PO 5 since, as shown in the assessment of this policy option, PO 5 is an inferior regulatory option.

Sub-option 1: the impacts of the internal market clause combined with legislative changes brought by PO3

Nature of the "legislative change"	Contribution to the better functioning of the IM	Minimising the burden of EU legislation for business	Enhancing consumer confidence	Improving the quality of legislation	Comments
Overall assessment of this option	++	+++	--	+	

The detailed explanations of the content of the legislative changes brought by PO3 as well as the detailed assessments of its impacts can be found in Annex 5

Sub-option 2: the impacts of the internal market clause combined with legislative changes brought by PO4

Nature of the "legislative change"	Contributing to the better functioning of the IM	Minimising the burden of EU legislation for	Enhancing consumer confidence	Improving the quality of legislation	Comments
Overall assessment of this option	+++	+++	+	+	

The detailed explanations of the content of the legislative changes brought by PO4 as well as the detailed assessments of its impacts can be found in Annex 5

### 5.9. Comparative assessment of policy options

Table 5.1 below provides a comparative overview of the POs, showing the extent to which each of the options is expected to contribute to the policy objectives and their effects on cross-border trade, consumer protection, on the environment and public administration and enforcement costs. Finally, the costs of the Policy options are compared against those of the Status Quo.

The comparative assessment below shows that the Preferred Policy option is option 4 (which also includes option 3). In this table each legislative Policy option is assessed as the accumulation of the changes that are introduced by that option (e.g. the assessment of PO 4 covers all the 20 changes introduced by that option).

Table 5.1 - The cumulative assessment of POs – comparison of the accumulation of changes introduced by policy options

Objective to be achieved/ problem addressed	Policy Options (Anticipated impacts rated from --- (highly negative contribution to objective) to +++ (high achievement of objective))						
	PO 1 Status quo	PO 2 Non legislative approaches	PO 2 to 3 Minimum legislative changes	PO2 to 4 Medium legislative changes	PO2 to 5 Maximum legislative changes	PO 6 Minimum legislative changes (PO3) combined with an internal market clause	Medium legislative changes (PO4) combined with an internal market clause
1. Contribution to the better functioning of the Internal Market	-	0	+	+++	+++	++	+++

2. Minimising the administrative burden of EU legislation for businesses	-	0	++	+++	++	+++	+++
3. Enhancing consumer confidence	0	+	+	+++	+++	--	+
4. Improving the quality of legislation	-	-	+	+++	+++	+	+++
Effects on cross-border trade	NA	No effect	Minor positive effect	Important positive effect	Important positive effect	Important positive effect for traders but important negative effect for consumers	Important positive effect for traders and certain negative effects for consumers
Effects on the level of consumer protection	NA	Minor positive effect	Some positive effect	Positive effect	Important positive effect	Possible negative effect	Negative effect in case of litigation
Environmental effects	NA	No effect	Important positive effect	Positive effect	Positive effect	Positive effect	Positive effect
Employment effects	No effect	Limited effect	Limited effect	Limited effect but slightly higher than PO2 or PO3	Limited effect but slightly higher than PO2 or PO3	Limited effect but slightly higher than PO2 or PO3	Limited effect but slightly higher than PO2 or PO3
Public sector administration/enforcement costs	NA	Some additional costs	Some additional costs	Some additional costs	Some additional costs	High additional costs for national courts and enforcement bodies	High additional costs for national courts and enforcement bodies

In the table below each legislative Policy option is assessed on an incremental basis (e.g. the assessment of PO 4 focuses exclusively on the additional 16 changes introduced on top of PO 3, which forms part of PO 4).

Objective to be achieved/ problem addressed	Policy Options (Anticipated impacts rated from -- - (negative contribution to objective) to +++ (high achievement of objective)				
	PO 1 Status quo	PO 2 Non legislative approaches	PO 3 Minimum legislative changes	PO 4 Medium legislative changes	PO 5 Maximum legislative changes
1. Contribution to the better functioning of the Internal Market	-	0	+	+++	0
2. Minimising the administrative burden of EU legislation for businesses	-	0	++	+++	-
3. Enhancing consumer confidence	0	+	+	++	+++
4. Improving the quality of legislation	-	-	+	+++	+
Effects on cross-border trade	NA	No effect	Minor positive effect	Important positive effect	No effect
Effects on the level of consumer protection	NA	Minor positive effect	Some positive effect	Positive effect	Important positive effect
Environmental effects	NA	No effect	Important positive effect	Minor positive effect	Positive effect
Employment effects	No effect	Limited effect	Limited effect	Limited effect but slightly higher than PO2 or PO3	Limited effect but slightly higher than PO2 or PO3

Public sector administration/enforcement costs	NA	Some additional costs	Some additional costs	Some additional costs	Some additional costs
--	----	-----------------------	-----------------------	-----------------------	-----------------------

## 6. MONETISATION OF IMPACT OF THE PREFERRED OPTION

### 6.1. Introduction

In accordance with European Commission IA guidelines, during the IA process that preceded this proposal, data was systematically collected in order to quantify the expected impacts of the preferred option in terms of compliance costs and administrative vis-à-vis the baseline scenario.

For more information on these topics, please refer to Annex 7

### 6.2. Administrative burden

The assessment of administrative costs imposed by the existing Directives and Policy Options 4 and 6 (sub-option 2) all based on full harmonisation of the EU Consumer Acquis, followed the method outlined in Annex 10 of the current Commission's impact assessment guidelines. The data sources and assumptions, as well as basic calculations are further elaborated in Annex 7.

The calculations include a consideration of the conditions created by the fragmentation of rules as a consequence of minimum harmonisation and the Rome I regulation. The results are reproduced in the table on the following page.

Given the full harmonisation of the proposal, for existing distance sellers the additional burden generated by the proposal (the cost of change) is 2153 Euros per company. For existing doorstep sellers, the cost of change is 3653 Euros per company. No additional burden is envisaged for face-to-face retailers. By incurring this cost of change, existing businesses will comply with the relevant legal requirements across the EU and will be able to trade freely in 27 Member States. This will result in a significant reduction of the burden for companies wishing to sell cross-border in the EU.

For example, a distance seller already trading in his home country will be able to sell to 27 Member States by incurring a cost of 2153 Euros instead of 70.526 Euros. Similarly, a doorstep seller already trading in his home country will be able to expand his operations to 27 countries for 3653 Euros instead of the sum of 71.625 Euros that he would have to incur under the current, fragmented regime.

The cost for a new company that complies with the regulations of 27 Member States will diminish. For a newly established distance selling business, the burden will be 5526 Euros instead of 70.526 Euros. For a newly established doorstep selling business, the burden will be 6625 Euros instead of 71.625 Euros. Companies that are already trading cross-border will have to incur the cost of fragmentation during the interim period between the entry into force of the Rome I Regulation and the implementation of the possible legislative proposal on consumer contractual rights.

Given that according to the 2008 Eurobarometer, out of 75% of traders who do not currently sell cross border using means of distance communication, almost half indicated that they would start doing so if regulations were harmonised, the significance of these cost reductions is even greater. If the number of distance sellers

trading cross-border were then to increase by 31% (not factoring in multiplier effects that could be present), the impacts on trading volumes would be very significant.

It can thus be anticipated on the basis of this percentage that - without factoring multiplier effects - 465.000 distance sellers would sell cross-border after the harmonisation of the EU Consumer Acquis. This argument of course depends on the relative weight of the costs stemming from the fragmented regulatory framework versus other exogenous sources. Such sources could be the pan-European macro-economic environment, fiscal conditions, domestic market conditions, as well as the outlook of individual firms. This IA does not attempt to rank these factors. But the research and analysis conducted during the IA, as well as the data collected from stakeholders in the course of the IA suggests that the relative significance of the costs stemming from the fragmented regulatory framework is quite high. For example, 60% of respondents to Eurobarometer 2008 rated these costs stemming from the legal fragmentation of the EU Consumer Acquis as being fairly or very important and considered that they caused more important obstacles to cross-border trade than other costs such as those arising from language differences, cross-border after-sale services or cross-border delivery costs.

Put in simple terms of winners and losers, the most prominent conclusions of the foregoing analysis are:

- Companies currently only trading domestically, but considering cross-border expansion will be winners since they will benefit from the much lower costs due to full harmonisation
- Companies currently trading with 1-2 Member States but considering expansion to more Member States will win in terms of much lower costs due to full harmonisation

Some of the companies trading only domestically *with no interest* to expand cross-border will marginally lose out due to their small one-off costs of adaptation to the regulatory changes. For both distance and direct sellers, there will be an adjustment cost (one-off cost) at EU level as they will need to adapt to the new directive, familiarise themselves with the obligations and draw up new standard contract terms and, in particular for direct sellers, order forms which incorporate the standard form. For face-to-face retailers, a minor additional burden is envisaged for specific types of face-to-face businesses (such as second-hand shops acting as intermediaries of consumers). Other shops, which trade on the basis of goodwill, will not be affected. All the costs involved in this adaptation are one-off costs. However, this is without prejudice of the net effects that will accrue through the simplification of the existing regulatory framework. Furthermore, when the simplification effect of the proposal is taken into account, the proposed policy option produces significant benefits in terms of administrative burden.

No major impacts are expected in terms of administrative burden on public authorities. The only administrative cost generated by the proposal would be that incurred by the national authorities in order to notify to the Commission then national case law on unfair contract terms in the context of a comitology procedure. The cost of this reporting obligation is expected to be negligible.

## 7. MONITORING AND EVALUATION

	Existing burden		Cost of change for existing companies		Cost for a new company wishing to sell in 27 Member States
	Total	Per company	Total	Per company	Per company
Distance Sellers – trading only domestically	8.288.850.000	5526	2.018.264.027	2153	5526
Distance Sellers – trading with 1-2 additional MS	1.113.108.000	9276			
Distance Sellers – trading with 3-5 additional MS	1.397.331.000	15.526			
Distance Sellers – trading with EU27 <sup>28</sup>		70.526			
Doorstep Sellers– trading only domestically	8.811.250	6625	4.857.945	3653	6625
Doorstep Sellers– trading with EU27	95.261.250	71.625			
Store Retailers	2.521.548.750	750	No cost of change		750

It is a requirement of European Commission Impact Assessments to indicate the way in which the effects and consequences of the preferred policy option should be

<sup>28</sup> Assuming all distance sellers decided to trade cross-border in 27 Member States the total burden would be approximately 106 bn euro.

monitored and evaluated. This Section identifies potential indicators and data sources. It is assumed that the preferred option would be subject to reporting on the progress of transposition by Member States.

### **7.1. Potential indicators and data sources**

At the strategic level the monitoring and evaluation process should focus on:

- Changes in the costs of legal uncertainty. Legal uncertainty is difficult to measure. However, the impacts of the preferred option are very sensitive to the changes in legal uncertainty that accrue. Research, based upon the experiences of a ‘sample’ of B2C traders within the EU would be of value.
- The numbers (and proportions) of consumers experiencing problems of different type for different types of sales and for different types of products
- The numbers and proportions percentage of consumers seeking redress as a result of having had a problem,
- The costs and time needed to achieve redress

A number of non routine monitoring and evaluation activities could generate evidence as to the impact of the option that will be chosen and insights into whether and what further action should be taken. They include, in particular:

- Case studies of particular traders that increase B2C cross border trade. Such systematic case studies should be undertaken over a period of years could provide insights into the extent to which the activity reduces price differentials and generates social and environmental costs and benefits.
- A panel (s) of traders could be established and the costs associated with the option that will be chosen periodically reviewed. The composition of panel should be quasi representative of traders involved in cross border B2C transactions.
- Establishing a small ‘legal experts’ group to review evidence on the legal functioning of the option that will be chosen. Such a group could, if independent both provide insights as to whether the legislation within the option that will be chosen has functioned as planned and also comment on proposed updates.

### **7.2. Other relevant developments**

The Commission has recently established a Consumer Market Watch that could be relevant to the future monitoring and evaluation of the preferred option. There would be merit in monitoring the price differential a basket of goods that are suitable for cross border sales and aspects of the standard terms and conditions offered by traders, such as length of withdrawal period that exceed the harmonised standards.

An evaluation of consumer protection legislation for 2016 is planned in SANCO’s Multiannual Evaluation Programme (approved by the Management Team). The provisional title of the evaluation is "Consumer Protection Acquis", and includes the four directives under review in addition to other related pieces of legislation.