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COMMISSION STAFF WORKING DOCUMENT

Accompanying document to the

Proposal for a directive on consumer rights

Executive summary of the Impact Assessment

1. CONSULTATION AND EXPERTISE

On 8 February 2007, the Commission adopted the Green Paper on the Review of the Consumer Acquis initiating a public consultation.¹ The Commission received more than 300 responses from consumer and business associations, Member States, the European Parliament, the European Economic and Social Committee and other stakeholders such as academics or lawyers.

Directorate General Health and Consumers held a full-day stakeholder conference on November 14, 2007, with a view to identifying regulatory problems and discussing different issues that had been addressed in the replies to the Green Paper consultation. In the context of the impact assessment work, 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.

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 Commission's contractor. In addition the contractor incorporated the results of two Eurobarometer polls commissioned by the Commission 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 in January and February 2008.

An expert panel comprising legal and economic experts and consumer representatives was set up to advise on the policy options and their likely impacts.

A full-day stakeholder workshop was organised on 6 February 2008 during which more than 40 business representatives discussed the effects of changes to EU consumer legislation affecting companies.

A consumer focus group was organised on 13 February 2008 with more than 20 consumers. The focus group assessed the impacts of the current consumer protection rules on consumer behaviour and estimated the effects of the envisaged legislative changes on their confidence in cross-border shopping.

A workshop was organised by the contractor on 29 February 2008 within the framework of the European Consumer Consultative Group (ECCG) to discuss the effects of changes to EU consumer legislation affecting consumer protection and consumer confidence, particularly in cross-border transactions.

In addition, the Commission services held bilateral meetings with BEUC and BEUC representatives participated in the consumer focus group, the expert panel and the ECCG subgroup meeting.

The Commission held two separate consultations on the Distance Selling and Doorstep Selling Directives. All interested parties were invited to submit replies to the Commission, respectively by 21 November 2006 and 4 December 2007.²

Finally, other DGs were associated in the impact assessment process through the Impact Assessment Interservice Steering Group on the review of the acquis.

¹ 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

² The outcomes of both consultations are available at <http://ec.europa.eu/consumers/rights>

2. PROBLEM DEFINITION

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 internal market barriers, such as 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. According to Eurobarometer 2008, the additional costs of compliance with different national laws regulating consumer transactions are seen by 60% of traders as an important obstacle to B2C cross-border trade.

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. Member States have made extensive use of the possibility to ensure a higher level of protection for their consumers. 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; the uncoordinated attempts by national regulators to address these issues have generated more fragmentation. 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 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.

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. 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 and carry out alternative-dispute resolution (ADR) mechanisms.

3. THE EU'S 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, a trader wishing to sell cross-border 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.

This problem can only be solved by a coordinated EU intervention since it is the 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.

4. OBJECTIVES

Overall objective: To contribute to the better functioning of the B2C Internal Market and achieve a high common level of consumer protection

Related Specific Objective:

To stimulate cross-border competition thus provide consumers with wider range of goods and services at lower prices.

Related Operational Objective:

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 fragmentation³ and by reducing the administrative and compliance costs to businesses in meeting the requirements of consumer protection legislation.

To increase the 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

³ Fragmentation here refers to differences between the existing laws that could apply to particular transactions.

5. POLICY OPTIONS

Based on the outcomes of consultation exercises, different policy options (POs) 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. A dual regime for domestic and cross-border transactions 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 increase other compliance costs such as the costs of the management of business processes (e.g. returns), would go against the objective of simplification and would create distortions of competition between businesses trading only domestically and those trading both domestically and cross-border.

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. 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 changes encapsulated in PO 4 include a total of 20 legislative changes (i.e. the four changes of PO 3 + 16 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, (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 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 indicative list.

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, reducing the burden on business, in particular SMEs, wishing to trade cross-border. 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 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). However, between these two sub-options, many other variants and corresponding impacts are possible. Such an internal market clause would conflict with 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 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; it would not improve the quality of the legislation and would involve a major policy change a few months after the adoption of the Rome I Regulation which contains a review clause which allows the Commission to evaluate its practical application.

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.

For the reasons outlined above, PO 4 (medium legislative changes) is proposed as the most appropriate solution to the problems identified in the review process. Only this option would meet the twinned objectives of the Review. This does not rule out the simultaneous application of non-legislative add-ons identified in PO 2.

6. ADMINISTRATIVE BURDEN

Given the full harmonisation approach of the chosen policy option (PO4), 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 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.

Put in simple terms of winners and losers, the most prominent conclusions of the 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. 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). All the costs involved in this adaptation are one-off costs. No major impacts are expected in terms of administrative burden on public authorities.

7. EVALUATION AND MONITORING

The monitoring and evaluation process should include, in particular:

- Systematic case studies of particular traders that increase B2C cross-border trade.
- A panel(s) of traders could be established and the costs associated with the option that will be chosen reviewed.
- A small 'legal experts' group could be set up to review evidence on the legal functioning of the option that will be chosen. The Commission's recently established Consumer Market Watch could be relevant to the future monitoring and evaluation of the preferred option.

An evaluation of consumer protection legislation for 2016 is planned in SANCO's Multiannual Evaluation Programme.