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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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to:	Mr Javier SOLANA, Secretary-General/High Representative
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Delegations will find attached Commission document SEC(2008) 2547.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.10.2008  
SEC(2008) 2547

**COMMISSION STAFF WORKING DOCUMENT**

*accompanying the*

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on consumer rights**

**ANNEXES**

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{SEC(2008) 2545}

## ANNEX 1

### SPECIFIC PROBLEMS IN RELATION TO THE CONSUMER ACQUIS

#### 1. DEFINITIONS

##### 1.1. Consumer and trader

At present, the definitions for consumers and traders are different between the directives of the Consumer Acquis. For instance the professional is variously described as 'trader', 'supplier', 'seller', or 'vendor'.

##### 1.2. Durable medium

Instead of communicating in writing and by post, consumers and professionals may want to make use of other means of communication, such as e-mails or pdf files. There is no definition of a 'durable medium' in the Directives subject to review and the concept is interpreted differently across the Member States.

##### 1.3. Intermediaries acting on behalf of a consumer

At present, information requirements in relation to intermediaries are not regulated at EU level. Consumers purchasing a product from an intermediary acting in the name of or on behalf of a consumer are often not aware that they are not covered by the consumer protection legislation. In relation to this, there is a need to clarify that online platforms are not considered to be intermediaries.

##### 1.4. Delivery and passing of risk

At present, the definition of a 'delivery' is not elaborated in EU consumer law. The concept of delivery is important in order to determine whether a delivery is on time or late. The concept of delivery is also important for the passing of the risk, i.e. the point at which the trader bears the risk and the cost of any deterioration or destruction/loss of the good and when this risk passes to the consumer. Different rules apply in different Member States. This is an important issue especially in relation to distance selling where goods have to be transported.

##### 1.5. Definition of "distance contract"

The current definition of distance contract has led to different interpretations and incomplete coverage in Member States. There are different views if the whole or only parts of the sales process have to take place through means of distance communication for the contract to be considered a distance contract. The criteria "organised sales scheme" by the distance seller opens up for circumvention of the distance selling legislation. Furthermore, uncertainties arise as to whether contracts negotiated away from business premises, but concluded by means of distance communication should be considered to be distance selling or off-premises sales.

##### 1.6. Definition of "off-premises contract"

At present a large number of off premises contracts fall outside the scope of the Doorstep Selling Directive due to the definition and unclear or too wide exemptions. Despite the fact that the decisive negotiations have taken place off-premises, a contract can be concluded for example on business premises. Contracts which have been entered into in certain public

places, for instance in the street or at fairs fall outside the scope of the Directive. It is unclear to what extent home parties are covered. These gaps have been filled in whole or in part by some Member States in an uncoordinated manner. The present distinction between “solicited” and “unsolicited” sales tends to confuse businesses, consumers and enforcement bodies and have also led to diverging implementation at national level.

## **1.7. Problems related to the right of withdrawal (cooling off period)**

### *1.7.1. Length of the cooling off period*

Consumers may cancel sales contracts or service contracts bought or concluded at a distance or away from business premises within a given period, with no penalties and without stating a reason. Both the number of days of the cooling off period and the computation of the withdrawal period vary across Directives and between Member States (there is a span between seven and 15 days and both "days", "calendar days" and "working days" are used).

### *1.7.2. The starting point of the withdrawal period and its extension*

The starting point of withdrawal currently varies across Directives and in the Member States. In some Member States the period starts as prescribed by the Doorstep Selling Directive, with the receipt of the notice of the right of withdrawal (normally at the time of the conclusion of the contract) and in others with the receipt of goods. For distance selling, the period starts as prescribed by the Directive at the time of the receipt of the goods. For services (distance and doorstep), the starting point is in general the conclusion of the contract.

Regarding the failure to comply with the information obligations, there is currently no consistent scheme of sanctions for a failure to comply with such an obligation in the Directives. The extension of the withdrawal period for failure to provide information is regulated in an incomplete and inconsistent way.

### *1.7.3. How to exercise the right of withdrawal*

The Directives do not foresee a formal requirement for the withdrawal, however, some Member States do. In some countries, withdrawal is to be communicated in a written form, in others by registered letter with return receipt. In others there are no formal requirements.

### *1.7.4. The effects of withdrawal (reimbursement, refunds, etc)*

The effect on the contract when the consumer exercises his or her right of withdrawal is regulated differently for different types of contracts. In the case of off-premises contracts, there is no standard procedure after the consumer has exercised his right of withdrawal while for distance contracts, there is a deadline of 30 days for reimbursing the sum paid. Some Member States have adopted stricter rules, and in some countries traders may have to reimburse without having received the goods back. According to the Distance selling Directive, only the costs of returning the goods can be charged the consumer, but in two countries, companies have to cover also those costs.

## **1.8. Unfair contract terms**

The list attached to the current Unfair Contract Terms Directive providing guidance to the Member States as to what contractual terms can normally be challenged under the unfairness test is purely indicative. This has led to divergent applications in Member States and no legal

certainty. The list does not make a distinction between terms which are unfair *per se* and terms which under certain circumstances become unfair.

### **1.9. The content and the form of information to be provided to the consumer**

There is no consistency between the information requirements imposed by the various Directives, which differ with regard to the circumstances in which information must be supplied, the nature of the information to be supplied, and the time at and manner in which it is to be supplied. These obligations are regulated very differently between the Member States.

## **2. PROBLEMS RELATED TO THE SCOPE AND CERTAIN DEFINITIONS IN RELATION TO DISTANCE SELLING AND OFF PREMISES SALES**

### **2.1. The notion of auctions in the Distance selling directive (Directive 97/7/EC on distance contracts)**

The Distance Selling Directive, which was prepared before the recent expansion of e-commerce, allows the Member States to exempt auctions. The key rationale for exempting auctions from the application of the Directive is the fundamental difference between a sale by mutual agreement between seller and buyer, and the bidding system which implies the fair competition of several potential buyers. This exemption has been differently transposed. It is an unsatisfactory situation regarding the uncertainties as to the consumers' rights and variations between Member States.

Furthermore it is unclear whether the so-called E-bay auctions should fall under the notion of auctions and should be exempted from the right of withdrawal. The increase in popularity of on-line auctions since the adoption of the Directive has led to a significant rise in consumer complaints.

### **2.2. Application of distance sales rules on m-commerce (mobile commerce) and t-commerce (television-commerce)**

The particular conditions for m-commerce (mobile telephone commerce) and t-commerce (television commerce), e.g. in the case of m-commerce the limited space of the mobile screen restricting how much information that can be given by a trader, are presently not tackled in the Distance selling directive. Legislation is not adapted to recent technological development.

### **2.3. Exemptions from the scope of the Distance Selling Directive**

Article 3(1) of Distance selling directive generally excludes from its scope certain types of contracts<sup>1</sup>, while Article 3(2) provides for a partial exclusion of two categories of products: i) the supply for foodstuffs, beverages or other goods intended for everyday consumption supplied by regular roundsmen; and ii) contracts for the provision of accommodation, transport, catering or leisure services. The partial exclusion concerns the obligations on prior information, on written confirmation of information, the right of withdrawal and the obligation to execute the order within a maximum of 30 days.

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<sup>1</sup> Contracts relating to financial services; concluded by means of automatic vending machines or automated commercial premises; concluded with telecommunications operators through the use of public payphones; concluded for the construction and sale of immovable property or relating to other immovable property rights, except for rental; concluded at an auction.

The exemptions have been differently transposed purporting to the increase of legal fragmentation and consumer confusion.

#### **2.4. Exemptions from the scope of the Doorstep Selling Directive**

The Directive currently excludes from its scope contracts for the supply of foodstuffs or beverages or other goods intended for current consumption in the household and supplied by regular roundsmen, which has been exercised by at least 14 member states. There are a number of variations across Member States in the way this exemption has been implemented.

In addition, The Doorstep Selling Directive allows Member States to exclude direct sales below 60€ from its scope. Exclusion has given rise to fragmentation between the Member States: 10 Member States have no threshold, 15 Member States have applied a threshold in an amount between 10€ and 58€ and only 2 Member States have applied the 60€.

#### **2.5. Unclear relationship between the Distance Selling and the Doorstep Selling Directive**

The issue of the so-called 'repeat transactions' refers to the situation where the initial order has been made away from business premises (i.e. within the scope of the doorstep selling directive) and subsequent orders of the same products (e.g. cosmetics) are made at a distance. At present it is unclear whether such 'repeat transactions' fall under the scope of the Distance Selling and the Doorstep selling Directives.

### **3. PROBLEMS RELATED TO LACK OF CONFORMITY OF GOODS AND LEGAL GUARANTEES.**

#### **3.1. The order of remedies in case of lack of conformity**

Directive on Consumer Sales provides for an order of remedies. The consumer may require repair or replacement in first place. Reduction of price or termination of the contract can only be invoked if repair and replacement are impossible or disproportionate, or if repair or replacement could not be completed within a reasonable time or without significant inconvenience to the consumer.

However, Member States are still allowed to regulate differently, with the result that some Member States allow consumers the free choice of remedies (i.e. EL, LT, PT and UK).

#### **3.2. The duty to notify**

Directive 1999/44/EC on Consumer Sales leaves it up to the Member States to determine whether a consumer must inform the seller of the lack of conformity within a certain period, which is not less than two months from the moment of discovery. 15 Member States have made use of this option; some have included exceptions to this rule under certain circumstances. In 10 Member States, the lack of notification does not deprive the consumer of his right to rely on lack of conformity.

#### **3.3. The extension of the guarantee in the event of recurring defects**

The Consumer Sales Directive provides consumers with a legal guarantee for generally two years. However, the Directive allows the suspension or interruption of this period in the event of repair, replacement or negotiations between seller and consumer on how to settle lack of conformity. Some Member States have transposed this option in national legislation, others

not. Nor does the Directive provide for the extension of guarantee in case of recurring defects.

### **3.4. The obligation of the seller to inform the consumer on the availability of spare parts**

At presents, the notion of spare parts and after-sales services is only briefly referred to in the Distance Selling directive. There are few provisions in the Consumer Acquis regulating the availability or the consequences of the non-availability of spare parts.

## **4. PROBLEMS RELATED TO OBTAINING REFUND (IN CASE OF WITHDRAWING OR RESCINDING FROM A CONSUMER CONTRACT)**

The right of consumers to obtain refund is currently regulated only partially in the Distance Selling Directive and in the Directive on Payment Services.

While the major international payment cards (e.g. Visa, MasterCard, Amex or Diners Club) already employ charge-back options which banks may offer to their customers, domestic payment systems (e.g. Bancontact or Dankort) may not grant such charge-back rights (with the exception of those Member States, where domestic debit systems are already obliged to provide charge-back arrangements).

## ANNEX 2

### PROBLEM DEFINITION – DATA TABLES

**Table 1: Percentage of consumers buying at a distance cross-border (within the EU) and domestically, by means of purchase**

Means of purchase	Purchasing from seller from abroad			Purchasing from domestic seller	
	2003	2005	2008	2005	2008
Distance selling	N/A	7	-	41	-
- Internet	3	6	7	23	30
- phone	1	1	1	14	15
- post (e.g. mail order)		2	2	25	27
Direct selling	0.4	1	1	7	8

*Source: Special Eurobarometer No. 193 (2003), No. 252 (2005) and No. 298 (2008).*

**Table 2: Excess prices paid for a sample of three products across Member States**

	Perfume		MP3 player		Sports shoe	
	Quote in Euro	Excess price paid (%)	Quote in Euro	Excess price paid (%)	Quote in Euro	Excess price paid (%)
Austria	62.90	21.2	189.00	11.5	50.00	8.8
France	61.70	18.9	199.00	17.4	50.00	8.8
Germany	66.50	28.2	189.00	11.5	50.00	8.8
Hungary			268.96	58.7		
Ireland	58.50	12.8	189.00	11.5		
Italy			189.00	11.5		
Netherlands			189.00	11.5	50.00	8.8
Romania	63.55	22.5	231.56	36.7	57.27	24.6
Spain	62.80	21.0	179.00	5.6	50.00	8.8
United Kingdom	51.88	0.0	169.44	0.0	45.96	0.0
Average <sup>2</sup>	60.67	16.9	186.60	10.1	49.02	6.7

*Source: GHK web survey quoted in: Preparatory study for the Impact Assessment on the review of the Consumer Acquis, Draft final report, CPEC, March 2008 (draft)*

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<sup>2</sup> Weighted average of individual country deviations, with the calculated volume of household expenditure on goods potentially sold through distance means being used as weights



**Table 3: Price differences index to the best price for four product categories (expressed as a percentage over the best price)**

Country	Consumer electronics
Austria	34
Belgium	25
Bulgaria	13
Cyprus	22
Czech Republic	13
Germany	13
Denmark	27
Estonia	16
Spain	23
Finland	28
France	28
Greece	26
Hungary	11
Ireland	20
Italy	21
Lithuania	0
Luxembourg	27
Latvia	10
Malta	:
Netherlands	28
Poland	12
Portugal	14
Romania	4
Sweden	20
Slovenia	15
Slovakia	6
United Kingdom	27
Price dispersion (standard deviation)	0,0867

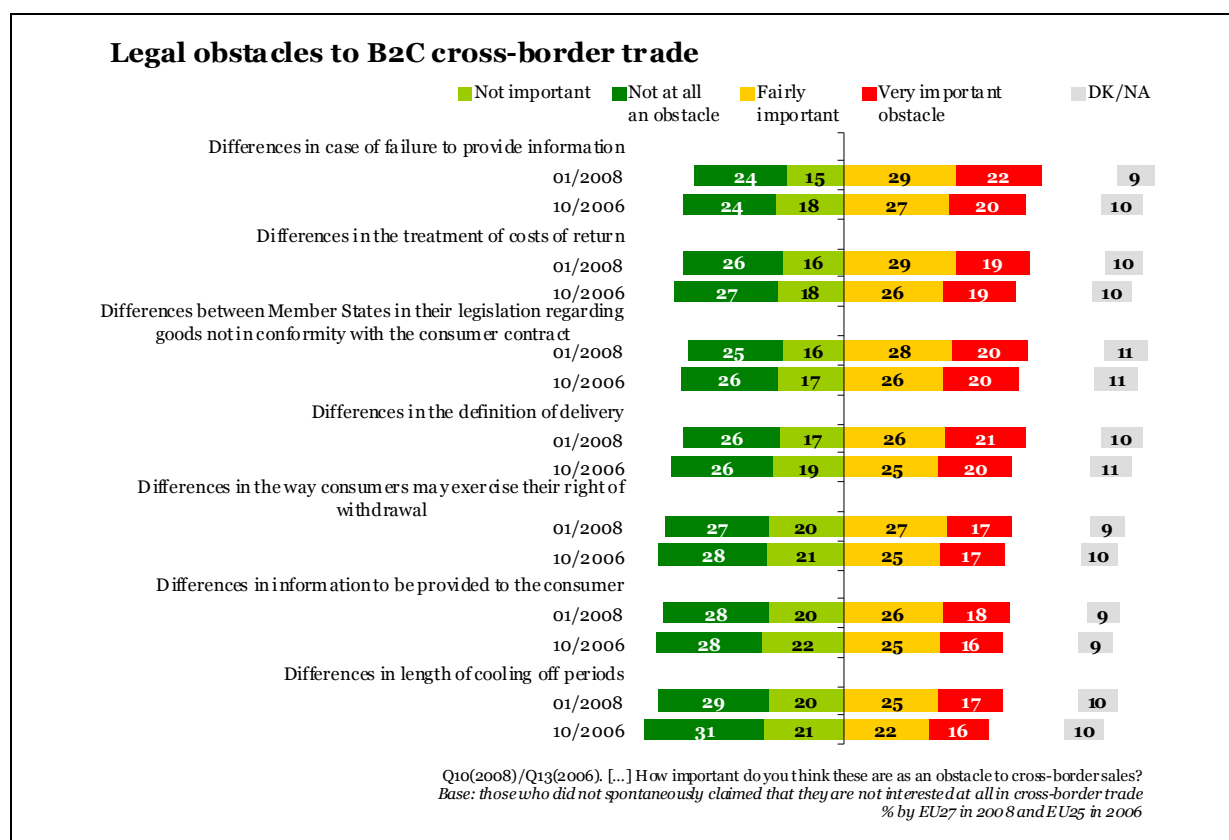
*Source: ESTAT: Statistics in focus, n°24 (2007) and UBS: Price and earnings (2006)*

**Table 4: Complaints and disputes reported to an European Consumer Centre office by type of problem**

Types of problems	
1. Delivery	46%
2. Quality and condition of product (e.g. defective product)	25%
3. Price and payment	8%
4. Contract terms (e.g. consumer's right to cancel the order and return the goods during the 'cooling-off' period)	8%
5. Redress (e.g. web traders do not honour their guarantees)	5%
6. Ethical issues, selling techniques and other cases	8%

Source: *The European Online Marketplace: Consumer Complaints 2005*

**Table 5: Legal obstacles to B2C cross-border trade**



Source: *Flash Eurobarometer 224 (2008)*

## ANNEX 3

### SCALE AND NATURE OF CROSS-BORDER COMPLAINTS

#### OVERALL LEVEL OF COMPLAINTS RELATED TO CROSS-BORDER PURCHASES

Citizens of the EU often complain about products and services. When asked if they ever had to complain to a salesperson, retailer or service provider, only 47% of EU citizens gave a negative response in 2004. The highest proportions of consumers who had made a complaint were found in Sweden and Luxemburg (70% and 68% respectively). Portugal, Belgium and Greece had the lowest proportions (31%, 36% and 39% respectively).

A similar question had been asked in the 1999 Eurobarometer survey. Compared with the 1999 results, a considerable increase in the percentage of respondents who had made a complaint was evident in Spain (+15 points), the Netherlands (+14 points), Greece (+13 points) and Austria (+11 points).<sup>3</sup>

A more recent Eurobarometer asked respondents if during the last 12 months, they had made any kind of formal complaint in writing, by telephone or in person, to a seller/provider (EB 252). Across the EU, 14% of Europeans had made some form of formal complaint during the previous year. Making complaints in relation to cross-border purchases rarely occurs in the EU (only 1%). This percentage should be interpreted in relation to the percentage of consumers who actually made a cross-border purchase (26%).<sup>4</sup>

With regard to the specific selling methods and the Directives under consideration, the following data with regard to complaints are presented as an illustration:

- **Sales of goods:** 15% of European consumers had tried to assert their warranty rights during the past twelve months, and almost all of them had done so in their home countries. Complaints mainly related to defective products that the trader did not want to replace or refund<sup>5</sup>.
- **Unfair terms:** 10% of European consumers had come across unfair contractual terms during the past twelve months.
- **Distance selling:** 14% of European distance shoppers have tried to return products or cancel a contract within the cooling-off period after purchasing on the Internet, by phone or by catalogue<sup>6</sup>.
  - A large number of problems arise in relation to on-line purchases: complaints in this area increased substantially in many countries. This is partly due to the increasing number of on-line purchases<sup>7</sup>. The non-delivery of goods and defective products constituted a significant share of complaints received in 2005.
- **Direct selling:** The main problem in the area of direct selling is that direct sellers have considerably diversified their business since the adoption of the Directive and

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<sup>3</sup> Special Eurobarometer 195 - European Union Citizens and Access to Justice (2004)

<sup>4</sup> Special Eurobarometer 252 on Consumer Protection (2006)

<sup>5</sup> The European Online Marketplace: Consumer Complaints 2005

<sup>6</sup> B 252

<sup>7</sup> The European Online Marketplace: Consumer Complaints 2005

that nowadays, off-premises transactions take place in a completely different context, mainly because the mentality and life-style European consumers have, radically changed. Evidence of these changes is the ‘solicited’ transactions, which are exempted from consumer protection legislation. It is claimed that consumers are unreasonably denied a right of withdrawal, because ‘unsolicited’ visits of sellers have been converted into ‘solicited’ visits. There is therefore a proportionately larger number of complaints coming from ‘solicited’ transactions as compared to ‘unsolicited’ transactions<sup>8</sup> Another area of concern is the use of high pressure selling, which according to the OFT, is the biggest problem identified in the home improvement sector<sup>9</sup>, itself subject to the highest number of complaints,

The ECC survey revealed that across the EU the average value of the transactions that led to a complaint ranges from 200 – 1000 euros. Industry sectors which show an increasing number of cross-border complaints include (in ascending order) electronic goods, car and motor vehicles and education, culture and leisure articles. This probably reflects the increase in cross-border transactions in these sectors. On premises and e-commerce were assessed by most ECCs as the selling methods bringing the largest number of cross-border Distance selling (excluding e-commerce) was considered by less than half of respondents as the third most important selling method generating complaints. Other areas of concern with regard to cross-border shopping have been highlighted by consumers and consumer representatives.

For example, it was mentioned in the ECCG group workshop that fairs are a growing area of concern especially because of the risk of impulsive buying and pressure situations. It is seen as a promotional/leisure event where consumers have the impression that they would make a bargain for a limited period of time (one time offer). Despite the fact that the element of pressure might be less of an issue in the instance of fairs, since the consumer decides freely to go or not to go to a fair and can walk out from a stand if he/she does not want to buy (no pressure like at home or with friends/family), consumers are complaining about contracts made at a fair as they assume that they had a withdrawal right but in fact they did not. The consultation on the Doorstep Selling Directive revealed that the stakeholder views with regard to the inclusion of fairs and markets in the off-premises contract are split. More specifically, business stakeholders are all opposed to such an extension, while three Member States and consumer organisations would agree to an extension to fairs and two Member States to an extension to markets.

The consumer focus group and the ECCG workshop participants also mentioned the auctions held on e-Bay style platforms as an area of growing concern. The fact that e-auctions fall outside the scope of the Distance Selling Directive in some Member States has been criticised for allowing traders to ‘circumvent’ distance selling obligations. The increase in popularity of on-line auctions since the adoption of the Directive has led to a significant rise in consumer complaints. Whereas originally websites such as eBay were geared towards C2C transactions of second hand goods, they are increasingly being used for B2C transactions of new goods. The European Online Marketplace reports on Consumer Complaints highlighted the increasing number of complaints in relation to Internet auctions, the vast majority of which involved the non-delivery of goods.<sup>10</sup> With regard to the safety of internet purchases, many

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<sup>8</sup> Between February and October 2007, according to the OFT in the UK, there were 6,800 complaints relating to unsolicited transactions and 32,000 complaints relating to solicited transactions.

<sup>9</sup> The analysis included double glazing, kitchens, bathrooms, heating systems. Double glazing and conservatories were found to have the largest number of complaints.

<sup>10</sup> The European Online Marketplace: Consumer Complaints 2005

agreed that it was very important to make sure that a website was bonafide, with authenticated / certified payment tools.

### ***Complaints related to the scope of the direct selling legislation***

With regard to the direct selling ("off-premises contracts") most of the problems experienced by consumers relate to the actual coverage of the legislation and the protection granted under it. The ECCG Group pointed out that this was a relatively significant issue for consumers and that it should be addressed by the Review.

Most consumer complaints are now related to some form of "solicited" visits rather than unsolicited visits. Solicited visits give rise to the great majority of complaints. The OFT evidence suggests that there is no difference between unsolicited and solicited visits in terms of the need for cooling off periods as it is the "in home" situation that affects the psychology of the consumer. Data from the OFT's Consumer Direct complaints database showed that there were 6,800 complaints relating to unsolicited transactions and 32,000 complaints relating to solicited transactions between February and October 2007. These figures suggest that in the UK solicited visits result in a proportionately larger number of complaints compared to unsolicited visits because of the lack of cancellation rights for consumers.

Furthermore, the UK Citizens Advice Bureau report (2002) showed that consumers had some difficulty in making the distinction between solicited and unsolicited visits in accordance with the legal definition. A comparison between complaints in the UK (32,000 complaints relating to solicited transactions) and complaints in France where the direct selling rules apply to solicited visits and close all loopholes (the last DGCCRF barometer of complaints of February 2008 shows a very small number of complaints in the doorstep selling which only accounts for 3.1% of consumer complaints as opposed to over 40% for distance selling and 1.4% for fairs) indicates that extension of the direct selling regulations to solicited visits can greatly reduce consumer complaints. So far, only five Member States have extended the application of the Directive to all solicited visits. Today's definition also creates several loopholes that have been exploited by rogue traders. It does not include the trader's home (for home parties for example), aggressive sales in streets, temporary business premises (such as hotels rented by a trader) and contracts concluded in a shop following a negotiation at the consumer's home. Attempts to circumvent the current rules in such a way have been documented in Germany for instance.

The consultation on the Doorstep Selling Directive has revealed that a majority of Member States, consumer organisations and some business stakeholders are in favour of a broad definition of off-premises contracts. According to them, this definition should cover solicited visits, sales on temporary premises, sales negotiated away from business premises but concluded on-premises, sales on the occasion of a home party or during excursions and sales in public places and public transport. On the other hand, some business stakeholders are rather negative towards the extension of the Directive to solicited visits and other situations in which products or services may be sold away from business premises.

### ***Complaints related to the notion of auctions in the Distance Selling Directive***

The increase in popularity of on-line auctions since the adoption of the Distance Selling Directive has led to a significant rise in consumer complaints. The fact that e-auctions fall outside the scope of the Directive in a majority of Member States (e.g. Austria, Italy, Netherlands, Poland, Portugal, UK) has been criticised for allowing traders to 'circumvent' distance selling obligations. Whereas originally websites such as eBay were geared towards

C2C transactions of second hand goods, they are increasingly being used for B2C transactions of new goods. From the information gathered during the consultation activities, it is clear that the definition of auctions causes problems. In particular the exclusion of Ebay-type auctions from information requirements seems to be causing a important part of the most common problems encountered by consumers and the reasons for complaints (difficulty to contact the seller, items not as described, misleading claims and omissions).

The OFT internet shopping study shows that these rapidly growing electronic marketplaces represent millions of transactions every year, accounting for spend using payment cards of £2.8 billion in 2005.<sup>11</sup> The study revealed that about half of the respondents who had bought items from an auction site in the last 12 months had experienced at least one problem in the past year. Most of these problems mirrored those of internet shopping generally, although some buyers perceived that they had been victims of deceptions (such as counterfeiting, or sellers bidding up their items).

Of those who had experienced problems buying from an auction, only 26% had bought from a business, while 60% stated that it occurred with a private seller. This implies that consumers may be more likely to experience a problem when buying from a private seller, although the uncertainties in identifying businesses in online auction sales mean care is needed in interpreting this finding. The two most common problems are the difficulty to contact the seller and the items not being as described. Misleading claims and omissions are a particular issue for online auction sites, with a higher proportion of such complaints relating to sales on internet auctions than over the internet generally.

Sixty per cent of survey respondents who bought items from an online auction wanted to know whether they were buying from a business. This affects both their confidence and their rights. However, it is not always clear whether sellers are trading as a business. The failure of some businesses selling through online auctions to provide their name and address to buyers can also be a problem. Where things go wrong, the legal liability and legal responsibility for consumer redress typically rests not with the auction platform but with the seller in question. It is estimated that sellers on eBay are increasingly professionals: private sellers with a professional behaviour could represent 60% of the sellers registered as 'private'.<sup>12</sup>

### ***Complaints related to lack of or incorrect information***

The consumer organisation survey questioned to what extent consumers experience problems with their national consumer legislation concerning the right to pre-contractual information. Several aspects were considered (content and amount of information, clarity). More than half of respondents (56%) agreed and strongly agreed that the information provided in general is unclear, and that the amount of information provided is insufficient (50%). Almost half (47%) agreed or strongly agreed that the information is not provided. During the focus group discussions, participants confirmed that very often, consumers did not read terms and conditions, either due to a lack of time or because it was too complicated.

Furthermore, there is evidence of consumers being confused over cancellation rights. In the UK, a study found that only 2% of respondents visited on the doorstep could recall being given cancellation details.<sup>13</sup> Overall, 27% of respondents who decided to cancel encountered problems, nearly half of these arising because of a lack of awareness of the cancellation

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<sup>11</sup> Office of Fair Trading, Internet Shopping, June 2007

<sup>12</sup> Conseil des Ventes, rapport annuel 2006

<sup>13</sup> Ofgem's Consultation. 'The Regulation of gas and electricity sales and marketing', August 2003

period available to them. Across all categories of direct sales, the OFT found that consumers are generally unaware of their rights when buying through direct selling. The majority are unaware that they may enjoy a cooling off period when buying in the home (if the visit was unsolicited) and 34% thought that they had more rights when purchasing in a shop. Only 6 % of consumers were aware that they may have additional rights when buying via direct selling.<sup>14</sup>

In distance selling, the ECC study on Internet shopping found that in 28% of the cases the web-traders had not informed the consumer about the cooling-off period prior to the purchase.<sup>15</sup> In the OFT study on Internet Shopping, more than half (56%) of the internet shoppers did not know about their right to cancel. One third also did not know where to turn to get advice on their rights.<sup>16</sup>

### ***Complaints related to withdrawal***

The evidence of complaints relating to withdrawal concerns three different categories: the length of the withdrawal period, the rules for exercising the right of withdrawal and the rules on the effects of withdrawal such as reimbursement, refunds, etc.

Overall, based on the complaints received and information requested by consumers, the ECCs considered issues with withdrawal rights the third most important problem of the Consumer Acquis. They highlighted in particular the lack of harmonisation of the cooling-off period, followed by the lack of harmonisation of the modalities to exercise the right of withdrawal. The lack of harmonisation with regard to the costs imposed on consumers is also frequently mentioned. Most cross-border complaints are however found in the last two aspects (modalities of exercising the withdrawal right and costs imposed in the event of withdrawal). With regard to the modalities of withdrawal, the notification procedure and the lack of acceptance of the notification by the trader often cause problems.

With regard to the length of withdrawal, the third annual E-commerce report published by the ECC Network shows that, even though in a significant number of websites, the existence of the consumer's right to withdraw was expressed, this right was frequently hampered by restrictions. The most frequent modification of the consumer's right of withdrawal by the supplier on his/her website was the shortening of the cooling-off period. Out of 262 operators on the Internet, who were tested in the study carried out by the ECC Network, 32% did not comply with the cooling-off period of the national regulations.

The second most frequent restriction to exercising the right of withdrawal resulted to be the requirement that the consumer had to give a reason for the withdrawal.<sup>17</sup> 24% of the web to which products were returned to asked for a reason. The question was often presented in such a way that the consumer might believe that an acceptable reason was a pre-condition for reimbursement.

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<sup>14</sup> Doorstep Selling, A Report on the Market Study, May 2004, OFT [http://www.of.gov.uk/shared\\_of/reports/consumer\\_protection/of716.pdf](http://www.of.gov.uk/shared_of/reports/consumer_protection/of716.pdf)

<sup>15</sup> Realities of the European Online Marketplace. A cross-border e-commerce project by the European Consumer Centre's Network. 2003

<sup>16</sup> Office of Fair Trading, Internet Shopping, June 2007

<sup>17</sup> According to the Distance Selling Directive, the consumer has the right to withdraw from the contract without reason within a specific number of days.

With regard to exercising the right of withdrawal and the effects of withdrawal, the existence of serious problems was confirmed by the experiment carried out by a number of ECCs in 2003 to test the difficulties arising from e-commerce.<sup>18</sup> Researchers returned 57 products they had received after ordering them on the internet. In 18 of those cases, i.e. almost one third of returned goods were not refunded. Regarding the sums that were reimbursed, only half of the web-traders that issued reimbursements included delivery charges in the refund. The rest simply ignored the initial shipping costs.

The average time taken for the web-traders to issue the reimbursement was 13 days. Almost 60% of the reimbursements took place within 7-14 days after the date that the researchers returned the goods. However, one must keep in mind that reimbursement was not received at all in almost a third of the cases.

### ***Complaints related to problems with delivery and passing of the risk***

The ECC questionnaire draws attention to issues of delivery in cross-border transactions, indicating that a high proportion of complaints are related to the issue of non- or late delivery. The most common complaints received by the ECCs by far concern problems with delivery (mostly non-delivery of ordered goods), which were the cause of 46% of all e-commerce complaints and disputes reported to the Network in 2005. Of the problems stated by the Green Paper, the problem of delivery is perceived as one of the most important ones by the ECCs interviewed (together with the problem of information requirements). Furthermore, the definition of delivery and passing of risk was seen as the most important change under consideration within the Review by the ECCG workshop. Also the consumers participating in the focus group ranked the notion of delivery and passing of the risk as most important problem (together with lack of conformity and recurrent defects).

Delivery is especially problematic in distance selling. Non-delivery of ordered goods is the most problematic issue within the European e-commerce market. It accounted for 38% of all consumer complaints submitted to the ECC Network during 2005. Almost one in four European consumers have encountered delivery problems in a distance purchase – delay or non-delivery – in the past 12 months<sup>19</sup>. As part of a cross-border e-commerce project by the ECC Network, a total of 114 orders were made as part of a shopping experiment, with all orders being cross-border and within the EU. However, only 75 of those orders resulted in a delivery. That means that 34% of the orders were not delivered (delivery rate of 66%).

According to an OFT study on Internet shopping, delivery problems in the UK account for nearly half (48 per cent) of all the problems people said they had experienced (most typically as late or non-delivery). This has important implications – the study estimates that annual economic detriment from unresolved delivery problems for online sales could be as much as 31.75€ million to 69.85€ million per year, excluding time and effort spent on resolving problems.

A specific problem mentioned during the consumer organisations survey in this regard was that some traders transfer the risks to the delivery company and this compromises consumer protection vis-à-vis the seller, not only in the event of non-delivery but also in cases of partial delivery or product damaged on arrival.

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<sup>18</sup> Realities of the European Online Marketplace. A cross-border e-commerce project by the European Consumer Centre's Network. 2003

<sup>19</sup> EBE 252.



Even though the public consultation on the Review of the Consumer Acquis, as well as several other stakeholder consultations such as the ECCG group workshop, the ECC and consumer organisations' survey and the consumer focus group have clearly demonstrated that a clear notion of delivery and passing of the risk is needed, other substantial problems related to delivery such as delivery times and reliability of carriers should also be addressed.

### ***Complaints related to the legal guarantee for lack of conformity of goods***

15% of European consumers tried to assert their guarantee rights in 2004, and almost all of them had done so in their home countries. Complaints mainly related to defective products that the trader did not want to repair, replace or refund.<sup>20</sup> In online cross-border transactions, problems relating to the conformity of a product are the second most common complaint received by the ECCs (25% of complaints).<sup>21</sup> The majority of complaints relate to the fact that the product is defective and that the web-trader does not respect the consumer's guarantee rights as set out in Directive 1999/44/EC.

Currently, the Consumer Sales Directive does not provide for the extension of guarantee in case of recurring defects. Both the ECCG group and the focus group revealed that a significant number of consumers had experienced problems in relation to the suspension or interruption of the liability period and the legal guarantee. Problems mentioned related to unreasonable long periods for repair or replacement without an extension of the guarantee.

### ***Other problems***

Around a quarter of the participants in the focus group expressed their reluctance to buy abroad, mainly in relation to internet purchases which required the use of a credit card. They felt that this particular medium was not trustworthy and feared that their personal data could be used for other purposes. In addition, they referred to linguistic problems and the fact that it was often difficult to foresee the consequences of an online purchase, as the terms and conditions could vary greatly from those that they were familiar with in their own country. Other issue mentioned included problems with ATMs, issues in relation to subscriptions to magazines being far more expensive when these have to be sent to another country, problems with delivery, VAT, and car rental.

Other factors being mentioned by a survey undertaken jointly by Eurobarometer and Optem<sup>22</sup> as influencing cross-border shopping:

- Risks of fraud by third parties (other than the supplier).
- The country: The countries bordering one's own, for obvious reasons of geographical, cultural and psychological "proximity", are, generally speaking, sufficiently "familiar" to inspire confidence or at least a feeling of being in control and at ease.
- Language used in contacts with foreign supplier.
- Type of supplier. The brands or chains that are well known internationally and, better still, at home, offer a guarantee of reliability and credibility, and possibility of recourse in the event of a problem. For "distance" selling – by mail order, telephone

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<sup>20</sup> The European Online Marketplace: Consumer Complaints 2005.

<sup>21</sup> The European Online Marketplace: Consumer Complaints 2005

<sup>22</sup> Qualitative Study on Cross-border Shopping in 28 European Countries, Optem/Eurobarometer, 2004.

or via the Internet –, the guarantee of a reputable company is decisive – large companies that have proven their worth, well-known websites or major brand names. Likewise, the payment terms (by card on line, advance, payment on delivery or not) and conditions of recourse (type of guarantee, return, refund, etc.) are decisive.

- Amount of the purchase. The amount of online purchases remains quite low in general, except in very specific cases (e.g. known site and supplier, payment on delivery). The average value is clearly lower in the EU10 than in the EU15, i.e. 50 to 200 euros and 500 to 1,000 euros respectively.

**ANNEX 4**  
**THE POLICY OPTIONS**

**Table 1 – Legislative proposals included in Policy Option 3**

Legislative proposal	Summary description	Problem addressed
<b>Definitions</b>		
1. and 2. Definition of ‘consumer’ and ‘trader’	<p>It is proposed to adopt a single definition for both concepts, which are the ones currently used in the Unfair Commercial Practices directive. The proposed solution would ‘tidy up’ the minor differences which are found between the Sales of Goods, Distance Selling, Doorstep Selling and Unfair terms Directives. The definition would be:</p> <p><i>"Consumer" means "any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession"</i></p>	At present, the definitions for consumers and traders are different between the directives of the Consumer Acquis and different between the Member States.
3. Definition of durable medium	<p>It is proposed to adopt the following single definition.</p> <p><i>"Any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference and which allows the unchanged reproduction of the information stored"</i></p>	At present, the definition of a ‘durable medium’ is not elaborated in the four Directives subject to review. In addition, the concept is interpreted differently across the Member State and usually not explicitly included in the directives under review. In some Member States, there is a requirement for all information and communication to be made either by trader or consumer on paper (in “written form”), whilst in other Member States “other durable media” are also allowed (e.g. emails), without necessarily defining them.

<b>Information requirements</b>		
12.a Information requirements for intermediaries	<p>Introducing an obligation to notify the consumer of the professional's position in the transaction. New rules considered:</p> <ol style="list-style-type: none"> <li>1. Except in the case of a public auction, a trader who acts in the name of, or on behalf of a consumer shall, prior to the conclusion of the contract, disclose to the purchaser or service recipient who is a consumer, that               <ol style="list-style-type: none"> <li>(a) he acts as an intermediary<sup>23</sup> and</li> <li>(b) as a consequence of this position as an intermediary, the contract concluded, shall not be regarded as a contract between a consumer and a trader but rather as a contract between consumers falling outside the scope of this Directive.</li> </ol> </li> <li>2. A trader who does not fulfil the obligation under paragraph 1, shall be deemed to have concluded the contract in his own name.</li> </ol>	<p>Consumers purchasing a product from an intermediary are often not aware that they are not covered by the protection that exists for B2C transactions, but that the rules for C2C transactions apply (which by nature offer less protection). This means that, for example, they do not have the right to a legal guarantee or have no right of withdrawal in case of a distance or off-premises contract.</p> <p>In addition, some intermediaries do not inform potential buyers of their specific position in the transaction.</p>

**Table 2 – Legislative proposals included in Policy option 4**

<b>Legislative proposal</b>	<b>Summary description</b>	<b>Problem addressed</b>
<b>Includes Policy Option 3</b>		
<b>Definitions</b>		
4. Definition of delivery and passing of risk	<p>Delivery would be defined freely by agreement between the parties.</p> <p>The risk shall always pass at the time when the consumer or a third party indicated by the consumer (e.g. a neighbour) acquires the material possession of the goods, unless the consumer has failed to take reasonable</p>	<p>The definition of a ‘delivery’ is not elaborated in EU consumer law. National consumer legislation does not always include a definition either, even though contractual arrangements and case law provide a framework for interpretation - which may vary slightly in different countries. The</p>

<sup>23</sup> Recital to be included: "the notion of intermediary should not include trading platforms for sellers and consumers, e.g. on the Internet, where the platform provider is not involved in the conclusion of the contract.

Legislative proposal	Summary description	Problem addressed
	steps necessary to acquire such a material possession.	concept of delivery is also important for determining the point in time when delivery is late and also for the passing of the risk (i.e. the point at which the professional bears the risk and the cost of any deterioration or destruction/loss of the good and when this risk passes to the consumer, e.g. in a situation where a good is damaged or destroyed while in transit from the trader to the consumer).
5. Definition of ‘distance contract’	<p>Introduction of the following definition:</p> <p><i>“Any sales or services contract where the trader, for the conclusion of the contract, makes exclusive use of one or more means of distance communication.”</i></p>	<p>According to the current definition, ‘distance contract’ means <i>“any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded”</i>. This had led to different interpretations and incomplete coverage in Member States (some considering that the entire process of ordering, negotiating and contracting had to take place through distant channels). In addition, the application of the distance selling directive could be circumvented if the "scheme" was not run by the supplier or if it was not an "organised" scheme. Furthermore, uncertainties as to whether contracts negotiated off-premises but concluded by means of distance communication fell within the scope of the distance selling or that of the doorstep selling Directive.</p>

Legislative proposal	Summary description	Problem addressed
6. Definition of 'off-premises' contract	<p>The broad definition would be as follows:</p> <p><i>"Any sales or services contract concluded away from business premises with the simultaneous physical presence of the trader and the consumer, or</i></p> <p><i>"Any sales or services contract, other than a distance contract, in respect of which a binding or non-binding offer was made either by the trader or the consumer, away from business premises, with the simultaneous physical presence of the trader and the consumer."</i></p> <p>For the avoidance of doubt, business premises would be clearly defined.</p> <p>Business premises<sup>24</sup> means any immovable or movable retail premises, including seasonal retail premises, where the trader permanently carries on his activity, as well as market stalls and fair stands where the trader carries on his activity on a regular or temporary basis;</p> <p>The distinction between distance and off-premises contracts would be more clear-cut.</p>	<p>The definition used in Doorstep Selling Directive only concerns those contracts which are concluded during an excursion organised by the trader away from his premises, or via unsolicited visits by a trader to the home or place of work of the consumer. In addition, contracts in respect of which a binding or non-binding offer was made by the consumer under the above circumstances also qualify as off premises contracts. As a result of changes in the marketplace over the last 20 years, most off-premises contracts are no longer concluded via unsolicited visits and most consumer complaints relate therefore to some kind of "solicited" visits where the consumer's psychology and the inability to compare competing offers may be affected in a similar way. New methods of sale include home-parties, social networking (sales between friends and family members in multi-level marketing schemes), and mutually agreed appointments at consumer's home between the doorstep seller and the consumer as well as fake solicited visits.</p>
<b>Withdrawal</b>		
8. Setting the length of the withdrawal period (Sub-option 1)	<p>It is proposed to set 14 calendar days for distance and doorstep contracts (like in the Timeshare proposal).</p>	<p>Under EU law, consumers may cancel sales contracts or service contracts bought or concluded at a distance or away from business premises within a given period,</p>

<sup>24</sup> Recital to be included: "Business premises include premises in whatever form (such as shops or lorries) which serve as a permanent place of business for the trader. Market stalls and fair stands should be treated as business premises even though they may be used by the trader on a temporary basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transports or facilities as well as private homes or workplaces should not be regarded as business premises.

Legislative proposal	Summary description	Problem addressed
		with no penalties and without stating a reason. This period is called the ‘cooling-off’ or withdrawal period, which is set at a minimum of seven days / working days but varies from one EU country to the other (between seven and 15 days). Also, some Member States use the notion of working days while others use calendar days.
9. Setting the start of the withdrawal period and its extension (Sub-option 2):	Setting different fully harmonised rules for distance and doorstep selling. The starting point in distance selling will be the material possession of the goods (or conclusion of contract for services). In doorstep situations (both for goods and services), the starting point will be the signature of the order form by the consumer.	In addition to differences in the length of the withdrawal period, the starting point of withdrawal (doorstep selling and distance selling) currently varies across Directives and in the Member States. In some cases (e.g. mainly in doorstep selling in many Member States) the period starts as prescribed by the Directive, with the receipt of the notice of the right of withdrawal (normally at the time of the conclusion of the contract) and in others with the delivery of goods and/or the consumer having material possession of the good. For services, the starting point is in general the conclusion of the contract.
10. Introducing a common set of rules for exercising the right of withdrawal	<p>It is proposed to adopt common rules for all types of contract which would provide sufficient proof both for consumers and traders of what measures have been taken and at what point in time. New rules considered :</p> <ul style="list-style-type: none"> <li>▪ Withdrawal may be communicated to the trader either by means of a standard form annexed to the directive (in all Community languages) or through a mere declaration of withdrawal sent by the consumer within the withdrawal period.</li> <li>▪ Whatever form is used by the</li> </ul>	The way in which consumers can exercise the right of withdrawal is currently regulated differently across the Consumer Acquis and in the Member States. In some countries, withdrawal is to be communicated in a written form, in others by registered letter with return receipt. In some countries there are no formal requirements (and a phone call or email, or simply returning the good could be sufficient, i.e. the trader has to accept the withdrawal).

Legislative proposal	Summary description	Problem addressed
	<p>consumer (standard form or mere declaration), it must be communicated to the trader on a durable medium (see proposal 3 above).</p> <p>If filling in a web-form is proposed by the trader, the latter must send an acknowledgement of receipt on a durable medium.</p>	
<p>11. Introducing common rules on the effects of withdrawal</p>	<p>It is proposed to introduce common rules to harmonise the provisions on the effects of withdrawal. New rules considered (note – these are not alternatives but cumulative rules):</p> <ol style="list-style-type: none"> <li><i>1. Withdrawal from a contract terminates the obligations to perform the contract.</i></li> <li><i>2. If the goods have been delivered before the expiration of the cooling-off period, the consumer must timely (e.g. 7 days) return any goods received under the contract to the trader unless the trader has offered to collect the goods himself.</i></li> <li><i>3. The consumer shall only be charged for the direct cost of returning the goods unless the trader has agreed to bear that cost</i></li> <li><i>4. The trader must reimburse any payment received from the consumer, as soon as possible and in any case no later than thirty days from having been informed of the consumer's withdrawal. For the sale of goods, the trader may however withhold the reimbursement until the consumer supplies evidence of having returned the goods or the trader has received the goods, whichever is earlier.</i></li> <li><i>5. The consumer shall be liable for any diminished value of the goods as a result</i></li> </ol>	<p>The effect on the contract when the consumer exercises his or her right of withdrawal is regulated differently for different types of contract in the Consumer Acquis.</p> <p>In the case of doorstep contracts, there is no standard procedure after the consumer has exercised his / her rights to withdrawal, for example in relation to the costs of returning goods, the time limit for returns, reimbursements and compensations for decreases in the value. In the case of distance contracts, there is a deadline of 30 days for reimbursing the sum paid but the starting point of this deadline is not always clear and in some countries traders may have to reimburse without having received the goods back. In two countries, companies have to cover the costs of the consumer returning a good or service (if this can be returned by post/courier).</p>



Legislative proposal	Summary description	Problem addressed
	<p><i>of any use other than what is necessary to ascertain the nature and functioning of the goods (in the same manner as a consumer would do in a shop as for example he would do with a demonstration item in a shop), unless the trader has failed to provide notice of the withdrawal right</i></p> <p><i>6. No cost borne by the consumer for services contracts (even if partly or fully performed) in off-premises contracts, unless an exemption applies (emergency services or craftsmen services genuinely requested by consumers)</i></p>	
<b>Information requirements</b>		
<p>7. Introducing a set list of unfair contract terms ("clauses abusives") with set legal effects</p>	<p>The proposal would introduce a black list (terms which will be automatically considered unfair and which will thus be banned upfront in all circumstances) and a grey list (terms which will be presumed to be unfair unless the business proves otherwise). The scope of the unfair contract terms chapter would be limited (like today) to standard (non-individually negotiated) terms.</p> <p>Both lists would be reviewed on a regular basis through a Comitology procedure (involving the Commission and Member States with the Parliament's scrutiny) so that new terms can be added or updated.</p>	<p>The list attached to the current Unfair Contract Terms Directive (93/13) provides guidance to the Member States as to what contractual terms can be normally challenged under the unfairness test.</p> <p>Because the current list of unfair terms is purely indicative, this has led to divergent applications in Member States and no legal certainty both for consumers and traders as to which terms are unfair (it is not clear whether a selective transposition of the list was acceptable, as it would easily mislead consumers about their rights, see ECJ case C-478/99 Commission v. Kingdom of Sweden). The list does not make a distinction between terms which are unfair per se and terms which under certain circumstances become unfair.</p> <p>Many member states have blacklisted the Annex No. 1 of the Directive and therefore provide a higher level of consumer protection. Moreover, the blacklist</p>

Legislative proposal	Summary description	Problem addressed
		in some member states contains more clauses than the Annex of the Directive 93/13.
12. Introducing new rules on the content and form of information to be provided to the consumer	<p>The introduction of rules which would make the content and form of the information to be provided to consumers standardised for distance and doorstep contracts: some basic pre-contractual information based on the current text of the Unfair Commercial Practices Directive ("UCPD") would be required and notice on the withdrawal right which would be standardised at EU level would have to be provided to the consumer both for distance and doorstep contracts.</p> <p>In addition, in distance contracts, further information would need to be included in the confirmation to be sent to the consumer on a durable medium after contract conclusion (as is the case today); in doorstep contracts, all the information items would need to be included at one time in the order form to be signed by the consumer. Currently, the doorstep selling Directive only contains one information requirement (related to the right of withdrawal) and UCPD adds some more items without specifying the modalities of providing them for this particular method of sale.</p>	<p>EU consumer protection rules require companies to provide information to the consumer, either before the conclusion of the contract or in distance selling, both before and after the conclusion of the contract. The information requirements cover, for example: the identity of the supplier, the main characteristics of the good or service, the price of the goods or services including taxes, delivery costs, etc.</p> <p>These obligations are regulated differently between the Member States. In addition there is no common core of pre-contractual information requirements in the Acquis.</p> <p>National consumer protection rules provide for more information requirements in terms of contents and form. These national requirements vary considerably from one Member State to the other.</p> <p>Relating in particular to doorstep and distance contracts, consumers must be given information on their right of withdrawal and on the way that they may exercise this right. In some EU countries, this information must be provided in writing in a specific form or in the form of a durable medium. For example, consumers may be provided with a standard form informing them on their right of withdrawal and with another standard form which they could use on a durable medium for notifying the seller of their withdrawal from the contract.</p>

Legislative proposal	Summary description	Problem addressed
<b>Conformity and legal guarantee</b>		
13. Introducing an obligation for consumers to notify the seller within a reasonable period of a lack of conformity (Sub-option 1)	<p>Setting a certain limit for notifying a lack of conformity. New rules could be (note – these are not alternatives but cumulative rules):</p> <p><i>1. If the consumer does not give notice to the seller specifying the nature of a lack of conformity within a reasonable time after the consumer discovered the consumer loses the right to rely on the lack of conformity.</i></p> <p><i>2. A notice given within two months is always regarded as given within a reasonable time for the purposes of paragraph (1).</i></p>	EU consumer protection rules provide consumers with a legal guarantee for up to two years (lack of conformity guarantee), i.e. the seller is liable for any lack of conformity which existed at the time of delivery and becomes apparent within two years from that moment. The Consumer Sales Directive leaves it up to the Member States to determine whether a consumer must inform the seller of the lack of conformity within a period of no less than two months from the moment of discovery. Most Member States have made use of this option; some have included exceptions to this rule under certain circumstances.
14 Clarifying existing rules on the order in which remedies may be invoked (Sub-option 2)	Status quo subject to minor clarification of the text considered, with <b>full harmonisation</b> .	EU consumer protection rules currently provides for a particular order in which remedies can be invoked. Reduction of price or termination of the contract can only be invoked if repair and replacement are impossible or disproportionate. However, Member States are still allowed to regulate differently, with few purporting to allow consumers the free choice of remedies.
<b>Vertical issues</b>		
18. Addressing online auctions	Notion of auction clearly defined, but status quo maintained: auctions will continue to be excluded from a withdrawal right but would be subject to information requirements (as already required by the Unfair Commercial Practices Directive)	The exemption of auctions from the scope of the distance selling directive has been differently transposed. It is also unclear how e-auctions should be treated, as different models of online platform exist

Legislative proposal	Summary description	Problem addressed
19. Addressing M-commerce and T-commerce	Including m-commerce and t-commerce in the directive with adapted provisions for the modalities to fulfil the information requirements. The proposal may be to provide link to web page for certain information items and requiring the display of the key information on the screen	Transactions using new media may present difficulties, for example to produce information on a screen with limited space.
20. Exemptions from the scope of distance selling	<p>Introduction of the following exemptions:</p> <p>a) Full exemption of car rental (Sub-option 1)</p> <p>b) Exempting "vins en primeur" from the right of withdrawal (i.e. wines sold at a fixed price but delivered a few years after the order when the market price may be different since it depends on the fluctuations in the market which cannot be controlled by the trader (Sub-option 1)</p>	Some categories of products would, because of their nature (vins en primeur) or the modalities and timing of reservation (car rental), suffer from inclusion in the distance selling directive and in particular from rules on withdrawal.
21. Exemptions from the scope of doorstep selling	<p>Introduction of the following rules and exemptions:</p> <p>a) Exclusion of emergency services and some craftsmen services requested by the consumer and for home-delivery schemes (i.e. supermarkets delivering foodstuffs, beverages and goods for current consumption at consumer's home) as well as foodstuffs and beverages supplied by regular roundsmen (such as the milk man or the sellers at beaches or the baker man going around villages)</p> <p>c) Deleting the current 60-euro in minimum harmonisation, in particular in order to take into account different living standards between Member States (Sub-option 2).</p>	Some categories of products would, because of their nature (e.g. foodstuffs, beverages) or their modality (e.g. supplied by regular roundsmen or through home delivery schemes) suffer from inclusion in the doorstep selling directive and in particular from rules of withdrawal
22. Clarification of relationships between rules applicable to distance and doorstep	Issue of the so-called "repeat transactions", where an initial order is made away from business premises (i.e. within the scope of the doorstep selling	With the new definitions as put forward under legislative proposals 5 and 6 above, repeat transactions would fall under the

Legislative proposal	Summary description	Problem addressed
selling (Sub-option 1)	directive) and subsequent orders of the same products (e.g. cosmetics) at a distance.  It is proposed to maintain the status quo meaning that subsequent orders fall within the scope of the distance selling rules.	Distance sales rules. This should be clarified so that traders know, for example, how to deal with the orders and when the withdrawal period will start.

**Table 3 – Legislative proposals included in Policy option 5**

Legislative proposal	Summary description	Problem addressed
<b>Includes Policy Options 3 and 4</b>		
<b>Conformity and legal guarantee</b>		
15. Introducing new rules with regard to the extension of the legal guarantee in the event of recurring defects. (Sub-option 1)	Introducing new rules:  <i>1. If any defect or failure in the goods is remedied under the (legal and/or commercial) guarantee then the guarantee is prolonged for a period equal to the period during which the guarantee holder could not use the goods due to the defect or failure.</i>  <i>2. If the seller has unsuccessfully attempted to remedy the lack of conformity and the same defect reappears within reasonable time, the consumer may resort to any other available remedy (i.e. price reduction and termination).</i>	EU consumer protection rules provide consumers with a legal guarantee for up to two years (lack of conformity guarantee). The Directive on Consumer Sales does not, however, regulate the suspension or interruption of the period within which the seller is liable for any lack of conformity, in case of repair, replacement etc., nor does it provide for the extension of guarantee in case of recurring defects. These two issues have been regulated at Member State level.
16. Introducing new rules with regard to the obligation of the seller to inform the consumer on spare parts. (Sub-option 1)	A new provision to the Consumer Sales Directive could state that the seller, prior to the conclusion of a contract, should inform the consumer of the means of repairing the goods and buying spare parts and the time period during which spare parts will be available.	At presents, the notion of spare parts and after-sales services is only briefly referred to in the Distance Selling directive. There are few provisions in the Consumer Acquis regulating the availability or the consequences of the non-availability of spare parts (Article 6(e) of UCPD on misleading actions on the need for a service, part, replacement or repair)

Legislative proposal	Summary description	Problem addressed
<i>Vertical issues</i>		
17. Increasing payment security	Introducing a set of rules to ensure that consumers can obtain refunds in certain instances. Member States would be encouraged to cooperate with the Commission for the promotion of self-regulation by the industry (mainly banks, credit card companies and intermediaries such as Pay-pal systems or other third party systems) on refund rights such as charge-back rights for credit cards.	The issue of payment security is currently regulated in the payment service directive and used to be regulated very partially by the distance selling directive. However, the Community Acquis does not provide for a "legal" charge-back right in favour of consumers, except in specific circumstances. Charge-back is therefore granted on the basis of commercial practices by banks or some national laws (UK, Sweden for example).

## ANNEX 5 – ASSESSMENT OF POLICY OPTIONS

### 5.1 ASSESSMENT OF POLICY OPTIONS: SUMMARY TABLES

#### 5.1.1. 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.		
Expected impacts		
Main Policy Objectives		
	Rating (-3 to 3)	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	-	Negative effects on the Internal Market as a result of possible reduced cross-border trade due fragmentation. Price differentials will persist.
<b>Minimising the burden of EU legislation for businesses</b>	-	Negative effects as the Status Quo places a heavy burden on businesses.
<b>Enhancing consumer confidence</b>	0	On the one hand, consumer confidence in cross border distance selling would increase as a result of Rome I. On the other hand, a number of problems due to fragmentation would persist, with the potential to reduce consumer confidence in certain instances. Consumers making on-premises purchases in other countries when travelling would also encounter problems as a result of the different legislative frameworks.
<b>Improving the quality of legislation</b>	-	Under the Status Quo, the current gaps and inconsistencies would remain both at EU level
Economic effects		
<b>Effects on business (administrative and compliance costs)</b>	Traders wishing to operate in different Member States will still be obliged to review and revise their terms and conditions and to familiarise themselves fully with the different national legislative frameworks. This entails high administrative and compliance costs.	
<b>Effects on SMEs</b>	Possible negative effects on SMEs. Some micro-business may even be deterred from selling to consumers in other Member States as a consequence of Rome I (distance sellers).	
<b>Effects on consumers</b>	Costs could increase for consumers as traders may pass on compliance costs to consumers through higher prices. Possible increases of prices and / or reduced choice (if traders stop selling cross-border to consumers in certain countries).	

<b>Effects on cross-border trade</b>	Possible reduction of cross-border trade, especially in terms of distance sales, as businesses are likely to refrain from selling to consumers in other Member States. This would apply in particular to countries with much stricter consumer protection rules in place, countries where rules on consumer protection are particularly complex or small countries.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	Little or no effect as the current protection levels would not be changed. Rome I would offer some increased legal certainty to consumers, but problems would persist when consumers make on-premises purchases when travelling since they will be subject to a foreign law and a different level of protection.
<b>Environmental effects</b>	
	No environmental effects
<b>Employment effects</b>	
	No employment effects
<b>Effects on fundamental rights</b>	
	No effect
<b>Public sector administration/enforcement costs</b>	
	High cross-border enforcement costs due to different laws.
<b>Preconditions necessary to ensure positive impacts accrue</b>	
Not applicable.	

### 5.1.2 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. Rome I applies.</p>		
Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	Minor positive effects on the Internal Market as a result of self-regulation in some areas and increased awareness. The negative effects of the fragmentation would not be remedied.



<b>Minimising the burden of EU legislation for businesses</b>	<b>0</b>	No reduction of the burden generated by the combination of fragmentation and Rome I.
<b>Enhancing consumer confidence</b>	<b>+</b>	<p>Consumer confidence may increase somewhat due to greater awareness and understanding of the legal framework. The campaigns would have to be conducted at national level and repeated regularly as consumers tend to forget and new consumers enter the market. However, given the fragmentation it will be difficult, if not impossible, to conduct pan-European information campaigns.</p> <p>Effective self regulation can also improve consumer confidence, but fragmentation is a significant obstacle to the development of pan-European codes of conduct.</p>
<b>Improving the quality of legislation</b>	<b>-</b>	The non-legislative option would imply a continuation of the current gaps, and inconsistencies at EU.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	The effects on business will be minimal. Traders wishing to operate in different Member States will still be obliged to review their terms and conditions and to familiarise themselves fully with the different national legislative frameworks. This entails high administrative and compliance costs. Depending on the system chosen for self regulation business may have to incur costs for running the self regulatory scheme, especially if an alternative-dispute resolution mechanism is part of the scheme.	
<b>Effects on SMEs</b>	SMEs would still suffer negative effects. Some (in particular distance sellers micro businesses) may stop selling to consumers in other Member States as a consequence of Rome I.	
<b>Effects on consumers</b>	As under the Status Quo P O1, prices could increase for consumers as traders may reflect the costs of minimum harmonisation and Rome I in their product prices. Possible increases of prices and / or reduced choice.	
<b>Effects on cross-border trade</b>	Possible reduction of cross-border trade, especially in terms of distance sales, as businesses are likely to refrain from selling to consumers in other Member States. This would apply in particular to countries with much stricter consumer protection rules in place or countries where rules on consumer protection are particularly complex.	
<b>Social effects</b>		
<b>Effects on the level of consumer protection</b>	Little effect as the current protection levels overall would not be changed. Improvements possible in self-regulated areas. Rome I would offer some increased legal certainty to consumers, but problems would persist for example in on-premises sales across the borders, as consumers would have to take account of the different	

	rules and obligations that apply to their transaction. Insufficiently informed consumers may encounter problems when assuming that they have the same rights.
<b>Environmental effects</b>	
	No environmental effects
<b>Employment effects</b>	
	<p>The overall impact on employment will be limited. Increase in distance sales channel is unlikely to occur under this Policy Option and even if it does it will not necessarily affect the total level of sales. -</p> <p>An increase in shipment of goods as a result of a possible increase in distance selling, may increase employment in the transport/logistic sector.</p>
<b>Effects on fundamental rights</b>	
	Some enhancement of Article 38 “Union policies shall ensure a high level of consumer protection” as a result of Rome I which would ensure that consumers buying products from another country through distance or other not on-premises channels would enjoy the same rights as in their own country, thus benefiting from greater legal certainty.
<b>Public sector administration/enforcement costs</b>	
	Increased enforcement costs due to higher likelihood of cross-border disputes. Financing of the information campaigns which will have to be different in the 27 Member states to adapt it to the non harmonised rules.
<b>Preconditions necessary to ensure positive impacts accrue</b>	
The self-regulation should preferably work across the EU. Also, any code of conduct should go beyond the mandatory provisions of each Member State and aim to agree on the highest common denominator or beyond. It would also be important to ensure that the self-regulation is enforced effectively.	

### 5.1.3 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 has a strong focus on addressing inconsistencies and gaps in EU legislation and in promoting further harmonisation and streamlining. It includes the following legislative proposals:</p> <ul style="list-style-type: none"> <li>▪ Definition of ‘consumer’ and ‘trader’</li> <li>▪ Definition of durable medium</li> <li>▪ Information requirements for intermediaries acting on behalf of consumers</li> </ul> <p>Rome I applies.</p>		
Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	+	<p>Most of the proposed new definitions are only a tidying up of the legal texts. No effect expected.</p> <p>A harmonised definition of durable medium could reduce the burden for cross-border trade, for distance sellers in particular. This will help to improve the functioning of the internal market.</p>
<b>Minimising the burden of EU legislation for businesses</b>	++	Some reduction of the burden due to harmonisation especially of the definition of the concept of durable medium. The costs for businesses could be reduced as the same rules would apply everywhere.
<b>Enhancing consumer confidence</b>	+	Clear and common interpretations of the definitions could increase consumer confidence. There would be a decrease of legal uncertainty as a result of introducing new obligations for intermediaries.
<b>Improving the quality of legislation</b>	++	Common definitions and obligations to inform will improve the consistency of legislation across Member States and within the Acquis.
Economic effects		
<b>Effects on business (administrative and compliance costs)</b>	Reduction of the current burden: reduced risks stemming from legal uncertainty whether communication and contractual information are valid. Possible reduction of costs in some countries where important information was to be sent by (registered) mail or presented in a certain format. Some additional costs for certain traders (e.g. second-hand shops). Indirect benefit to bona fide traders.	
<b>Effects on SMEs</b>	No particular effects other than those mentioned above.	
<b>Effects on consumers</b>	Increased clarity and legal certainty for consumers.	
<b>Effects on cross-</b>	Harmonised definitions could reduce the burden for businesses	

<b>border trade</b>	engaged in cross-border trade.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	Some increase in consumer protection, especially due to the new obligations posed on intermediaries. Some improvement as a result of the definition of durable medium.
<b>Environmental effects</b>	
	Positive environmental effects if emails and web-forms would be considered durable media, in terms of paper (if they are not printed) and also in relation to transport (i.e. posting).
<b>Employment effects</b>	
	<p>The overall impact on employment will be limited. Increase in distance sales channel is unlikely to occur under this Policy Option and even if it does it will not necessarily affect the total level of sales. -</p> <p>An increase in shipment of goods as a result of a possible increase in distance selling, may increase employment in the transport/logistic sector.</p>
<b>Effects on fundamental rights</b>	
	Some enhancement of Article 38 “Union policies shall ensure a high level of consumer protection” due to the use of common definitions and introduction of new obligations on intermediaries.
<b>Public sector administration/enforcement costs</b>	
	The limited scope of harmonisation resulting from this Policy Option will not compensate for the increased likelihood of cross-border enforcement actions as a result of Rome I. These are likely to be mainly in the area of distance sales.
<b>Preconditions necessary to ensure positive impacts accrue</b>	
A clear operational definition of durable medium would be required to achieve a common interpretation. Consumers should not be obliged to notify their decision to withdraw on a web form only. The definitions should be future-proof.	

#### 5.1.4 Assessment of PO 4 Medium legislative changes

<b>Summary of PO 4</b>
<p>The fourth option includes PO3 changes plus a total of 16 legislative changes, 11 of which are of a horizontal nature and five address vertical aspects. As explained above, this policy option is assessed on an incremental basis. As a result, this table assesses exclusively the 16 changes introduced specifically by PO4. These changes include:</p> <ul style="list-style-type: none"> <li>• Definition of delivery and passing of risks</li> <li>• Definition of ‘distance contract’</li> <li>• Definition of ‘off-premises contract’</li> </ul>

- Introducing a grey and a black list of unfair contract terms with legal effects instead of a purely indicative list
- Setting the length of the withdrawal period
- Setting the start of the withdrawal period and its extension
- Introducing a common set of rules for exercising the right of withdrawal
- Introducing a common set of rules on the effects of withdrawal
- Introducing common rules on the content and form of information to be provided to the consumer
- Introducing an obligation for consumers to notify the seller within a reasonable period of a lack of conformity
- Clarifying rules on the order in which remedies may be involved
- Addressing online auctions
- Addressing M-commerce and T-commerce
- Exemptions from the scope of the distance selling directive
- Exemptions from the scope of the doorstep selling directive
- Clarifying relationships between rules applicable to distance and direct selling

Rome I applies.

#### **Expected impacts**

#### **Main Policy Objectives**

	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+++	<p>Overall, harmonisation will improve the functioning of the internal market and reduce the burden on cross-border trade.</p> <p>The harmonisation and simplification of the regulatory framework will make it easier for direct sellers to conclude cross-border contracts.</p> <p>Some discrepancies could arise with rules on B2B transactions (delivery and passing of risk).</p> <p>Harmonisation of the unfair contract terms may encourage cross-border trade as businesses would know that the same terms are considered unfair or are grey-listed in every Member State.</p> <p>Setting the withdrawal period at 14 calendar days for distance and direct selling as well as for timeshare would have a small positive impact on the functioning of the internal market. To always count days in calendar days would be a clarification and simplification in particular for cross-border transactions. Devising common rules for the right of withdrawal for both distance and doorstep sales would be economically positive for the internal</p>

		<p>market. Introducing common and fully harmonised rules for exercising the right of withdrawal and on the effects of withdrawal would lead to reduced costs and increased legal certainty.</p> <p>Introducing an obligation for the consumer to notify within a reasonable period of time the lack of conformity of a product would have some positive effect on the level of cross-border transactions.</p> <p>Prices might be reduced due to increased competition and reductions in compliance costs.</p> <p>Information requirements (both in terms of contents and modalities) vary highly across Member States and represent a constraint on cross-border trade. Fully harmonised requirements would increase legal certainty for businesses and remove disincentives for cross-border trade.</p> <p>Clarification and harmonisation of the rules on the order of remedies would reduce the possible detrimental effects of Rome I especially for distance sellers.</p>
<b>Minimising the burden of EU legislation for businesses</b>	+++	<p>The cumulative effect of all harmonisation steps is substantial. The Policy Option would imply some one-off administrative costs, but, more importantly, would reduce compliance cost in both cross-border trade and in a number of cases also for domestic sellers.</p> <p>Single definitions will increase legal certainty but will include some traders which were previously exempted under the Directive (but not always under national laws transposing it), which would increase the burden on such traders. However, that will allow competition on equal terms for businesses which already are covered by the scope of the directive, and especially with regard to direct selling, the current self-regulation of the industry and several national laws already make no distinction between 'solicited' and 'unsolicited' visits, implying that many direct sellers are already in compliance.</p> <p>Overall increase in some MS of the burden for ensuring material possession in order to pass the risk when delivering a good, as this requires investing additional resources in delivery.</p> <p>Lower legal costs arising from uniform use of black and grey lists of unfair contract terms. Some additional burden, mostly one off costs, to companies trading only domestically, as they would have to review their terms and conditions or explain why their terms are not unfair.</p>

		<p>Minor positive effects of a harmonised withdrawal period of 14 days as a single period would imply lower costs of return management (companies no longer have to take account of different periods in cross-border trade), lower legal costs to monitor legislation, etc. The burden on companies in those countries applying a shorter withdrawal period would increase as the rate of return might increase slightly, as well as the risk that products would be used and damaged during the withdrawal period. The latter problem would however be addressed if a new provision is introduced in a possible legislative instrument on the liability of the consumer for excessive/abusive use of the withdrawal right.</p> <p>A common start of the withdrawal period would increase the burden of direct selling companies in 14 Member States where withdrawal starts at the signature of the order form / contract or notice of withdrawal. However, if the start of the withdrawal period for sales contracts is set differently in direct selling (i.e. at the signature of the order form) and in distance selling (i.e. when the consumer acquires the material possession of the goods), the burden of direct selling companies would remain the same in 14 Member States and would be significantly reduced in the 13 other Member States.</p> <p>Introducing common rules for exercising the right of withdrawal would reduce the burden for companies as it establishes clear and unambiguous rules. There would be potential administrative costs for distance sellers in Member States where there is no formal requirement at all on how to withdraw: e.g. in terms of the flow of communication with the customer, the need for companies to change their present service policy (e.g. use of telephone by companies in the Netherlands and Ireland). Introducing common rules on the effects of withdrawal would increase legal certainty for businesses and possibly reduce return rates.</p> <p>Harmonisation of the obligation to notify a lack of conformity will slightly reduce the burden for companies in relation to monitoring legislation in other Member States.</p> <p>Standardised information requirements would significantly reduce the costs of providing information in cross-border trade. New information requirements for off premises traders in relation to the Doorstep selling Directive are introduced, but given that these new rules are aligned with the</p>
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		<p>Unfair Commercial Practices Directive and the numerous national information requirements would have to be removed as a result of the full harmonisation approach, the additional burden on domestic traders is marginal and the burden on traders selling cross-border is reduced as a result of full harmonisation.</p> <p>Common rules on the order of remedies would reduce the costs especially for businesses in countries where currently consumers can choose freely.</p> <p>A decreased cost for businesses as the solution for M-commerce and T-commerce addresses the difficulty to provide information for these kinds of sales.</p> <p>Exemptions from the distance selling directive would reduce compliance costs for certain businesses especially in those countries where such products are currently included. For some business sectors (e.g. vins en primeur), exclusion is key to the viability of their business model.</p> <p>Exemptions to the doorstep selling directive (e.g. on craftsmen, home delivery schemes in supermarkets, emergency services, foodstuff and drinks by regular roundsmen) will have similar effects.</p> <p>Applying two different regimes to those direct sellers who use distance selling for their "repeat transactions" (i.e. transactions concluded by distance means of communication following a previous transaction concluded away from business premises) would impose an additional burden on businesses, which is however low as a result of the information requirements in both Directives being harmonised.</p> <p>Applying harmonised rules for e-auctions which would be exempted from the right of withdrawal, will diminish the burden on businesses in Member States (e.g. Germany) where e-auctions are covered by such a right.</p>
<b>Enhancing consumer confidence</b>	++	<p>The Policy option would overall increase consumer confidence in cross-border and domestic shopping, particularly through lower prices and better choice for consumers.</p> <p>The definitions proposed would help to close some loopholes (e.g. distance and doorstep selling definitions) and increase consumer confidence. Increase of consumer confidence especially in Member States where the risk passes at the time of concluding the contract.</p>



		<p>The unfair contract terms would increase confidence on the longer term: consumers would know that they were not protected less in other Member States. It would also, in some countries which previously used indicative lists which could not be followed by Courts, increase legal certainty.</p> <p>Setting the withdrawal period at 14 calendar days would increase the cooling-off period in 12 Member States, which would slightly increase consumer confidence. The common rules for exercising the right of withdrawal would mean a moderate increase of consumer confidence. The common rules on the effects could decrease consumer confidence in countries where they were previously not made liable for damage within the cooling-off period or where consumers did not pay the costs of return (two Member States: Finland and Belgium).</p> <p>Standard forms and rules on information requirements could increase consumer confidence, depending on the content. As a result of the obligation to notify on a durable medium (e.g. on an email), consumer confidence might increase, in particular in Member States with formal requirements, for instance where notification needs to be made by (registered) mail. Consumer confidence may decrease in 10 Member States where consumers can withdraw by any means as it will mean a slight increase of burden.</p> <p>Harmonised rules on the order of remedies will reduce consumer confidence in those countries where they were able to freely choose a remedy (Portugal, Lithuania, Latvia and Greece)</p>
<b>Improving the quality of legislation</b>	+++	<p>The Policy option would strongly improve the quality of consumer protection legislation as it would remove inconsistencies and loopholes by setting common definitions, common use of lists of unfair terms, introduce a common withdrawal period and common rules for withdrawal, etc.</p> <p>It would also improve the quality of legislation by defining a consistent scheme of sanctions for failure to comply with information obligations.</p> <p>The common rules on the effects of withdrawal fill a gap in particular for direct selling and clearly establishes the right of the trader to claim a remedy if the goods were damaged.</p> <p>Fully harmonised information requirements across the EU would guarantee legal certainty. The use of the Unfair Commercial Practices Directive</p>

	<p>("UCPD") requirements would create a general system of obligations.</p> <p>The adaptation of the information requirements for some types of contracts (m-commerce and t-commerce) could increase the transparency of the legislation.</p> <p>Minor increase of legal certainty by clarifying the notion of auctions. The inclusion of M and T-commerce would strengthen legislation. Establishing clarity on repeat transactions will also improve the legislative framework.</p>
<b>Economic effects</b>	
<b>Effects on business (administrative and compliance costs)</b>	<p>Overall, the Policy option would reduce the burden on businesses, particularly in cross-border trade but also at domestic level. Especially for distance sellers, further harmonisation would reduce the burden on businesses engaged in cross-border trade in view of Rome I. It would require an initial administrative cost (mainly one-off) but would imply an overall reduction of compliance costs. In some Member States, however, compliance costs could slightly increase as the changes would imply increased costs especially for domestic traders.</p> <p>With regard to delivery and the passing of risk, the burden on companies in the few Member States where the national rule or the commercial practice is different, would increase as they would carry the risk until the consumer would acquire material possession of the goods. This implies extra costs for monitoring, tracking, arranging specific deliveries, resending goods, notifying etc. The definition of distance contracts will in some Member States increase costs for traders who only use distance selling occasionally (not part of an organised scheme) or use an organised scheme of a third party but this would put all distance sellers on an equal footing and would thus avoid unfair competition for instance from distance sellers using the organised scheme run by a third party. Possible costs in multi-channel sales, such as some direct sellers using websites for repeat transactions. However, the costs would be offset by a full harmonisation of information requirements applicable to both distance and direct selling. The definition of off premises contracts will imply minimal initial costs and a decreased burden in the longer time because of the simplification and harmonisation of the regulatory framework in the EU.</p> <p>Setting common lists of unfair contract terms would substantially reduce the costs of cross-border trade.</p> <p>Implementing a withdrawal period of 14 calendar days (already in force in some Member States) would increase the burden on distance and direct selling businesses in several other Member States, as it may increase return management costs as well as the risk of consumers using and damaging the goods. Harmonisation would however reduce this burden for businesses engaged in cross-</p>

	<p>border trade. The vast majority of distance sellers already offer far more than the legal minimum in each Member State. Harmonising the start of the withdrawal period would increase the costs for direct selling companies, also because consumers would be allowed to have physical possession of the good during the cooling-off period, thus increasing the risk of use / damage. However, if different starting points were introduced between distance and direct selling, the costs for direct selling would remain the same in those Member States where different starting points apply and would be reduced in the other Member States. Setting common rules for withdrawal would reduce the current burden, but possibly imply some administrative costs for distance sellers in countries where previously no formal requirements existed.</p> <p>The common rules on the effects of withdrawal would reduce costs especially for traders in countries where they had to cover the costs of returning a good or where they had to provide a refund before knowing that a good was returned.</p> <p>Standardised information requirements in line with UCPD would reduce the burden compared with the current obligations of distance sellers and direct sellers in some Member States and overall reduce the amount of information to be provided. Information packs would be the same for all countries. They would imply a one-off administrative cost.</p> <p>The proposal on the obligation for the consumer to notify would bring a change in national legislation in 10 Member States. It would imply a one-off administrative cost to businesses, but some reduction of legal and operational costs. It would also increase legal certainty. The ratio of claims to redress made after the reasonable period would be marginal. Harmonising the current order of remedies would in particular reduce the burden for businesses where currently consumers are free to choose between the available remedies.</p> <p>With regard to auctions, the current unclear situation creates legal uncertainty. Harmonised rules may be advantageous for serious e-auction traders.</p> <p>The exemption of car rental from the distance directive would not have a particular effect as a result of the ECJ ruling on the Easycar case. The exemption of goods which imply an investment of a speculative nature (e.g. <i>vins en primeur</i>) would be a key issue for this small industry.</p> <p>The prolongation of the cooling off period to 3 months in case information requirements have not been respected will in the case of direct selling diminish the economic risk and legal uncertainty, compared to today's practice with indefinite withdrawal rights following an ECJ ruling.</p>
<b>Effects on SMEs</b>	<p>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.</p>

	<p>The lists of unfair contract terms could particularly benefit SMEs engaged in or willing to engage in cross-border trade who cannot afford their own legal services or afford to employ lawyers and pay legal fees. The same applies for the rules on effects of withdrawal, which vary greatly between Member States.</p> <p>Harmonised information requirements would particularly favour SMEs, as they cannot afford legal advice to adapt their websites to fulfil the information requirements in force in the countries they wish to conduct business with.</p> <p>Internet trading platforms offering low costs to newly emerging and innovative SMEs in addition to the reduction of compliance costs resulting from harmonisation will further encourage SMEs to trade cross-border.</p> <p>SMEs with limited cross-border selling activities would profit most from the obligation for the consumer to notify within a reasonable period and from the liability of the consumer to pay damages if abusing the withdrawal right.</p>
<b>Effects on consumers</b>	<p>Some of the legislative changes proposed in the Policy effects could have specific effects on prices and availability but overall the increase in cross-border offers is likely to lower retail prices and increase consumer choice. For example, with regard to the definition of delivery and passing of risk, this could lead to an increase of prices due to increased costs of businesses for ensuring material possession of goods by consumers.</p> <p>A minor increase in the rate of withdrawal by setting the cooling-off period at 14 days and by setting common rules on the effects of withdrawal is anticipated.</p> <p>In 10 Member States a deadline will be introduced to exercise their right to rely on the lack of conformity. Their choice could however be increased as slightly more traders could decide to sell in their country.</p> <p>In one member State the exemption of e-auctions from the withdrawal right will be a decrease in consumer protection but the extension of the information requirements to e-auction will increase consumer confidence.</p>
<b>Effects on cross-border trade</b>	<p>The legislative proposals together would significantly alleviate the burden on distance sellers imposed by Rome I. They would also imply a reduction of the burden for cross-border trade in general.</p> <p>The harmonisation of the lists of unfair contract terms would particularly encourage cross-border trade.</p> <p>Common rules for exercising the right of withdrawal would facilitate return management for companies operating in different countries.</p> <p>Having the same information requirements across the EU would be beneficial to cross-border trade.</p> <p>Harmonised rules under this option would encourage small</p>

	<p>businesses not to exclude potential consumers from certain countries.</p> <p>Harmonised rules on the order of remedies will encourage cross-border trade as it will remove important differences.</p>
<b>Social effects</b>	
<b>Effects on the level of consumer protection and employment</b>	<p>The Policy option includes a number of changes which would increase the level of consumer protection at both EU and national levels. In a few cases, despite its beneficial effect at the EU level, protection levels in some Member States are reduced, such as in the case of common rules on withdrawal modalities, information requirements for distance sales and the obligation of consumers to timely notify a lack of conformity<sup>25</sup>.</p> <p>By agreeing that the passing of risk occurs with the material possession of the good by the consumer, the latter is given higher legal certainty a better protection in case of damage during transport. The definition of distance and off premises contracts will close loopholes, thus increasing confidence and reducing consumer detriment where no adequate protection existed before.</p> <p>Setting common lists of unfair contract terms would increase legal certainty for consumers. Some reduction on consumer protection in Member States where such lists already exist and include more terms or where terms suggested to be included in the grey list are included on the black national list.</p> <p>The proposed increase of the withdrawal period to 14 days would improve consumer protection in 12 Member States and not imply any changes in 9 Member States. Setting a common start of the withdrawal period would raise the level of consumer protection in at least 14 countries. The current model applied by a proportion of direct selling companies, namely to deliver after the withdrawal period is detrimental in terms of consumer protection, as consumers do not always have the opportunity to fully examine the product. The extension of the three month period will slightly improve consumer protection in distance and direct selling, requiring full performance of the traders' obligations.</p> <p>Common rules for withdrawal and particularly a common form for withdrawal would bring certainty for consumers. In countries where no such requirements exist the burden on consumers would increase and require a learning process. The same applies for the rules on the effects of withdrawal, as consumers will have to bear the costs of returning a good and are made liable for damage.</p> <p>Harmonised information requirements could increase consumer confidence in cross-border shopping. Consistent information requirements could increase confidence also in domestic shopping as in some countries consumers suffer from an 'information overload'.</p>

<sup>25</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)

	<p>As a result of the obligation to notify, the level of protection will in theory be reduced in 10 Member States, but the effects are likely to be minor in practice.</p> <p>Consumer protection would be reduced in the four countries where previous more favourable rules on the order of remedies were in place (e.g. free choice).</p> <p>With regard to auctions, there are great variations between Member States which lead to legal uncertainty. The solution for repeat transactions ensures higher consumer protection as the provisions of the distance selling directive would apply (e.g. the withdrawal period starts at delivery).</p> <p>With the new definition of distance sales, the consumer will be protected by distance sales provisions also when buying from a trader not using an organised distance sales scheme.</p>
<b>Employment effects</b>	
	<p>The overall impact on employment will be limited but slightly higher than in PO2 or PO3. Increase in distance sales channel will not necessarily affect the total level of sales. While the option for consumers of buying cross-border via means of distance communication (such as the Internet) may affect certain retail stores negatively, making them lose customers if they do not lower their prices as a result of enhanced competition, there may also be a positive effect. Indeed small local companies, emerging companies or innovative companies serving specialist niche markets which currently have limited business opportunities locally would be able to reach new groups of consumers via means of distance communication. Increased cross-border distance sales would allow such companies to reduce their investment costs in business premises and marketing and may therefore have a positive impact on employment in small and/or remote towns and also on the setting up of new businesses, such as companies set up by young entrepreneurs who were previously unemployed.</p> <p>An increase in shipment of goods as a result of an increase in distance selling, may increase employment in the transport/logistic sector.</p> <p>Finally, harmonised rules on off-premises contracts may encourage the expansion of direct sellers cross border, in particular part-time salespersons engaged in multi-level marketing schemes or agents acting on behalf of direct sellers who will be able to sell to new customers in border areas or to friends/family members living abroad, while today this practice is restrained by the legal risks resulting from the current legal fragmentation.</p>
<b>Environmental effects</b>	
	<p>In general, the Policy option implies no major environmental effects. However, there is a possibility of increased environmental costs in relation to:</p> <ul style="list-style-type: none"> <li>• Delivery and passing of risk in case of repeat deliveries to</li> </ul>

	<p>ensure material possession (as opposed to being able to leave goods without prior agreement with a neighbour or even in front of the consumer's house).</p> <ul style="list-style-type: none"> <li>• Increased withdrawal rights in some Member States which could lead to increased transport of products and repackaging.</li> <li>• Increased travel of direct sellers to their clients if the start of the withdrawal period is the same as in distance selling (increased risk of used/damaged product)</li> <li>• Having the same information requirements, if not too lengthy, would reduce the negative effects of printing different forms.</li> <li>• Harmonised rules on the order of remedies could favour sustainable environmental development.</li> </ul>
<b>Effects on fundamental rights</b>	
	Enhancement of Article 38 "Union policies shall ensure a high level of consumer protection" due to the use of common definitions and introduction of new obligations.
<b>Public sector administration/enforcement costs</b>	
	<p>The Policy option would mainly require one-off costs to implement new legislation and initial enforcement costs due to the changeover between the old and the new legislation and possible disputes arising from these. Enforcement costs may rise when a larger scope is covered by the acquis (on premises sales, new definition for distance sales and off premises sales etc).</p> <p>The introduction of the lists of unfair contract terms, a definition of delivery and provisions on the passing of risk would imply administrative costs in a number of Member States (e.g. in the case of unfair contract terms France, UK, with only non-binding lists) which operate different systems in relation to unfair terms (new legislation, detailed regulation, training of enforcement bodies and courts, reporting systems to exchange information with other Member States).</p> <p>The harmonisation of the rules on the order in which remedies may be requested will imply administrative costs in countries where previously no such order existed.</p> <p>The obligation to notify would imply a one-off cost for establishing and communicating the change and for detailing the interpretation of the notion of reasonable time, which might be different depending on the product category.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
<p>Exemptions are needed to the distance contracts (such as accommodation and transport or e-auctions) and off-premises contracts, such as craftsmen, emergency services and home-delivery schemes by supermarkets and foodstuffs and drinks by regular roundsmen.</p> <p>Defining unfair terms for the EU27 could be very challenging. The black list should be very</p>	

short and Member States should not be allowed to add lists. The standard form for withdrawal should be short and easy to use. Consumers should not be obliged to go digital for completing the form.

The harmonised information requirements should be short and coherent with other legislative instruments.

The technologies of M and T commerce are developing and the legislative change should be flexible and take this development into account.

Harmonisation of the information requirements in distance and doorstep selling directives is necessary for including repeat transactions under the distance selling directive.

### 5.1.5 Assessment of PO 5 Maximum legislative changes

Summary of PO 5		
<p>The fifth Policy option includes all of PO4 and in addition three legislative proposals which would both fit into a horizontal instrument and address some vertical aspects. 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 might possibly outweigh the benefits (see table below). As indicated above, this policy option is assessed on an incremental basis. As a result, this table assesses exclusively the 3 changes introduced specifically by PO5. These are:</p> <ul style="list-style-type: none"> <li>• Introducing new rules with regard to the extension of the legal guarantee in the event of recurring defects</li> <li>• Introducing new rules with regard to the obligation of the seller to inform the consumer on spare parts</li> <li>• Improving payment systems / introducing rules to ensure that consumers can obtain refunds ("charge-back" rights)</li> </ul> <p>Rome I applies.</p>		
Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	<p>The effects on the internal market of Policy option 5 are not evident. Increased harmonisation of rules could to some extent facilitate cross-border trade but the proposals are at the same time likely to increase the burden on companies and hence on price levels.</p> <p>Introducing rules on the extension of the legal guarantee in case of recurrent defects would slightly improve legal certainty.</p> <p>Introducing new rules on spare parts is likely to cause an increase of price levels to cover additional costs for retailers and producers.</p>
<b>Minimising the burden of EU legislation for</b>	<b>-</b>	<p>Policy option 5 would overall increase the burden on businesses rather than bring a reduction.</p> <p>The burden would increase as a result of the new</p>



<b>businesses</b>		<p>rules on recurrent defects due to the extended liability period and the higher numbers of other remedies requested in Member States not having such rules. The new rules on spare parts would impose a significant burden especially on retailers, who would need to check their inventory and request information from producers. They are also exposed to additional risk. It would also be detrimental for sales volumes.</p> <p>If obligatory rules are introduced on refunds, one-off investment and compliance costs will increase for card issuers and acquirers, in particular those participating in domestic debit schemes currently not subject to charge-back obligations.</p>
<b>Enhancing consumer confidence</b>	+++	<p>The proposals under Policy option 5 would strongly benefit consumer confidence, which would be a result of better protection.</p> <p>The introduction of rules on recurrent defects, consumer confidence would increase as rules will be more favourable and uniform across the EU. A large effect on consumer confidence is anticipated as a result of the new rules on spare parts.</p>
<b>Improving the quality of legislation</b>	+	<p>Harmonisation will bring additional clarity in legislation and increase legal certainty overall. In case of the rules on recurrent defects, the phrasing of the proposal should be clear in order to avoid that it leads to judicial disputes (e.g. the notion of ‘the same’ defect).</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>Overall, Policy option 5 would increase administrative and compliance costs for businesses.</p> <p>Regarding recurrent effects, the administrative work in relation to registering the new date on the guarantee form is incremental. If consumers were able to resort to any other remedy in the case of recurrent defects, the additional burden on traders would be substantial and not proportional. The new rules on spare parts would imply substantial one-off costs (reviewing product information notes), as well as recurrent costs to monitor products and negotiate with producers. It would place substantial risk on retailers. An increased supply of spare parts could improve repair services but reduce sales volumes.</p> <p>A compulsory system would impose a high additional handling costs and substantial one-off investment costs on scheme operators.</p>	
<b>Effects on SMEs</b>	<p>Policy option 5 would have an overall negative effect on SMEs.</p> <p>The extension of the legal guarantee and rules on recurrent defects would place a relatively high burden on SMEs which tend to repair goods rather than replacing the product or refunding consumers.</p>	

	<p>Retailers would face the additional problem of producers not wanting to extend their liability, so that they have to bear the costs of remedies.</p> <p>As a result of the new rules on spare parts, SMEs risk to get squeezed between consumers and suppliers. Spare part producers and repair services may benefit though.</p>
<b>Effects on consumers</b>	<p>The effects of Policy option 5 are mixed. Some of the legislative proposals will have positive effects, but there is a risk that price levels are increased and therefore that consumer welfare is not achieved.</p> <p>The extension of the legal guarantee and rules on recurrent defects increase consumer protection, but could lead to price increases of products.</p> <p>New rules on payment systems ("charge-back" rights) would make it easier and more secure for consumers to obtain refunds which have a positive effect on their confidence in buying cross-border with the assurance they will be refunded in case they exercise their right of withdrawal or their legal guarantee rights for products which are not in conformity.</p>
<b>Effects on cross-border trade</b>	<p>Policy option 5 will overall have little effect on cross-border trade. The new rules on recurring effects and payment refunds may facilitate cross-border purchases.</p>
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>Overall, consumer protection would be substantially increased as a result of Policy option 5.</p> <p>The extension of the legal guarantee and rules on recurrent defects would increase the prolongation of the liability period. Reliable and enforceable information on the availability of spare parts could be a considerable improvement in the way consumers are informed.</p>
<b>Environmental effects</b>	
	<p>In general, the Policy option implies no major environmental effects. However, the new rules on recurrent defects may lead to a slightly higher level of replacements and refunds as opposed to repairs, thus increasing environmental costs.</p>
<b>Employment effects</b>	
	<p>The overall impact on employment will be limited but slightly higher than in PO2 or PO3. Increase in distance sales channel will not necessarily affect the total level of sales. While the option for consumers of buying cross-border via means of distance communication (such as the Internet) may affect certain retail stores negatively, making them lose customers if they do not lower their prices as a result of enhanced competition, there may also be a positive effect. Indeed small local companies, emerging companies or innovative companies serving specialist niche markets which currently have limited business opportunities locally would be able to reach new groups of consumers via means of distance</p>

	<p>communication. Increased cross-border distance sales would allow such companies to reduce their investment costs in business premises and marketing and may therefore have a positive impact on employment in small and/or remote towns and also on the setting up of new businesses, such as companies set up by young entrepreneurs who were previously unemployed.</p> <p>An increase in shipment of goods as a result of an increase in distance selling, may increase employment in the transport/logistic sector.</p> <p>Finally, harmonised rules on off-premises contracts may encourage the expansion of direct sellers cross border, in particular part-time salespersons engaged in multi-level marketing schemes or agents acting on behalf of direct sellers who will be able to sell to new customers in border areas or to friends/family members living abroad, while today this practice is restrained by the legal risks resulting from the current legal fragmentation.</p>
<b>Effects on fundamental rights</b>	
	Enhancement of Article 38 “Union policies shall ensure a high level of consumer protection” due to the introduction of new obligations.
<b>Public sector administration/enforcement costs</b>	
	<p>Policy option 5 would require some administrative and enforcement costs, some of which are difficult to determine at this stage.</p> <p>The legal consequences of the obligation to inform consumers on the availability of spare parts and how these would be controlled and enforced cannot yet be anticipated but are potentially costly.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

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

<b>Summary of PO 6</b>
<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 assessment of this policy option will not be as thorough as for the other policy options, since 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. It would also involve a major policy change a few months after the co-legislators adopted the Rome I Regulation, which contains a revision clause which allows the Commission to evaluate its practical application.</p>

Expected impacts of sub-option 1 (internal market clause combined with PO3)		
Main Policy Objectives		
	Rating	Explanation
Contribution to the better functioning of the Internal Market	++	Removal of the regulatory barrier for business. Enhanced incentive to trade cross-border. However possible negative implications on consumer confidence and demand.
Minimising the burden of EU legislation for businesses	+++	Significant reduction of the administrative burden, and neutralisation of the effects of Article 6 of Rome I.
Enhancing consumer confidence	--	Negative impact on consumer confidence: legal uncertainty will be transferred to consumers. Consumers will be subject to different levels of protection when they buy from foreign traders. Such a negative impact could be partly offset by access to more competitive cross-border offers, particularly for consumers resident in small Member States.
Improving the quality of legislation	+	Slight improvement due to the changes described under PO3. Some significant legislative gaps and inconsistencies will remain at EU level.
Economic effects		
Effects on business (administrative and compliance costs)	Significant reduction of burden and compliance costs.	
Effects on SMEs	Significant reduction of burden and compliance costs.	
Effects on consumers	Legal uncertainty due to varying levels of protection.	
Effects on cross-border trade	Stronger incentive for traders to engage in cross-border offers.  Possible reluctance of consumers to trade with foreign traders (the problem of lack of consumer confidence as a result of legal uncertainty will persist).	
Social effects		
Effects on the level of consumer protection	Possible decrease in consumer protection in cross-border transactions (i.e. if the consumer is resident in a country with a higher protection than that under the law chosen in the contract).	
Environmental effects		
	In general, the Policy option implies no major environmental effects. However, there is a possibility of increased environmental costs due to increased cross-border trading.	
Employment effects		
	The overall impact on employment will be limited but slightly higher than in PO2 or PO3. Increase in distance sales channel will not necessarily affect the total level of sales. While the option for	

	<p>consumers of buying cross-border via means of distance communication (such as the Internet) may affect certain retail stores negatively, making them lose customers if they do not lower their prices as a result of enhanced competition, there may also be a positive effect. Indeed small local companies, emerging companies or innovative companies serving specialist niche markets which currently have limited business opportunities locally would be able to reach new groups of consumers via means of distance communication. Increased cross-border distance sales would allow such companies to reduce their investment costs in business premises and marketing and may therefore have a positive impact on employment in small and/or remote towns and also on the setting up of new businesses, such as companies set up by young entrepreneurs who were previously unemployed.</p> <p>An increase in shipment of goods as a result of an increase in distance selling, may increase employment in the transport/logistic sector.</p> <p>Finally, harmonised rules on off-premises contracts may encourage the expansion of direct sellers cross border, in particular part-time salespersons engaged in multi-level marketing schemes or agents acting on behalf of direct sellers who will be able to sell to new customers in border areas or to friends/family members living abroad, while today this practice is restrained by the legal risks resulting from the current legal fragmentation.</p>	
<b>Effects on fundamental rights</b>		
	No effect	
<b>Public sector administration/enforcement costs</b>		
-	<p>Negative impact. One of the objectives of Rome I is to facilitate cross-border litigation in particular by ensuring that national courts having jurisdiction over B2C contracts in accordance with the Brussels I Regulation (i.e. courts where the consumer resides) will apply their own law which they are familiar with. Introducing an internal market clause reversing Article 6 of Rome I would allow traders to apply the law of their choice which would create major complications for the judiciary. National courts and enforcement bodies will often have to apply a foreign law they are unfamiliar with. The same is true for mediators. This will also generate significant legal costs for consumers in case of litigation.</p>	
<b>Expected impacts of sub-option 2 (internal market clause combined with PO4).</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+++	Removal of legal uncertainty for business both in cross-border operations and in the case of litigation. Enhanced incentive to trade cross-border.
<b>Minimising the</b>	+++	Significant reduction of the administrative burden

<b>burden of EU legislation for businesses</b>		mainly as a result of the full harmonisation of the key aspects of consumer contract law.
<b>Enhancing consumer confidence</b>	+	On the one hand, positive impact on consumer confidence as a result of the full-harmonisation of the aspects described under PO4; on the other hand, possible lower consumer protection and transfer of legal uncertainty from the trader to the consumer in case of litigation..
<b>Improving the quality of legislation</b>	+++	This is the result of the full harmonisation of the issues described under PO4.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	Reduction in legal costs in case of litigation.	
<b>Effects on SMEs</b>	Reduction in legal costs in case of litigation.	
<b>Effects on consumers</b>	For a limited number of issues, legal uncertainty due to varying levels of protection. Increase of legal costs in case of litigation.	
<b>Effects on cross-border trade</b>	Stronger incentive for traders to engage in cross-border offers. Possible reluctance of consumers to trade with foreign traders (the problem of lack of consumer confidence as a result of legal uncertainty will persist).	
<b>Social effects</b>		
<b>Effects on the level of consumer protection</b>	For certain issues, possible decrease in consumer protection in cross-border transactions (i.e. if the consumer is resident in a country with a higher protection than that under the law chosen in the contract).	
<b>Environmental effects</b>		
	In general, the Policy option implies no major environmental effects. However, there is a possibility of increased environmental costs due to increased cross-border trading	
<b>Employment effects</b>		
	The overall impact on employment will be limited but slightly higher than in PO2 or PO3. Increase in distance sales channel will not necessarily affect the total level of sales. While the option for consumers of buying cross-border via means of distance communication (such as the Internet) may affect certain retail stores negatively, making them lose customers if they do not lower their prices as a result of enhanced competition, there may also be a positive effect. Indeed small local companies, emerging companies or innovative companies serving specialist niche markets which currently have limited business opportunities locally would be able to reach new groups of consumers via means of distance communication. Increased cross-border distance sales would allow such companies to reduce their investment costs in business	

	<p>premises and marketing and may therefore have a positive impact on employment in small and/or remote towns and also on the setting up of new businesses, such as companies set up by young entrepreneurs who were previously unemployed.</p> <p>An increase in shipment of goods as a result of an increase in distance selling, may increase employment in the transport/logistic sector.</p> <p>Finally, harmonised rules on off-premises contracts may encourage the expansion of direct sellers cross border, in particular part-time salespersons engaged in multi-level marketing schemes or agents acting on behalf of direct sellers who will be able to sell to new customers in border areas or to friends/family members living abroad, while today this practice is restrained by the legal risks resulting from the current legal fragmentation.</p>
<b>Effects on fundamental rights</b>	
	No effect
<b>Public sector administration/enforcement costs</b>	
-	<p>Negative impact. One of the objectives of Rome I is to facilitate cross-border litigation in particular by ensuring that national courts having jurisdiction over B2C contracts in accordance with the Brussels I Regulation (i.e. courts where the consumer resides) will apply their own law which they are familiar with. Introducing an internal market clause reversing Article 6 of Rome I would allow traders to apply the law of their choice which would create major complications for the judiciary. National courts and enforcement bodies will often have to apply a foreign law they are unfamiliar with. The same is true for mediators. This will also generate significant legal costs for consumers in case of litigation.</p>

## 5.2. ASSESSMENT OF POLICY OPTIONS: DETAILED ASSESSMENT SHEETS OF PROPOSED LEGISLATIVE CHANGES IN PO3, PO4 AND PO5

### Methodology

Within the context of the business workshop, individual participants were asked to rank the proposed legislative changes by using a scoring sheet. 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 symmetric approach was adopted during the workshop organised within the context of the European Consumer Consultative Group (ECCG). 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.

## **POLICY OPTION 3**

### **1. and 2. Definitions of consumer and trader**

#### ***Problem***

At present, the definitions for consumers and traders are different between the directives of the Consumer Acquis.

Although the consumer definitions in European law exhibit a common core for instance, the wording of the directives uses different definitions, which furthermore diverge in the individual language formulations. Unlike for consumer, Community law does not use a uniform term for the other party to a consumer contract. That party is variously described as ‘trader’, ‘supplier’, ‘seller’, or ‘vendor’.

#### ***Solution proposed***

##### *1. Definition of consumer*

It is proposed to adopt a single definition, which is the one currently used in the Unfair Commercial Practices directive. The proposed solution would remove the minor differences which are found between the Sales of Goods, Distance Selling, Doorstep Selling and Unfair contract terms. The definition would be:

*"Consumer" means "any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession"*

##### *2. Definition of trader*

It is proposed to adopt a single definition, which is the one currently used in the Unfair Commercial Practices directive. The proposed solution would ‘tidy up’ the minor differences which are found between the Sales of Goods, Distance Selling, Doorstep Selling and Unfair contract terms. Member States would continue to have the possibility to extend the protection afforded by the Directive to certain B2B transactions since this is an issue outside the scope of the Directive. The definition would be:

*"Trader" means "any natural or legal person who, in contracts covered by this Directive, is acting for purposes relating to his trade, business, craft or profession and anyone acting in the name of or on behalf of a trader"*



Expected impacts		
Main Policy Objectives		
	Rating	Explanation
Contribution to the better functioning of the Internal Market	0	The proposed new definition is only a clarification of the legal texts. No effect expected.
Minimising the burden of EU legislation for businesses	0	No effect expected.
Enhancing consumer confidence	0	No effect expected.
Improving the quality of legislation	+	Effect on ‘better regulation’ by tidying up legislation. The definition used is the one of the UCPD which has now been transposed by most Member States.
Economic effects		
Effects on business (administrative and compliance costs)	No effect expected.	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade		
Social effects		
Effects on the level of consumer protection	No effect expected.	
Environmental effects		
Public sector administration/enforcement costs		
	Definition of consumer comes from UCP directive, a full harmonisation directive which is copied into the law of most MS.  The issue of “mixed purpose” purchases is to be assessed nationally. There will be variations in application.	
Stakeholder views		
Consumers		
Consumer organisations survey	n/a	

ECCG workshop	<p>Change not considered significant. On average, no impact is expected on the overall level of consumer protection or on consumer confidence (both 0.0).</p> <p>Comments:</p> <p>If the EC will not propose a completely harmonized horizontal directive, there is a risk that judges will make different interpretations. E.g. the case of ‘mixed’ purposes by persons who are individuals and also have a business. In many MS an interpretation already exists by case law.</p> <p>BEUC also highlighted the problem of ‘mixed purposes’. There are developments in MS that include broader groups of people (e.g. non-profit organizations).</p>	<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><di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	<p>various types of people (employees, company, independent sellers etc). In France there are two main categories: the representatives who negotiate contracts in the name of the company, and the independent sellers who buy the products from the company to sell them to the consumers. The definition should clearly define different categories of professional for direct selling.</p> <p>Bouygues Telecom: criteria in the UCP definition are too vague, case by case analysis will be necessary.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	With fully harmonised definitions it must be clear whether the Member States are allowed to extend the protection to further groups of persons.

### 3. *Definition of durable medium*

#### *Problem*

At present, the definition of a ‘durable medium’ is not elaborated in the Directives subject to review. In addition, the concept is interpreted differently across the Member State and usually not explicitly included in consumer legislation. In some Member States, there is a requirement for all information and communication to be made either by trader or consumer on paper (in ‘written form’), whilst in other Member States ‘other durable media’ are also allowed (e.g. e-mails), without necessarily defining them. For example, consumers may be able under the new Directive to notify their intention to make use of the right of withdrawal on a durable medium and distance sellers could continue to provide the pre-contractual information on a durable medium (which will then be clearly defined).

#### *Solution proposed*

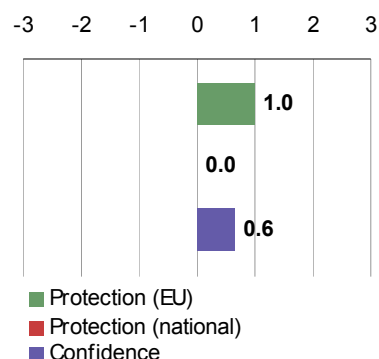
It is proposed to adopt the following single definition.

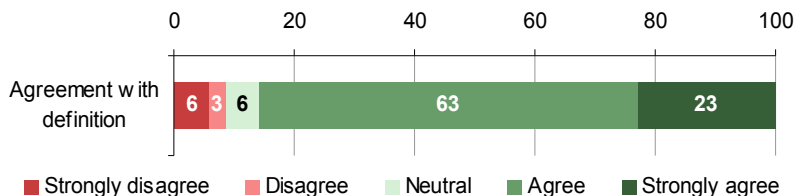
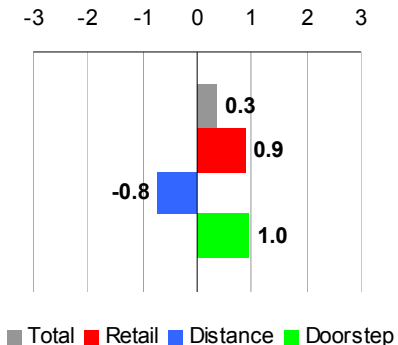
*"Any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference and which allows the unchanged reproduction of the information stored"*

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	++	A harmonised definition could reduce the burden for cross-border trade, for distance sellers in particular.
<b>Minimising the burden of EU legislation for businesses</b>	++	<p>Possible reduction of costs due to harmonisation, as currently professionals and consumers have to use different forms of communication (e.g. when exercising the right of withdrawal) to take account of different definitions.</p> <p>The definition could decrease the costs for</p>

		professionals since the rules would be the same everywhere. This will depend on the operational interpretation of the definition proposed, especially in the Distance selling sector (e.g. technological evolutions should be taken into account and the wording should be flexible enough).
<b>Enhancing consumer confidence</b>	<b>0</b>	A clear operational interpretation (e.g. e-mail as durable medium) of the definition could slightly increase consumer confidence due to the clarification of rules (they can be assured that their notification is valid).
<b>Improving the quality of legislation</b>	<b>++</b>	The notion of 'durable medium' is currently interpreted differently across Member States. This definition would improve the consistency of legislation across Member States and within the acquis. A time-proof definition will also ensure the consistency of legislation.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>Reduction of current burden: reduced risks stemming from uncertainty whether communication / contracts are valid in all Member States if confirmation is given in electronic form.</p> <p>In most countries businesses have to provide information on a durable medium (in particular in distance selling). One common definition will reduce the burden for cross-border trade. It is estimated that electronic billing saves approximately 50 to 75 cents per bill in envelopes and postage, and another \$1 in handling costs.</p> <p>Potential additional administrative costs: concerns expressed by distance sellers about the requirement, that the information has to be "addressed personally to him" [i.e. the consumer]", fearing that this would create unnecessary burden. For example, on e-Bay consumers have a User ID – it takes additional time for sellers to identify the name of the consumer. Companies with software to automatically respond to clients will have to incur costs to purchase management tools that can also add their full name.</p> <p>Administrative costs might also increase in countries where web-forms are accepted as durable medium without obligation of the trader to confirm by e-mail and without giving the consumer the choice of using other means of communication. In other countries some information (e.g. regarding withdrawal) can also be provided by phone.</p> <p>In general direct sellers consider that “in written form” guarantees legal certainty (especially for informing the consumer about the right of withdrawal).</p>	
<b>Effects on SMEs</b>		
<b>Effects on consumers</b>		

Effects on cross-border trade	A harmonised definition could reduce the burden for cross-border trade, for distance sellers in particular.	
Social effects		
Effects on the level of consumer protection	Regarding the provision of information to the consumer: to guarantee consumer protection it is important to ensure that important information is still provided in paper format, in addition to emails. Consumers should not be obliged to accept important information provided only on digital format.	
Environmental effects		
	If e-mails are considered a durable medium the environmental effects could be important (if emails are not printed). It was estimated that financial transactions performed via the web require far fewer material resources and none of the energy involved in moving information stored on paper to and from the home or office.	
Public sector administration/enforcement costs		
Stakeholder views		
Consumers		
Consumer organisations survey	n/a	
ECCG workshop	<p>The topic was not considered significant by participants.</p> <p>Protection at the EU level would slightly increase (1.0). Confidence would also increase slightly (0.6).</p> <p>The definition was deemed acceptable but the legislation should ensure that the communication of important information has to be in a ‘harder’ format. Businesses have different responsibilities. Consumers should not be forced to ‘go digital’. They should not be required to notify their decision to withdraw via a webform if they want to notify via other means (e.g. emails).</p> <p>A similar definition is currently used in Germany</p>	<div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div>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<b>Businesses</b>													
<b>Business survey</b>	<p>The vast majority of respondents welcome the definition: 53% of respondents agreed with the definition proposed and 23% strongly agreed.</p>  <table border="1"> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Strongly disagree</td> <td>6</td> </tr> <tr> <td>Disagree</td> <td>3</td> </tr> <tr> <td>Neutral</td> <td>6</td> </tr> <tr> <td>Agree</td> <td>63</td> </tr> <tr> <td>Strongly agree</td> <td>23</td> </tr> </tbody> </table> <p>It was suggested to keep the definition as in Art. 2 Dir.2002//65/EC for the purpose of the coherence of the acquis.</p> <p>One comment argued that this definition should only be the legal fallback and that businesses may voluntarily accept a notice in any other form as well.</p>	Response	Percentage	Strongly disagree	6	Disagree	3	Neutral	6	Agree	63	Strongly agree	23
Response	Percentage												
Strongly disagree	6												
Disagree	3												
Neutral	6												
Agree	63												
Strongly agree	23												
<b>Business workshop</b>	<p>Mixed opinions in retail and distance selling.</p> <p>Only distance sellers considered the change somewhat significant (3.87)</p> <p>Distance selling representatives indicated the highest score in relation to the current burden, and they also rated the proposed change as having a rather negative impact (a score of -0.8: i.e. an increase of their burden).</p> <p>During the group session a number of participants mentioned that they were concerned with the speed at which technology develops. The definition needs to be time proof and not restricted by particular technologies. After clarifications on certain points, the group was overall rather favourable to a harmonised definition of durable medium, thinking it would decrease their costs since the rules would be the same everywhere, and that the voting result from the morning session would have to be interpreted accordingly.</p>  <table border="1"> <thead> <tr> <th>Category</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>0.3</td> </tr> <tr> <td>Retail</td> <td>0.9</td> </tr> <tr> <td>Distance</td> <td>-0.8</td> </tr> <tr> <td>Doorstep</td> <td>1.0</td> </tr> </tbody> </table>	Category	Score	Total	0.3	Retail	0.9	Distance	-0.8	Doorstep	1.0		
Category	Score												
Total	0.3												
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Doorstep	1.0												

<b>Business interviews</b>	<p>FEVAD: In practice (distance selling), everything is now done through emails.</p> <p>FVD: there should still be a written support for communicating the information to the consumer in an off-premises situation (face to face situation different from distance) signed by both parties (not an e-mail).</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>Definition should clearly state, at least for distance selling, if a website (under certain conditions, otherwise risk that the trader can unilaterally alter its contents) or an e-mail is considered to be a durable medium. The operational interpretation of the definition should be absolutely clear. Consumer confidence will only increase with a clear operational interpretation.</p> <p>The definition has to be 'future proof'.</p> <p>Linked with proposals 10 (modalities) and 12 (information requirement).</p>

#### 4. *Introducing obligations for intermediaries*

##### *Problem*

At present, information requirements in relation to intermediaries are not regulated at EU level. An intermediary is a professional who acts in the name of or on behalf of a consumer. For the purpose of this definition, online platforms are not considered to be intermediaries.

A consumer is not protected by the acquis when his/her contractual counterpart is another private person. A practical example of this is when a car dealer sells a second-hand car on behalf of one consumer to another consumer. Consumers purchasing a product from an intermediary are often not aware that they are not covered by the protection that exists for B2C transactions, but that the rules for C2C transactions apply (which normally offers less protection). This means that, for example, they do not have the right to a legal guarantee or have no right of withdrawal in case of a distance or off-premises contract.

In addition, some intermediaries wilfully do not inform potential buyers of their specific position in the transaction.

##### *Solution proposed*

For intermediaries: Introducing an obligation to notify the consumer of the professional's position in the transaction, and to disclose the legal consequences of his position. New rules considered:

- a) *Except in the case of a public auction, a trader who acts in the name of, or on behalf of a consumer shall, prior to the conclusion of the contract, disclose to the purchaser or service recipient who is a consumer, that*

- (i) *he acts as an intermediary<sup>26</sup> and*
- (ii) *as a consequence of this position as an intermediary, the contract concluded, shall not be regarded as a contract between a consumer and a trader but rather as a contract between consumers falling outside the scope of this Directive.*
- b) *A trader who does not fulfil the obligation under paragraph 1, shall be deemed to have concluded the contract in his own name.*

Expected impacts		
Main Policy Objectives		
	Rating	Explanation
Contribution to the better functioning of the Internal Market	0	
Minimising the burden of EU legislation for businesses	0	
Enhancing consumer confidence	+	Disclosure of this information would moderately strengthen consumer confidence in professionals acting as intermediaries and would remove legal uncertainty
Improving the quality of legislation	0	
Economic effects		
Effects on business (administrative and compliance costs)	Potential additional costs on some professionals (e.g. second hand shops) acting on behalf of consumers: in some situations, consumers who are informed of the consequences might decide not to conclude a contract with an intermediary.  Important additional costs only for rogue traders.  Indirect benefit to 'bona fide' traders.	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade		
Social effects		
Effects on the level of consumer protection	Requirement for intermediaries to disclose their position and the possible legal consequences would strengthen consumer	

<sup>26</sup> Recital to be included: "the notion of intermediary should not include trading platforms for sellers and consumers, e.g. on the Internet, where the platform provider is not involved in the conclusion of the contract.



	<p>protection. The information to the consumer that he has no rights under consumer protection B2C legislation is key.</p> <p>. Some companies re-sell returned (used) goods pretending that they sell on behalf of a private person, or they use an auction platform like eBay, acting as a private person.</p>
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	<p>Regarding the effect of requiring intermediaries to disclose their position and the legal consequences of this position:</p> <ul style="list-style-type: none"> <li>• 87% of respondents agree/strongly agree that in some situations, consumers who are informed of the consequences might decide not to conclude a contract with an intermediary</li> <li>• A large majority (83% of respondents agree/strongly agree that the disclosure of this information would strengthen consumer confidence in professionals acting as intermediaries and would remove legal uncertainty</li> <li>• The impact is expected to be rather important, as 41% disagree with the idea that the disclosure of this information would have no significant impact on business transactions between consumers and intermediaries. Only 36% agree with this statement.</li> </ul> <p>Several respondents expressed the view that when a professional acts as intermediary, consumer should be protected by consumer law (B2C). Online platforms should be considered as intermediaries, especially when they intervene in the contract conclusion.</p>
<b>ECCG workshop</b>	<p>The change was generally welcomed by participants. They remarked that it creates transparency obligations, which is positive, but also goes quite far in terms of harmonisation.</p>
<b>Consumer focus group</b>	n/a
<b>Businesses</b>	
<b>Business survey</b>	<p>Regarding the effect of requiring intermediaries to disclose their position and the legal consequences of this position:</p> <ul style="list-style-type: none"> <li>• Almost half of respondents agree/strongly agree that the disclosure of this information would strengthen consumer confidence in professionals acting as intermediaries and would remove legal uncertainty</li> <li>• Half of respondents agree/strongly agree that in some</li> </ul>

	<p>situations, consumers who are informed of the consequences might decide not to conclude a contract with an intermediary</p> <ul style="list-style-type: none"> <li>• The impact is expected to be rather important, as more than 30% disagree with the idea that the disclosure of this information would have no significant impact on business transactions between consumers and intermediaries. Only 14% agree with this statement.</li> </ul> <p>Comments: The BRC support this move to increase transparency and consumer confidence including the need for traders to identify themselves as such in online portals.</p>
<b>Business workshop</b>	<p>Participants raised the question of the kind of ‘intermediary’ that the new rules would include. It was mentioned that there are ‘trading assistants’ (also known as ‘drop-off stores’ in the US) who charge someone for the service of putting their item on sale. However, seen that this is their only role in the transaction, the sanction mentioned in paragraph (2) was deemed unfair by a number of participants: the good not belonging to that person, it would be unfair to put the contract in his/her name and make him/her liable for any default/lack of information/breach of contract that may occur.</p>
<b>Business interviews</b>	<p>According to the Conseil des Ventes, auctions should not be covered by this notion of intermediary. Professionals and consumers are on both sides of the auctions, they can all be bidders or sellers. The auctioneer also has specific responsibilities.</p> <p>The Conseil believes that the responsibility of intermediaries should be encouraged.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## POLICY OPTION 4

### 1. *Definition of delivery and passing of risks*

#### ***Problem***

At present, the definition of a ‘delivery’ is not elaborated in EU consumer law. National consumer legislation does not always include a definition either, even though contractual arrangements and case law provide a framework for interpretation - which may vary in different countries. The concept of delivery is important in order to determine whether a delivery is on time or late. The concept of delivery is also important for the passing of the risk (i.e. the point at which the professional bears the risk and the cost of any deterioration or destruction/loss of the good and when this risk passes to the consumer, e.g. in a situation where a good is damaged or destroyed while in transit from the seller to the consumer).

In some Member States the risk always passes to the buyer when he acquires the material possession of the goods while in others it passes at the time of the transfer of ownership which usually coincides with the conclusion of the contract. Sometimes companies pass the risk to the carrier.

### ***Problems encountered by consumers***

Delivery is a big issue especially in distance selling. Non-delivery of ordered goods proves to be the most problematic issue within the European e-commerce market. It accounted for 38% of all consumer complaints submitted to the ECC Network during 2005.

Almost one in four European consumers have encountered delivery problems in a distance purchase – delay or non-delivery – in the past 12 months (EB 252). As most distance purchases are carried out at national level, most delivery failures occur at that same level. As part of a cross-border e-commerce project by the European Consumer Centre's Network, a total of 114 orders were made as part of a shopping experiment, with all orders being cross-border and within the EU. However, only 75 of those orders resulted in a delivery. That means that 34% of the orders were not delivered (delivery rate of 66%).

According to an OFT study on Internet shopping, delivery problems in the UK account for nearly half (48 per cent) of all the problems people said they had experienced (most typically as late or non-delivery). This has important implications – the study estimates that annual economic detriment from unresolved delivery problems for online sales could be as much as £25 million to £55 million per year, excluding time and effort spent on resolving problems.

### ***Problems encountered by traders***

According to Royal mail 80% of UK household are not at home from 8 to 5 on week days. This entails problems of late pick up of the goods, damaged goods, theft, or redelivery at the expense of the retailer. The @Your Home (DTI, 2001) report confirmed that the last leg of the home delivery operation to the customers' home is the most problematic for operators, and potentially the most expensive, due to factors such as congestion levels in urban areas often exacerbated by preferred delivery times or absent customers causing return journeys. Homes are empty for longer periods than they used to be and estimates suggest half of UK homes are empty between 9am and 4pm. The DTI survey of delivery companies suggested that failed delivery of small packages, where no delivery time or arrangement is made with the customer, can be as high as 60%. Unsuccessful deliveries lead to higher operating costs and poor customer perception. In terms of distribution of costs related to selling activities on the internet in France, it is estimated that logistics account for 24% of costs (marketing 25%; client relations 15%; hosting site 12%; site maintenance 13%).<sup>27</sup>

### ***Solution proposed***

Delivery would be defined freely by agreement between the parties. The option would only consist in introducing a default rule applying in the absence of an agreed definition in the contract.

#### **Option 1**

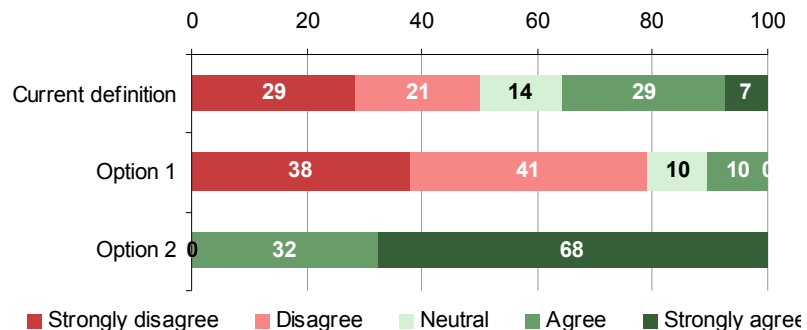
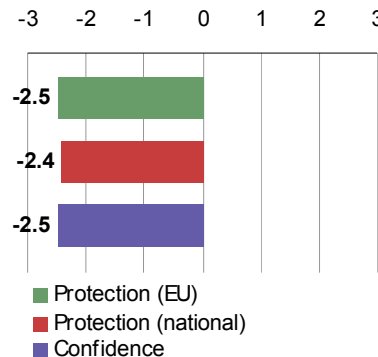
As for the passing of risk, a first option is to let the risk pass at the time of delivery (which may be defined freely by agreement between the parties, i.e. a default rule).

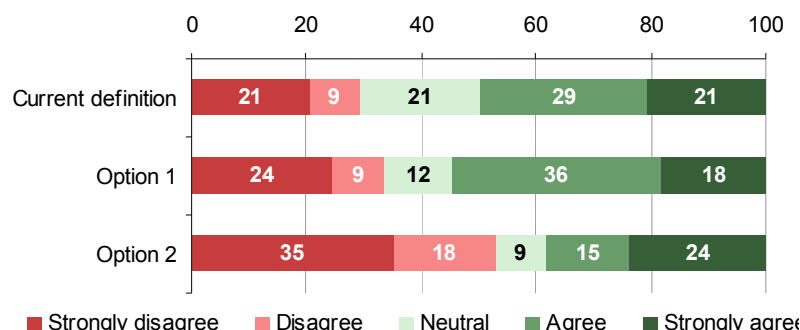

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<sup>27</sup> INSEE - les acteurs du commerce électronique (2004)

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+	<p>Harmonisation will improve the functioning of the internal market.</p> <p>Changing the provisions for B2C transactions could cause possible discrepancies with B2B transactions.</p>
<b>Minimising the burden of EU legislation for businesses</b>	++	<p>Minor positive effects arising from uniform rules (but the cumulative effect of all harmonisation steps is substantial). This option is very flexible and would minimise the burden for businesses.</p> <p>The burden on companies in Member States currently placing stricter rules in particular in relation to the passing of risk (e.g. exclusively upon material possession of the product by the consumer) would decrease.</p>
<b>Enhancing consumer confidence</b>	--	<p>Harmonisation of the rules on delivery and passing of risk could slightly increase consumer confidence (except in distance selling where under Rome I provisions are governed by their respective national law), in particular in Member States without link between passing of risk and material possession of the goods.</p> <p>However, in at least 8 Member States where traders bear the risk of any damage to goods in transit and the risk passes when the consumer acquires material possession of a good, the option could decrease current protection levels, which may lead to a reduction in confidence in these countries.</p> <p>Overall, full harmonisation of the definitions may increase overall confidence in cross-border shopping.</p>
<b>Improving the quality of legislation</b>	+	<p>The change proposed would improve the quality of consumer protection legislation as it would remove inconsistencies between national laws by setting common definitions.</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>Businesses incur high costs for delivery and problems related to delivery. Whilst these are mainly of a logistical nature, some are linked to the meaning of delivery and the moment in which the risk is being passed. Costs involved in establishing an effective delivery system are high (tracking system, insurance etc).</p> <p>There would therefore be some cost-savings for businesses, especially those in countries with stricter rules as to the passing of risk. Cost of destruction or deterioration of the goods while in</p>	

	<p>transit or insurance costs could decrease in countries where the trader always bears the risk of any damage to goods in transit (e.g. United Kingdom, Estonia, Finland, Germany, Hungary, the Netherlands, Slovakia, Sweden).</p> <p>In addition, further beneficial effects of harmonisation would be accrued by businesses engaged in cross border trade (Rome I) as it reduces costs to monitoring legislation, take account of different definitions, etc.</p>
<b>Effects on SMEs</b>	
<b>Effects on consumers</b>	Costs could increase for consumers in the 8 Member States mentioned above when goods are damaged before they acquire the material possession of the goods and if the trader and the consumer have agreed on an earlier point of time for the passing of risk.
<b>Effects on cross-border trade</b>	Minor, but all harmonisation steps together will significantly alleviate the burden on distance sellers imposed upon them by Rome I.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>The legislative solution could lower the level of consumer protection, in Member States applying stricter rules in relation to the passing of risk. In some countries the trader bears the risk of any damage to goods in transit (e.g. United Kingdom, Estonia, Finland, Germany, Hungary, the Netherlands, Slovakia, Sweden).</p> <p>This solution could be viewed as unbalanced insofar as businesses usually have insurances with transporters.</p>
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
	In some countries, the passing of the risk forms an integral part of the law of contracts in national legal systems. The introduction of harmonised rules may require a change to the civil code in a few cases or the introduction of specific rules applicable only to consumer contracts.
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	<p>Views are mixed as to the definition of delivery. 50% of the consumer organisations disagree / strongly disagree with applying as a default rule that delivery would take place when the consumer or a third party indicated by the consumer acquires the material possession of the goods delivery, unless the parties have agreed otherwise. 36% would agree / strongly agree with this rule.</p> <p>On the passing of risk, 79% of the consumer organisations disagree / strongly disagree with letting the risk pass at the time of delivery (if it may be freely defined by mutual agreement between the parties). They note that consumers are often not aware (and not</p>

	<p>made aware in the information provided to them) about the passing of risk, what it means and what the consequences could be.</p>  <table><thead><tr><th></th><th>Strongly disagree</th><th>Disagree</th><th>Neutral</th><th>Agree</th><th>Strongly agree</th></tr></thead><tbody><tr><td>Current definition</td><td>29</td><td>21</td><td>14</td><td>29</td><td>7</td></tr><tr><td>Option 1</td><td>38</td><td>41</td><td>10</td><td>10</td><td>0</td></tr><tr><td>Option 2</td><td>0</td><td>0</td><td>0</td><td>32</td><td>68</td></tr></tbody></table>		Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Current definition	29	21	14	29	7	Option 1	38	41	10	10	0	Option 2	0	0	0	32	68
	Strongly disagree	Disagree	Neutral	Agree	Strongly agree																				
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Option 2	0	0	0	32	68																				
<b>ECCG workshop</b>	<p>The definition of delivery and passing of risk is seen as the most important change (4.86) under consideration.</p> <p>Option 1 was considered to reduce EU protection levels, domestic levels and consumer confidence drastically (scores between -2.4 and -2.5 whereby -3 is the lowest possible score).</p> <p>Delivery should also address the return of goods, as the same issues arise in relation to potential damage caused during transport, the passing of risk, etc.</p> <p>At least in Germany and the Netherlands the risk passes when the consumer acquires material possession of a good. Option 1 would thus reduce the level of consumer protection in these countries.</p>  <table><thead><tr><th></th><th>Score</th></tr></thead><tbody><tr><td>Protection (EU)</td><td>-2.5</td></tr><tr><td>Protection (national)</td><td>-2.4</td></tr><tr><td>Confidence</td><td>-2.5</td></tr></tbody></table>		Score	Protection (EU)	-2.5	Protection (national)	-2.4	Confidence	-2.5																
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<b>Consumer focus group</b>	<p>None of the participants favoured Option 1. All expressed the need to be able to examine the product before bearing the risk of the good (and also considered that a consumer was obliged to instantly check whether a product was conform).</p>																								
<b>Businesses</b>																									
<b>Business survey</b>	<p>Several respondents stressed that the concept of the passing of the risk forms an integral part of the law of obligations in national legal systems and that these should not be changed without any need. Changing the provisions for B2C transactions could also cause discrepancies with B2B transactions.</p> <p>Views are somewhat mixed as to the definition of delivery. 50% would agree / strongly agree with applying as a default rule that</p>																								

	<p>delivery would take place when the consumer or a third party indicated by the consumer acquires the material possession of the goods delivery, unless the parties have agreed otherwise. 30% of the business organisations disagree / strongly disagree with this rule.</p> <p>54% of the business organisations agree / strongly agree with letting the risk pass at the time of delivery (if it may be freely defined by mutual agreement between the parties). 33% however disagrees / strongly disagrees with this proposal.</p>  <table><thead><tr><th></th><th>Strongly disagree</th><th>Disagree</th><th>Neutral</th><th>Agree</th><th>Strongly agree</th></tr></thead><tbody><tr><td>Current definition</td><td>21</td><td>9</td><td>21</td><td>29</td><td>21</td></tr><tr><td>Option 1</td><td>24</td><td>9</td><td>12</td><td>36</td><td>18</td></tr><tr><td>Option 2</td><td>35</td><td>18</td><td>9</td><td>15</td><td>24</td></tr></tbody></table>		Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Current definition	21	9	21	29	21	Option 1	24	9	12	36	18	Option 2	35	18	9	15	24
	Strongly disagree	Disagree	Neutral	Agree	Strongly agree																				
Current definition	21	9	21	29	21																				
Option 1	24	9	12	36	18																				
Option 2	35	18	9	15	24																				
Business workshop	<p>Mixed views among retail and doorstep sellers. Overall, the groups considered the change as relatively important, although not one of the most significant issues.</p> <p>The change was expected to contribute to a minor decrease in the burden.</p> <p>A number of participants expressed concerns, for example in relation to the role of dispatchers in the process of delivery.</p>  <table><thead><tr><th></th><th>Total</th><th>Retail</th><th>Distance</th><th>Doorstep</th></tr></thead><tbody><tr><td>Score</td><td>0.7</td><td>0.8</td><td>0.3</td><td>1.2</td></tr></tbody></table>		Total	Retail	Distance	Doorstep	Score	0.7	0.8	0.3	1.2														
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Business interviews	<p>Interviewees confirmed that delivery was one of the key problem areas, especially in cross-border trade. However, most obstacles mentioned related to logistics (e.g. goods not being delivered or being damaged during transport, uncertainty when delivering goods in other EU Member States) and the costs of delivery (with particularly high costs for cross-border trade).</p> <p>Delivery is therefore mainly a domestic problem: people are not at home at the moment of delivery. Of course this is also a problem when shipping abroad. For cross border trade the biggest challenge is the risk of fraud.</p> <p>Mixed views were expressed. Many believed there is no need to change the current provisions in place concerning the burden of the risk.</p> <p>According to ACSEL, Option 1 is preferable as it reflects the</p>																								

	<p>current situation in France.</p> <p>Companies such as Pixmania accept in practice that delivery takes place (and risk passes) when goods reach the consumer (full responsibility in case of lost parcel). They use a tracking system for each parcel. This is a significant cost borne by businesses.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>Linked to proposal 9.</p> <p>This issue requires determining who is in the best position to ensure the transport of the goods.</p>

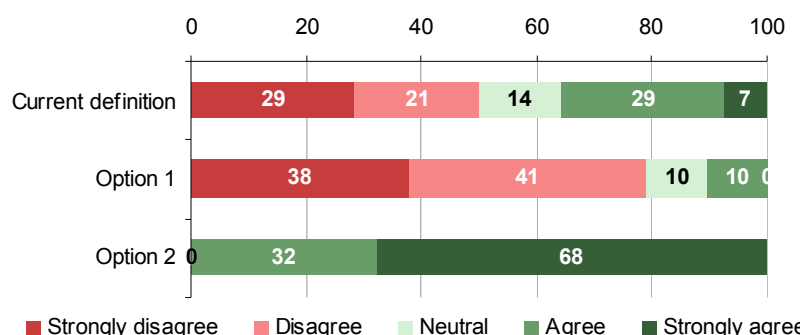
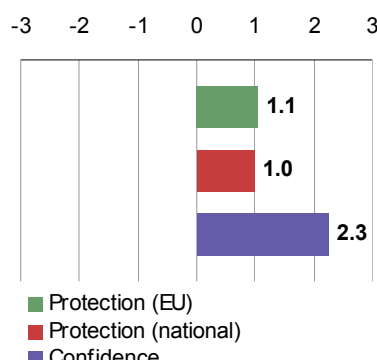
## Option 2

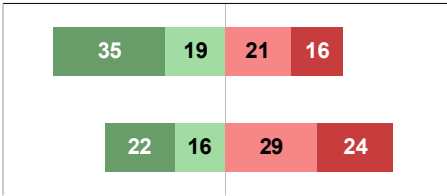
Another option is to provide that the risk shall **always** pass at the time when the consumer or a third party indicated by the consumer (e.g. a neighbour) acquires the material possession of the goods, unless the consumer has failed to take reasonable steps necessary to acquire such a material possession.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+	<p>Harmonisation will improve the functioning of the internal market.</p> <p>Changing the provisions for B2C transactions could cause possible discrepancies with B2B transactions.</p>
<b>Minimising the burden of EU legislation for businesses</b>	0	<p>Minor positive effects arising from uniform rules (but the cumulative effect of all harmonisation steps is substantial).</p> <p>The change could however overall increase the burden for businesses in some Member States not having this definition of passing of risk today, as more resources would need to be invested in ensuring the 'smooth' passing of risk in line with the new requirements (i.e. material possession). However, an exception is provided (i.e. where the consumer has failed to take reasonable steps, for example if he has been negligent in collecting the parcel).</p>
<b>Enhancing consumer confidence</b>	+++	<p>Harmonisation of the rules on delivery and passing of risk could slightly increase consumer confidence (except in distance selling where under Rome I provisions are governed by their respective national law).</p> <p>In Member States where, as a default rule, the risk passes at the time of the conclusion of the contract, the introduction of an EU rule would</p>



		<p>have an impact on consumer confidence, even for cross-border purchases where the consumer travels to buy the goods.</p> <p>Consumers would be better protected as the risk would not be passed until they acquire the material possession of the goods. Full harmonisation may especially increase confidence in cross-border shopping as many problems in cross-border shopping are related to delivery, hence consumers are likely to welcome increased clarity and uniformity.</p>
<b>Improving the quality of legislation</b>	+	The change proposed would improve the quality of consumer protection legislation as it would remove inconsistencies by setting common definitions.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>		<p>In many Member States, the burden on companies would increase as they would carry the risk until the consumer (or a third party indicated by the consumer) would acquire material possession of the goods. Companies would therefore have to make sure that delivery includes the effective ‘handing over’ of a good to a consumer (or a third party indicated by the consumer) so that they no longer carry the risk. This could imply extra costs for monitoring / tracking, arranging specific delivery times, resending goods, using tracking systems, notification systems of receipt etc. Companies such as Pixmania accept in practice that delivery takes place (and risk passes) when goods reach the consumer (full responsibility in case of lost parcel). They use a tracking system for each parcel. This is a cost that is borne by businesses. For such companies already adapted to the passing of the risk at the time the consumer takes material possession of the goods, the legal change would not make a difference.</p> <p>Overall the burden could be diminished if companies contract insurances.</p>
<b>Effects on SMEs</b>		
<b>Effects on consumers</b>		Potential price increase due to increased costs for businesses. Consumers may collectively have to pay a slightly higher price to ensure material possession, rather than a few consumers losing out. The positive effect is that they will not have to bear the risk while the product is outside their control.
<b>Effects on cross-border trade</b>		Minor, but all harmonisation steps together will significantly alleviate the burden on distance sellers imposed upon them by Rome I.
<b>Social effects</b>		
<b>Effects on the level of consumer</b>		The change proposed would improve the level of consumer protection in a number of Member States which have less

protection	protective rules or do not have a definition of delivery and passing of risk.  It would also improve legal certainty for consumers.																								
Environmental effects																									
	Possible increased environmental costs in case of repeat deliveries to ensure material possession of the goods.																								
Public sector administration/enforcement costs																									
	In some countries, the passing of the risk forms an integral part of the law of obligations in national legal systems. The introduction of harmonised rules may require a change of the civil code in a few cases or the introduction of specific rules applicable only to consumer contracts.																								
Stakeholder views																									
Consumers																									
Consumer organisations survey	<p>All consumer organisations that expressed a view agreed / strongly agreed with the proposal that, no matter how the delivery is defined, the risk shall not pass to the consumer before he acquires the material possession of the goods.</p> <p>One respondent stressed that businesses took most of the risk but that they could insure risky situations (delivery of damaged goods, etc), whilst the consumer did not have such a possibility. Many sellers these days deliver the goods to third parties (e.g. to a neighbour) if the contracting consumer is not at home at the moment of the delivery, even if the consumer did not specifically agree with that.</p>  <table><thead><tr><th></th><th>Strongly disagree</th><th>Disagree</th><th>Neutral</th><th>Agree</th><th>Strongly agree</th></tr></thead><tbody><tr><td>Current definition</td><td>29</td><td>21</td><td>14</td><td>29</td><td>7</td></tr><tr><td>Option 1</td><td>38</td><td>41</td><td>10</td><td>10</td><td>0</td></tr><tr><td>Option 2</td><td>0</td><td>0</td><td>0</td><td>32</td><td>68</td></tr></tbody></table>		Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Current definition	29	21	14	29	7	Option 1	38	41	10	10	0	Option 2	0	0	0	32	68
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ECCG workshop	<p>Seen as the most important change (4.86). The reception was positive, especially as regards of an anticipated increase in consumer confidence (with 2.3 out of a possible 3).The moment of physical reception should count as the moment in which the risk passes. Euro Coop mentioned that this would be the only viable</p>  <table><thead><tr><th></th><th>Score</th></tr></thead><tbody><tr><td>Protection (EU)</td><td>1.1</td></tr><tr><td>Protection (national)</td><td>1.0</td></tr><tr><td>Confidence</td><td>2.3</td></tr></tbody></table>		Score	Protection (EU)	1.1	Protection (national)	1.0	Confidence	2.3																
	Score																								
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	<p>solution offering protection to the consumer and ensuring a balance between the latter and businesses.</p> <p>The German and Dutch representatives confirmed that Option 2 was already part of their national law.</p>															
<b>Consumer focus group</b>	<p>All participants preferred the second option which envisaged that the risk would always pass at the time when the consumer acquires the material possession of the goods, and that such a provision could influence the extent to which they purchased goods in other EU countries. All expressed the need to be able to examine the product before bearing the risk of the good (and also considered that a consumer was obliged to instantly check whether a product was conform).</p>															
<b>Businesses</b>																
<b>Eurobarometer</b>	<p>Obstacles to cross-border trading: f) Differences in the definition of delivery</p> <div><div><div>Trading cross-border</div><div>Not trading cross-border</div></div><div><table><thead><tr><th>Category</th><th>Not at all an obstacle</th><th>Not an important obstacle</th><th>Fairly important obstacle</th><th>Very important obstacle</th></tr></thead><tbody><tr><td>Trading cross-border</td><td>35</td><td>19</td><td>21</td><td>16</td></tr><tr><td>Not trading cross-border</td><td>22</td><td>16</td><td>29</td><td>24</td></tr></tbody></table></div></div>	Category	Not at all an obstacle	Not an important obstacle	Fairly important obstacle	Very important obstacle	Trading cross-border	35	19	21	16	Not trading cross-border	22	16	29	24
Category	Not at all an obstacle	Not an important obstacle	Fairly important obstacle	Very important obstacle												
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Not trading cross-border	22	16	29	24												
<b>Business survey</b>	<p>Several respondents stressed that the concept of the passing of the risk formed an integral part of the law of obligations in national legal systems and that these should not be changed without any need. Changing the provisions for B2C transactions could also cause discrepancies with B2B transactions.</p> <p>Views on the option are rather mixed: 53% of the business organisations disagree / strongly disagree with the proposal that, no matter how the delivery is defined, the risk shall not pass to the consumer before he acquires the material possession of the goods. Another 39%, however, agree / strongly agree with the proposal.</p>															

	<div><div><div>020406080100</div><div><div>Current definition</div><div>219212921</div></div><div><div>Option 1</div><div>249123618</div></div><div><div>Option 2</div><div>351891524</div></div></div><div><div>Strongly disagree</div><div>Disagree</div><div>Neutral</div><div>Agree</div><div>Strongly agree</div></div></div>
<div>Business workshop</div>	<div><div>Mixed views in all groups</div><div><div>All groups see it as relatively important, though not one of the most significant issues.</div><div>The impact of this option on the burden seemed less obvious, considering that about one third of distance and doorstep selling representatives did not provide a rating. Among participants who rated the option, the impact was considered to be an increase of the burden for retail and direct selling representatives (-0.8 and -1.7 respectively), whereas distance sellers expected a slight decrease (a score of 0.3).</div><div>Direct sellers in particular largely rejected option 2. Participants remarked that the idea of “material possession” is something you can never really agree upon (e.g. consumers not being at home whereas an appointment was fixed etc)</div></div><div><div><div>-3-2-10123</div><div><div><div>-0.6</div><div>-0.8</div><div>0.3</div><div>-1.7</div></div><div><div>Total</div><div>Retail</div><div>Distance</div><div>Doorstep</div></div></div></div></div></div>
<div>Business interviews</div>	<div><div>Delivery is a big issue especially for distance sellers. For example, according to Royal mail 80% of UK household are not at home from 8 to 5 on week days. This entails problems of late pick up of the goods, damaged goods, theft, or redelivery at the expense of the retailer.</div><div>A key issue for Amazon is to have an efficient tracking system providing that the product has been delivered when it is a high value product. Tracking systems are not as accurate when trading cross-border.</div></div>

	Interviewees confirmed that delivery was one of the key problem areas, especially in cross-border trade. However, most obstacles mentioned related to logistics (e.g. goods not being delivered or being damaged during transport, uncertainty when delivering goods in other EU Member States) and the costs of delivery (with particularly high costs for cross-border trade).
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>Linked to proposal 9.</p> <p>This issue requires determining who is in the best position to ensure the transport of the goods.</p>

## Definition of "distance contract"

### *Problem*

According to the current definition, 'distance contract' means *“any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service-provision scheme run by the supplier, who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded”*. This had led to different interpretations and incomplete coverage in Member States (some considering that the entire process of ordering, negotiating and contracting have to take place through distance channels).

In addition, the application of the Distance Selling Directive could be circumvented if the "scheme" was not run by the supplier (for example by an on-line platform or any other third party) or if it was not an "organised" scheme. Furthermore, uncertainties arose as to whether contracts negotiated off-premises but concluded by means of distance communication fell within the scope of the Distance Selling directive or that of the Doorstep Selling Directive.

### *Transposition of the definition of distance contract*

<b>Transposition of the definition</b>	<b>Member States (EU 25)</b>
Definition as in the Directive	Austria, Belgium, Cyprus, Denmark, France, Germany, Ireland, Italy, Luxembourg, Malta, Portugal, Slovenia, United Kingdom (13)
Slight variations (e.g. terms used)	Greece, Finland, Netherlands Poland, Spain, Sweden (6)
Condition that supplier must have made an offer or a proposal to the consumer to make an offer	Estonia, Latvia (2)
No implementation of the – restrictive – precondition that the contract must be concluded “under an organised distance sales or service-provision scheme”	Czech Republic, Hungary, Latvia, Lithuania and Slovakia (5)

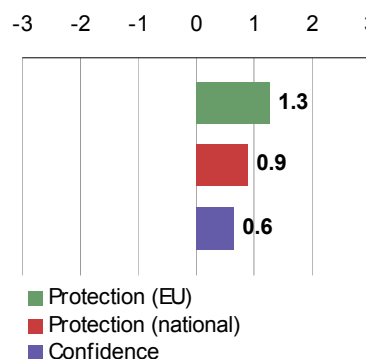
## ***Solution proposed***

Introduction of the following definition:

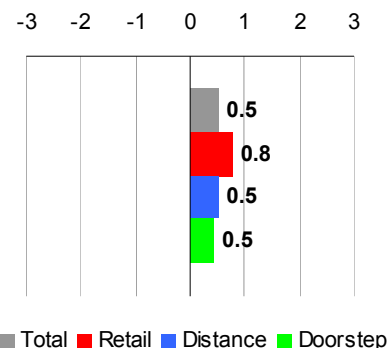
*“Any sales or services contract where the trader, for the conclusion of the contract, makes exclusive use of one or more means of distance communication”*

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+	A harmonised definition could reduce the burden for cross-border trade, for distance sellers in particular.
<b>Minimising the burden of EU legislation for businesses</b>	+	Single definition will increase legal certainty but in some Member States the definition will cover traders previously exempted.
<b>Enhancing consumer confidence</b>	+	Consumer confidence slightly enhanced as in many countries the scope of application of the Directive will be extended and loopholes will be closed.
<b>Improving the quality of legislation</b>	++	Current definition created loopholes exploited by rogue traders to circumvent definition. New definition closes these loopholes.  Symmetric approach to all definitions: together the three definitions (on-premises, off-premises and distance selling contracts) cover all selling methods.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	Additional costs for traders who only use distance selling occasionally or for very specific purposes and who were exempted as they did not fall under an organised scheme. The proposed definition would include all distance sales. However, all distance traders will be subject to equal market conditions.  Five member states had not implemented the – restrictive – precondition that the contract must be concluded “under an organised distance sales or service-provision scheme”. Consequently, such member states had already extended the scope of application of their distance selling laws to contracts concluded without such a system, e.g. cases where the supplier uses means of distance communication merely exceptionally for the conclusion of a contract.	
<b>Effects on SMEs</b>		
<b>Effects on consumers</b>		

<b>Effects on cross-border trade</b>	
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>The new definition will increase consumer protection by closing loopholes in particular when the organised scheme is not run by the supplier but by a third party such as an online platform. The fact that the old definition referred to the ‘organised schemes’, hence not including ad-hoc purchases, enabled enterprises to circumvent the definition. Currently only 5 Member States clearly extended the scope of application of distance selling to contracts concluded without such as scheme.</p>
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	n/a
<b>ECCG workshop</b>	<p>Considered only somewhat significant (3.71)</p> <p>Overall the new definition is expected to increase slightly consumer protection (a fair positive impact is anticipated as regards of the impact at EU level, with a score of 1.3 out of 3) and confidence (0.6).</p> <p>Participants noted that the notion of ‘exclusive use’ could still be confusing and could affect the law.</p>
<b>Consumer focus group</b>	
<b>Businesses</b>	
<b>Business survey</b>	



<b>Business workshop</b>	<p>Proposed change not considered significant by either group.</p> <p>The impact of the option proposed was anticipated to have a rather positive impact (reducing the burden slightly, with scores between 0.5 and 0.8). Overall, the change had a relatively low significance.</p> <p>Almost one third of retail and doorstep selling representatives did not express their views.</p> <p>A German representative mentioned that traders who only use distance selling occasionally or for very specific purposes were exempted as they did not fall under an organised scheme. It seems that the new definition would include all distance sales instead.</p> <p>One participant raised the issue of the confusing mixture of distance sales and in store sales. The use of a "reservation system" to circumvent the directive by claiming that no contract has been concluded until the consumer comes collecting the reserved good, will become more common for all kinds of products.</p>
<b>Business interviews</b>	<p>One direct seller emphasised that losing the loophole will be achieved at EU level by defining distance contracts as contracts that are (only) concluded via means of distant communication, irrespective of the nature of the offer and negotiation phase.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>The means of sale are becoming more and more hybrid; these mixed sales should be clearly covered by one type of contract (e.g. if an item is ordered online but picked up from the store, when is the contract effectively completed?). Issue is also linked to proposal 6.</p>





## **Definition of "off premises contract"**

### ***Problem***

At present, the scope of the Doorstep Selling Directive is basically limited to contracts concluded and to binding / non-binding offers made by a consumer in two situations: 1) during an excursion organised by the trader away from his business premises; or 2) during an "unsolicited visit" by the trader to the consumer's home or to that of another consumer or to the consumer's place of work.

The Doorstep Selling Directive foresees a certain number of exemptions: when the goods or services for which the visit was requested are not those eventually sold, the Directive grants a withdrawal right only if the consumer did not know, or could not reasonably have known, that the supply of those other goods or services formed part of the trader's commercial or professional activities, unless the goods or services eventually sold have a direct connection with the goods or services concerning which the consumer requested the visit of the trader.

This complex definition of "unsolicited" off-premises contracts, combined with unclear exemptions, tends to confuse businesses, consumers and enforcement bodies. It is often difficult to find out whether or not the consumer knew or should have known that certain products formed part of the trader's commercial activities or to establish the "direct connection" between the goods requested and those eventually sold. Protecting the consumer only in the case of "unsolicited" off premises transactions often leads to malpractices. There is evidence from those Member States where "solicited" transactions are exempted from consumer protection legislation, that vulnerable consumers are unreasonably denied a right of withdrawal, because "unsolicited" visits of sellers have been converted into "solicited" visits (e.g. in the UK).

The distinction between "solicited" and "unsolicited" sales and the related exemptions have also led to diverging implementation at national level. Some Member States have extended the protection of the Directive to all types of solicited visits which, according to some stakeholders, have become more and more common over the last few years (e.g. in France, Italy, Latvia and Poland the protective provisions also apply to visits taking place at the express request of the consumer).

Lastly, some off-premises contracts do not fall within the scope of the Doorstep Selling Directive since off-premises transactions do not necessarily occur on the occasion of an "excursion" or a "visit" *stricto sensu*. Despite the fact that the decisive negotiations have taken place off-premises, a contract can be concluded for example on business premises.

Several Member States have extended the protection of the Directive to other situations. For instance, certain Member States felt that contracts which were entered into in certain public places (e.g. in the street, at fairs) require similar protection to that offered by the Directive and introduced provisions to this effect. Similarly, some Member States have extended protection to contracts negotiated in a doorstep situation but concluded subsequently on business premises.

### *Exemption of solicited visits*

Exemption for solicited visits				No exemption for solicited visits
If goods for which visit was requested are <i>not</i> those eventually sold:				
Exemption without further conditions	Exemption if consumer should have known that other goods were likely to be offered by trader	Exemption if other goods have a direct connection with goods for which visit was requested	In this case, no exemption	
Austria Czech Republic Hungary Netherlands Spain	Bulgaria Cyprus Estonia Germany Greece Ireland Portugal Romania Slovenia United Kingdom	Germany Slovakia Sweden	Belgium Denmark Finland Lithuania Malta	France Italy Latvia Luxembourg Poland

### *Problems encountered by consumers*

As a result of changes in the marketplace over the last 20 years, most off-premises contracts are no longer concluded via unsolicited visits and most consumer complaints relate therefore to some kind of "solicited" visits where the consumer finding himself under pressure or unable to compare competing offers, may be affected in a similar way.

Solicited visits give rise to the great majority of complaints (between February and October 2007, according to the OFT in the UK, there were 6,800 complaints relating to unsolicited transactions and 32,000 complaints relating to solicited transactions).

Today most off-premises contracts can rarely be classified as unsolicited visits. The distinction is often blurred. Multi-level marketing ("MLMs") companies working on the basis of networking, home-parties, traditional doorstep sellers who call before visiting the consumer to seek their prior approval, do not clearly conclude/negotiate contracts as a result of an unsolicited visit. New methods of sale include home-parties, social networking (sales between friends and family members in multi-level marketing schemes), mutually agreed appointments at consumer's home as well as fake solicited visits.

The Citizens Advice Bureaux report (2002) highlighted that doorstep selling is an area where unfair trading practices thrive. In 2002 there had been a significant increase in the number of evidence reports received expressing concerns about experiences with sales conducted in the home. Some traders have recourse to unfair or even illegal practices to prevent consumers from exercising their rights (e.g. the contract is negotiated at the consumer's home but is later concluded in a shop where the consumer is taken by the trader).

The survey also showed that consumers had some difficulty in making the distinction between solicited and unsolicited visits in accordance with the legal definition. Being asked whether a visit arranged following a cold call by telephone would be solicited or unsolicited, 66 per cent incorrectly identified it as solicited. A fairly consistent seven to ten per cent of all consumers surveyed on a number of examples given, indicated they didn't know when a visit was solicited.

A comparison between complaints in the UK (32,000 complaints relating to solicited transactions) and complaints in France where the doorstep selling rules apply to solicited visits and where loopholes are closed (the last DGCCRF barometer of complaints of February 2008 shows a very small number of complaints in the doorstep selling which only accounts for 3.1% of consumer complaints as opposed to over 40% for distance selling and 1.4% for fairs) indicates that extension of the doorstep selling regulations to solicited visits can greatly reduce consumer complaints.

Extracts from the official response by the UK government (Department for Business Enterprise and Regulatory Reform (BERR) of 18.12.2007 on the doorstep selling consultation: "Based on a strong evidence-base from Citizens Advice and OFT, we decided to legislate to extend consumer protection in the UK. Provided that there is evidence across the EU, similar to that in the UK, we believe that in order to improve legal certainty and consumer protection across the Community the Directive should be extended in general to all contracts concluded away from business premises. In the UK we are preparing legislation (planned commencement date October 2008) to extend to solicited visits the cancellation rights and cooling-off period which currently apply to unsolicited visits by a trader. The findings from OFT's 2004 report showed that "more complaints are made about the doorstep sale of high value products than of any other, usually involving pressure selling, and the majority of these are made during solicited visits". OFT evidence suggests that there is no difference between unsolicited and solicited visits in terms of the need for cooling off periods as it is the "in home" situation that affects the psychology of the consumer. Data from the OFT's Consumer Direct complaints database showed that between February 2007 and October 2007 there were 6800 complaints relating to unsolicited doorstep selling transactions, and 32,000 complaints relating to solicited transactions. These figures suggest that solicited visits result in a proportionately larger number of complaints compared to unsolicited visits because of the lack of cancellation rights for consumers. Having the same rights for both unsolicited and solicited transactions would prevent rogue traders exploiting the different treatment to avoid the need to provide a cooling off period and cancellation rights. It would also keep the law simple for consumers, business and enforcement agencies by minimising the need to differentiate between unsolicited and solicited transactions."

### ***Solution proposed***

Introduction of a broad and relatively simple definition of "off premises contracts" based on two key elements: (1) negotiation / conclusion of the contract away from business premises, with (2) the trader's and the consumer's simultaneous physical presence.

The suggested definition does not use the notion of "solicitation" which has led to fragmentation and circumventions. Moreover, in order to close an important loophole in EU law, the proposed definition focuses not only on the circumstances of the conclusion of the contract but also on the circumstances of its negotiation: e.g. consumers would have the right to withdraw from a contract signed on business premises which has been initiated by negotiations between the trader and the consumer off premises. Today's definition has several loopholes since it only mentions excursions, visits to the consumer's home or to that of

another consumer or place of work. It does not include the trader's home (for home parties for example), sales in streets, temporary business premises (such as hotels rented by a trader) and contracts concluded in a shop following a negotiation at the consumer's home.

The new proposed definition which does not make a distinction between solicited and unsolicited visits specifies that the contract is concluded or negotiated away from business premises which will be defined and supplemented by examples in a Recital ('business premises'<sup>28</sup> means any immovable or movable retail premises, including seasonal retail premises, where the trader permanently carries on his activity, as well as market stalls and fair stands where the trader carries on his activity on a regular or temporary basis). Not specifying the place where the contract is concluded or negotiated allows the definition to be future-proof and to deal with all possible situations away from permanent business premises, hence avoiding circumventions. The definition also extends to contracts negotiated at doorstep but concluded in a shop in order to avoid circumventions. It also includes temporary business premises such as hotels rented by doorstep sellers and public spaces (such as sales in streets or near supermarkets for example). The broad definition would be:

- *Any sales or services contract concluded away from permanent business premises with the simultaneous physical presence of the trader and the consumer or*
- *Any sales or services contract, concluded on business premises but negotiated with a view to its conclusion away from permanent business premises, with the simultaneous physical presence of the trader and the consumer.*

This definition would explicitly exclude markets and fairs. The distinction between distance and off-premises contracts would be more clear-cut thanks to the requirement of the trader's and the consumer's simultaneous physical presence.

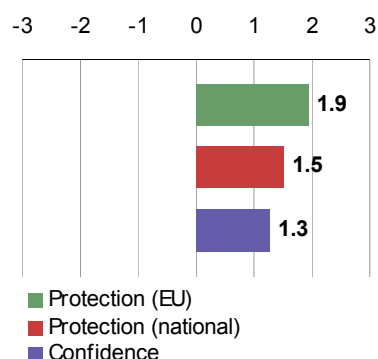
Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	++	<p>Harmonisation and simplification of the regulatory framework will make it easier for direct sellers to conclude cross-border contracts in specific geographical areas which have such a potential (e.g. Luxembourg-Belgium-Netherlands-France-Germany; Germany-Austria-Hungary; Czech Rep-Slovakia).</p> <p>The proposal also closes the current loopholes for rogue traders circumventing the application of both direct and distance selling directives, ensuring fair market conditions and competition.</p>

<sup>28</sup> Recital to be included: "Business premises include premises in whatever form (such as shops or lorries) which serve as a permanent place of business for the trader. Market stalls and fair stands should be treated as business premises even though they may be used by the trader on a temporary basis. Other premises which are rented for a short time only and where the trader is not established (such as hotels, restaurants, conference centres, cinemas rented by traders who are not established there) should not be regarded as business premises. Similarly, all public spaces including public transports or facilities as well as private homes or workplaces should not be regarded as business premises.

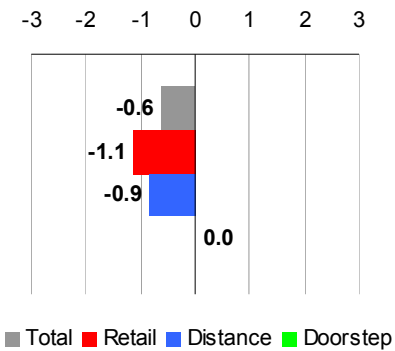
<b>Minimising the burden of EU legislation for businesses</b>	+	<p>Clarifications as to which situations fall under the scope of the Directive would reduce the burden for doorstep sellers.</p> <p>The additional burden for businesses due to the inclusion of solicited visits will be minimal since all the industry's codes of conduct already include solicited visits and some national laws have already extended the scope of the direct selling regulations to solicited visits. Some businesses not covered by the withdrawal right today will however fall within the scope of the new legislation.</p>
<b>Enhancing consumer confidence</b>	+++	<p>Increasing confidence significantly as potential loopholes will be closed. Broader scope of definition also includes a broader range of situations where consumers will be protected (e.g. 'fake' solicited visits which give rise to great majority of complaints)</p>
<b>Improving the quality of legislation</b>	+++	<p>Simplification of the definition which would cover all possible situations and would close loopholes (e.g. a contract negotiated at the consumer's home but that is later concluded in a shop where the consumer is taken by the trader).</p> <p>The definition will also put an end to uncertainties as to whether distance selling regulations or doorstep selling regulations apply in certain cases: indeed, in combination with the definition of "distance contract", the definition of off premises contracts clarifies the situation of "repeat transactions". This issue is only relevant for certain direct sellers who combine direct selling for the first order with distance selling for the recurrent orders of the same or similar products.</p> <p>It would also greatly simplify the issue whether "home parties" are covered: home parties are considered to be solicited sales in some countries but can be regarded as unsolicited sales in other countries, depending on the way the party is organised and the invitation is made.</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<ul style="list-style-type: none"> <li>- A likely reduction of costs for businesses because of the simplification and harmonisation of the regulatory framework in the EU. Reduction in the fragmentation of legislation, in particular for crossborder solicited visits as exemptions may be partial in various ways or not applicable at all from one Member State to the other.</li> <li>- Possible reduction of costs if the definitions of distance and</li> </ul>	

	<p>off-premises contracts clarify the situation of “repeat transactions” (which is only relevant for certain direct sellers (multi-level marketing schemes) who combine direct selling for the first order with distance selling for the recurrent orders of the same product; usually cosmetics) regarding which regulation applies. - Since all existing codes of conduct of the direct selling industry do not make any distinction between solicited and non-solicited visits, the increase in costs to businesses is likely to be minimal if the distinction between “solicited” and “unsolicited visits” is not included in the definition anymore. Moreover, this minimal increase will only occur in countries where some solicited visits are currently exempted.</p> <p>- The abolition of the distinction between solicited and unsolicited visits could have potential costs for professions such as craftsmen providing home repairs currently excluded from the Directive in certain countries (e.g. Germany). An exemption would need to be drafted to address the issue of craftsmen to avoid circumvention by doorstep craftsmen but in a very restrictive manner. A significant number of complaints relate to craftsmen (e.g. in the UK, France or Scandinavia) who propose expensive renovation works at doorstep (roof repair, double glazing, painting etc.) in particular to the elderly.</p> <p>- Exemptions would need to be introduced to deal with certain specific situations (e.g. emergency services, certain craftsmen services, foodstuffs and beverages by regular roundsmen, home-delivery scheme by supermarkets) as there would otherwise be a negative effect on business in these areas.</p>
<b>Effects on SMEs</b>	
<b>Effects on consumers</b>	
<b>Effects on cross-border trade</b>	A harmonised definition could reduce the burden for cross-border trade for doorstep sellers.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>- Increase in consumer protection: current loopholes for traders not being covered by any of the direct or distance selling directives are effectively being closed. It is an increase in consumer protection as it makes things more difficult for rogue traders. Currently some Member States cover contracts concluded inside business premises but initiated in a doorstep situation before (e.g. Austria, Poland, Germany, France). The new rule would generalize this protection to all consumers.</p> <p>- Inclusion of solicited visits would significantly increase consumer protection in countries where solicited visits are currently excluded (currently no exemption for solicited visits in France, Italy, Latvia, Luxembourg, Poland). OFT survey showed that the great majority of complaints relate to allegedly solicited visits (e.g. difficulty for consumers to prove that the visit was unsolicited). Consumers are also often as likely to</p>

	<p>regret a purchase made at a solicited visit as at an unsolicited visit. OFT evidence suggests that there should be no difference between unsolicited and solicited visits in terms of the need for cooling-off periods as it is the "in home" situation that affects the behaviour of the consumer.</p> <p>- Issue of fairs: common problem with consumers complaining about contracts made at fairs (free time' situation/ risk of impulsive buying/ pressure situations/ one-time offer). Specific rules for contracts concluded at fairs are contained in Belgian and Slovenian law (e.g. in Belgium the trader and his representatives need to be licensed).</p> <p>- If fairs are exempted from the Directive, fair organisers should have at least some liability, or at least 'the duty of care' to make sure that there are no rogue traders at their fairs.</p>
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	n/a
<b>ECCG workshop</b>	<p>Seen as relatively significant (4.14)</p> <p>The level of protection in the EU is expected to be quite significantly increased (relatively strong positive impact expected, scoring 1.9 out of a possible 3).</p> <p>The issue of fairs was discussed at length, as there is an element of pressure and it is a growing phenomenon. If we wish to improve the internal market, covering fairs would also increase the confidence of consumers especially when they are in another country.</p>
<b>Consumer focus group</b>	n/a
<b>Businesses</b>	
<b>Business survey</b>	



<b>Business workshop</b>	<p>Mixed views, especially amongst retailers and doorstep sellers</p> <p>Not significant for retailers and distances sellers, but the most significant (with 4.75) for direct sellers. They anticipated a considerable negative impact (-1.1 and – 0.9 respectively).</p> <p>The change was of very high significance for direct sellers, who also rated the current burden as being relatively high. Overall, they estimated that the impact of the proposed change would have no notable effect on the current burden.</p> <p>The group discussion mainly focused on the issue of solicited and unsolicited visits. The German craft association expressed its concern at the possible inclusion of craftsmen solicited by consumers to provide home repairs or improvements, and the potential costs of the change. Direct Selling Europe was in favour of keeping the distinction between solicited and unsolicited visits, on the ground that the justification for the withdrawal right is the "surprise" element. AVEDISCO noted that no difference is made between solicited and unsolicited visits in Italy.</p>
<b>Business interviews</b>	<p>Interviewees emphasised the need for exemptions: situations such as markets should not be included.</p> <p>- FVD: the definition must include <i>negotiations carried out in the consumer home</i>, with the presence of the seller, even if the contract is consequently concluded in a location not covered by the Directive. No distinction should be made between solicited/unsolicited. This distinction is very difficult to make in practice, and consumers should benefit from protection anyway.</p>





	<ul style="list-style-type: none"> <li>- FEDSA: solicited visits should be subject to different policy considerations from those applicable to unsolicited visits (e.g. be excluded from the scope of the right of withdrawal). However they could accept this definition under the caveat that direct selling law is fully harmonised.</li> <li>- Amway (key member of FEDSA): The distinction between solicited and unsolicited visits is irrelevant and should be abolished. Unsolicited visits are getting rare, and current legislation only encourages rogue traders. Generally, regulations on distance sales, sales at business premises, fairs, etc. could be better aligned in a wide range of topics.</li> <li>- Vorwerk: the proposed definition closes all the loopholes effectively. The distinction between solicited and unsolicited visit should be dropped. Exemptions can be made, e.g. regarding markets, fairs or craftsmen, whereas it would be overly burdensome for the trader to grant the consumer with a right of withdrawal.</li> </ul>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>Exemptions should be foreseen where the right of withdrawal is not appropriate.</p> <p>Harmonising as much as possible the provisions across different types of contracts would ensure legal certainty and consumer protection (linked to proposals 8, 9, 10, 11 and 12).</p>

## Setting the length of the withdrawal period

### *Problem*

Under EU law, consumers may cancel sales contracts or service contracts concluded at a distance or away from business premises within a given period, with no penalties and without stating a reason. This period is called the ‘cooling-off’ or withdrawal period, which is set at a minimum of seven days/working days but varies from one EU country to the other (between seven and 15 days). The computation of the withdrawal period varies across Directives. Whereas the Distance Directive mentions ‘working’ days, the Doorstep Selling Directive simply mentions ‘days’.

Also, some Member States use the notion of working days while others use calendar days. The tables below provide an overview of the variances.

### **Length of the withdrawal period - Distance selling**

<b>Number of days</b>	<b>Member States (EU25)</b>
15 calendar days	Malta, Slovenia (2)
14 calendar days	Czech Republic, Cyprus, Denmark, Estonia, Finland, Germany, Latvia, Portugal, Sweden (9)
10 working days	Greece, Italy (2)
10 calendar days	Poland (1)

8 working days	Hungary (1)
7 working days	Austria, Belgium, France, Ireland, Lithuania, Luxembourg, Netherlands, Slovakia, Spain, UK (10)

#### **Length of the withdrawal period – Doorstep selling**

<b>Number of days</b>	<b>Member States (EU25)</b>
15 calendar days	Malta, Slovenia (2)
14 calendar days	Cyprus, Denmark, Estonia, Finland, Germany, Latvia, Portugal, Sweden (8)
10 working days	Greece, Italy (2)
10 calendar days	Poland (1)
One week	Austria (1)
8 working days	Hungary (1)
8 calendar days	Netherland (1)
7 working days	Belgium, Lithuania, Luxembourg, Slovakia, UK (5)
7 calendar days	Czech Republic, Ireland, France, Spain (4)

#### ***Problems encountered by consumers***

The third annual E-commerce report published by the ECC Network shows that even though on a significant number of websites, the existence of the consumer's right to withdraw was expressed; this right was frequently hampered by restrictions. The most frequent modification of the consumer's right of withdrawal by the supplier on his website was the shortening of the cooling-off period. Out of 262 operators on the Internet who were tested in the study carried out by the ECC Network, 32% did not comply with the cooling-off period of the national regulations.

#### ***Solution proposed***

##### Option 1

A first option is to set 14 calendar days for distance and doorstep contracts (like in the Timeshare proposal).

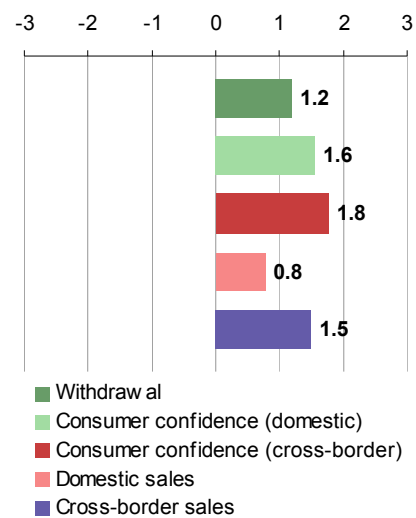
<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	++	Positive effect on the propensity of businesses, in particular SMEs to engage in cross-border transactions can be expected due to harmonisation.

		No perceivable changes to competition and prices are anticipated.
<b>Minimising the burden of EU legislation for businesses</b>	+	<p>Minor positive effects (lower costs of returns management, less administrative check, lower legal costs in relation to monitoring MS legislation) arising from uniform rules for distance selling and possibly for some doorstep selling companies operating cross-border (but the cumulative effect of all harmonisation steps is substantial).</p> <p>The burden on companies in Member States currently employing shorter cooling-off periods will increase.</p>
<b>Enhancing consumer confidence</b>	+++	<p>In at least 12 Member States the length of the cooling-off period would be increased, which could contribute an increase in consumer protection and to a significant increase in consumer confidence.</p> <p>Indirectly, a full harmonisation of national consumer protection frameworks may also increase the overall confidence of consumers in cross-border shopping.</p>
<b>Improving the quality of legislation</b>	++	<p>The change proposed would improve the quality of consumer protection legislation as it would remove inconsistencies by setting a single period in the EU for different types of contracts. The 14 days period is also used in a number of other Directives.</p> <p>Increased legal certainty for both businesses and consumers as a result of applying the same length across the EU.</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>Current withdrawal rates are up to 10% overall, but most often between 2 – 5%. Costs in relation to return management (including repackaging, reprocessing, damages) are relatively high, representing around 2-5% of the total operating costs of companies. In Germany, the rate of returns (resulting from the legal right to withdraw and from commercial practices) has been steadily increasing from 24.2% (in terms of value) in 1998 to 30.2% in 2002, corresponding to a total increase of 25%, i.e. 5.5% per annum (according to the German Retail Federation). Costly investments to modernise return systems, leading to lower costs per unit, are eaten up by the increasing return rates.</p> <p>The probability of withdrawal will not change much (although FVD estimated that it would go up by 3-4% based on estimates in the evolution of withdrawal rates per day in the cooling-off period). One business survey respondent indicates that 60% of withdrawals occur in the first 6 days. Many German e-Bay sellers stated that the length of the withdrawal period has little or only medium impact on the number of returns (citing for example that</p>	

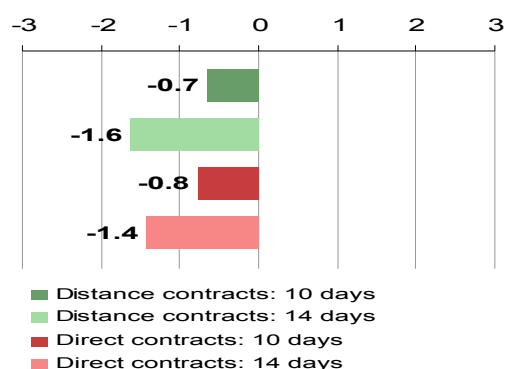
	<p>even the forced extension for sales on eBay.de to one month, for legal reasons, did not significantly increase the number of returns).</p> <p>Probability of goods used/damaged during a longer withdrawal period may slightly increase – traders will have to take the goods back but could charge consumers for the use/damage (see also proposal 11).</p> <p>Delivery of certain goods in the direct selling sector will be delayed (if start of the period is the conclusion of the contract, see proposal 9.2), which may make it more attractive to consumers to purchase through other channels (e.g. retail). For highvalue goods, which are usually not delivered before the end of the withdrawal period, the impact could be important.</p> <p>Losses to service providers may increase (proposal 10. says no charges for services in the withdrawal period)</p> <p>Beneficial effects of harmonisation: reduces costs to businesses engaged in cross border trade (Rome I) – monitoring of legislation, taking account of different withdrawal periods in return management, etc. Simplification also arising from the fact that 14 days is also used in a number of other sectors.</p> <p>Considering that 95% of the large distance sellers already offer far more than the legal maximum in each Member States, the costs will not be substantial.</p>
<b>Effects on SMEs</b>	The effects on SMEs will not differ from the overall effects on traders. However, one effect of having one period is to prohibit Member States to add longer periods. The positive effect might be stronger for SMEs who are not well-informed on the different periods in place in the EU.
<b>Effects on consumers</b>	The level of consumer protection will be increased in a number of MS. A perceivable general increase in the withdrawal rate is however not anticipated.
<b>Effects on cross-border trade</b>	Minor, but all harmonisation steps together will significantly alleviate the burden on distance sellers imposed by Rome I upon them.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>The proposed 14 calendar days are longer or equally long as the current standards in all Member States, except Slovenia and Malta, where the current length set by national legislation is 15 calendar days. The proposal would be an effective extension of the cooling off period in at least 12 Member States, and would not result in any change in 9 Member States.<sup>29</sup></p> <p>However, the additional days to the cooling-off period are generally not considered to be of key importance for consumers, they rather serve convenience purposes.</p>

<sup>29</sup> Romania and Bulgaria not included

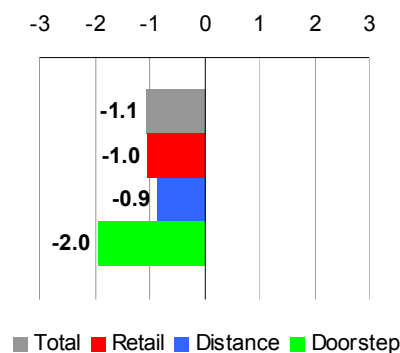
Environmental effects	
	<p>Prolonged cooling off periods could lead to an increase in distance sales which would have a negative environmental effect due to increase in transports. It would also increase re-packaging which, according to an IMRG report, is the single largest category of municipal solid waste.</p>
Public sector administration/enforcement costs	
Stakeholder views	
Consumers	
<p><b>Consumer organisations survey</b></p>	<p>Consumer organisations estimated that a common period of 14 days for doorstep and distance selling would overall have a significant positive impact on the consumers' ability to exercise their right of withdrawal (an average positive score of 1.2 out of 3).</p> <p>Positive impacts expected mainly related to the confidence of consumers in making domestic and cross-border purchases (1.8) and total cross-border sales (1.5). It was also expected that the legislative change proposed would increase the numbers of consumers exercising their right of withdrawal.</p> <p>Many emphasise that the effects of any changes to the length of the withdrawal period would be strongly dependent on how the beginning of the withdrawal period would be regulated.</p>



ECCG workshop	<p>The consumer organisations considered the legislative change as very significant (4.29 points out of 5).</p> <p>Setting a common cooling-off period of 14 days would increase the level of consumer protection in the EU (1.5), but not necessarily in all Member States. It would also considerably increase consumer confidence (1.9).</p>	<div><div><div>-3</div><div>-2</div><div>-1</div><div>0</div><div>1</div><div>2</div><div>3</div></div><div><div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div><div></div><div></div><div></div></div></div><div><div>Protection (EU)</div><div>Protection (national)</div><div>Confidence</div></div></div>
Consumer group focus	<p>Consumers are often aware that cooling-off periods vary between Member States. Fourteen days seemed reasonable (the current period in Belgium is seven working days) and the use of calendar days would avoid confusion in relation to public holidays, etc. The discussions showed that the group considered that, even though usually a consumer is able to reach a decision to withdraw or not quite fast, it is important to maintain a high number of days which would mean upwards harmonisation for many Member States rather than going for the lowest common denominator. The vast majority considered that it would increase their confidence in cross-border shopping.</p>	
Businesses		
Eurobarometer	<p>Obstacles to cross-border trading: a) Differences in the length of cooling-off periods</p> <div><div><div>Trading cross-border</div><div>Not trading cross-border</div></div><div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div><div><div></div><div></div><div></div><div></div></div></div><div><div>Not at all an obstacle</div><div>Not an important obstacle</div><div>Fairly important obstacle</div><div>Very important obstacle</div></div></div>	
Business survey	<p>On average, the business organisations consulted consider the costs of adapting the management of returns to comply with different national legislations to be significant or highly significant. The negative effects anticipated ranged if 14 days would be set between -1.4 and -1.4 on a scale of -3 to 3.</p> <p>Nearly 50% of the business organisations considered that 14 calendar days would increase to significantly increase costs for handing returns in distance selling, whilst nearly 40% considered that the same would apply to doorstep selling. Some mention that imposing a longer cooling off period would increase the already substantial costs associated with managing cancelled contracts and would be disproportionate to the aim of providing the consumer with the equivalence of an in-store possibility of examining the</p>	



	<p>product. Businesses are also concerned about the deterioration of the goods.</p> <p>Some however noted that for commercial reasons some businesses would voluntarily offer longer cooling-off periods.</p>
<b>Business workshop</b>	<p>A significant increase in the burden of companies was expected by participants, especially by direct sellers (-0.9 to -2.0).</p> <p>Mixed views in retail and distance, but not among direct sellers. Overall the change was considered to be very significant by all groups.</p> <p>Participants commented on the fact that it was difficult to rate this option insofar as the consequences on cross-border sales and domestic markets would be different. Harmonisation would undoubtedly be a benefit, but on the other hand extending the period would have repercussions on the way businesses operate at national level. Participants emphasised that the longer the cooling off period, the higher the rates of damaged products. An extension of the cooling-off period also represents a cost for direct sellers who operate in a</p>



	competitive market with other sales channels. Indeed a 14 day period means that high ticket goods won't be delivered before 2 weeks, which puts direct selling even more at a disadvantage with retailers.
<b>Business interviews</b>	<p>The interviewees considered that a common cooling-off period would not significantly increase the burden for businesses. More importantly, however, many feared that a longer period would increase potential abuse. (The BRC indicated that in some sectors withdrawal is as high as 48% and referred to a report which stated that consumers do not hesitate to lie in order to get a refund).</p> <p>According to IMRG, lengthening the cooling off period would increase the costs for retailers:</p> <ul style="list-style-type: none"> <li>- Costs of stock (retailers would end up with a higher quantity of "dead stock", i.e. goods that are going to come back and will have to be resold.</li> <li>- Increased opportunity to damage the goods on the consumer' side (the longer the goods are with the consumer, the higher the risks of damage)</li> <li>- Detrimental to online retailers, put at a disadvantage compared with high street retailers</li> </ul>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>Depending on / linked to decisions in relation to proposals 9, 10 and 11, and to a lesser extent to proposal 4.</p> <p>Consistency with the Consumer Credit Directive which harmonises the lender's right to withdraw within 14 calendar days could increase legal certainty and coherence of EU law.</p>

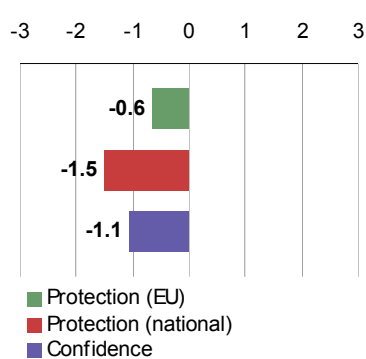
## Option 2

A second option is to set 10 calendar days for distance and doorstep contracts (but the 14 calendar days in the Timeshare proposal would not be changed).

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	++	<p>The effective reduction of the length of the cooling-off period in 13 MS is not likely to have a perceivable impact on the rate of withdrawal, and consequently on competition and prices.</p> <p>Harmonisation may slightly encourage SMEs to trade cross-border.</p>



<b>Minimising the burden of EU legislation for businesses</b>	+	<p>Minor positive effects arising from uniform rules for distance selling and possibly for some doorstep selling companies operating cross-border (but the cumulative effect of all harmonisation steps is substantial).</p> <p>The burden on companies would decrease slightly in Member States currently employing longer cooling-off periods. A minor increase for companies who would have to switch from working to calendar days systems.</p>
<b>Enhancing consumer confidence</b>	–	<p>In at least 13 Member States the length of the cooling-off period would be reduced, which could be likely to contribute to a certain decrease in consumer confidence.</p> <p>Indirectly, a full harmonisation of national consumer protection frameworks may to some extent increase the overall confidence of consumers in cross-border shopping.</p>
<b>Improving the quality of legislation</b>	0	<p>The change proposed would improve the quality of consumer protection legislation as it would remove inconsistencies by setting a standard period in the EU for distance and for doorstep selling contracts. However this would not be consistent with the 14 days period used in other Directives.</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>Current withdrawal rates are up to 10% overall, but most often between 2 – 5%. Costs in relation to return management (including repackaging, reprocessing, damages) are relatively high, representing around 2-5% of the total operating costs of companies. In Germany, the rate of returns has been steadily increasing from 24.2% (in terms of value) in 1998 to 30.2% in 2002, corresponding to a total increase of 25%. Costly investments to modernise return systems, leading to lower costs per unit, are eaten up by the increasing return rates.</p> <p>The probability of withdrawal will not change and could even become less in those Member States which currently have longer cooling-off periods. The probability that goods are used or damaged will not change either or even slightly decrease as a result of shorter cooling-off periods in some EU countries (see also proposal 11).</p> <p>Beneficial effects of harmonisation: reduces costs to businesses engaged in cross border trade (Rome I) – monitoring of legislation, taking account of different withdrawal periods in return management, etc.</p>	
<b>Effects on SMEs</b>	<p>SMEs might be encouraged through the full harmonisation to trade cross-border.</p>	

<b>Effects on consumers</b>	The level of protection will be reduced in 13 MS. A drop in the rate of withdrawals is however generally not anticipated, only a small number of individual cases.								
<b>Effects on cross-border trade</b>	Minor, but all harmonisation steps together will significantly alleviate the burden on distance sellers imposed by Rome I upon them.								
<b>Social effects</b>									
<b>Effects on the level of consumer protection</b>	<p>In at least 13 Member States the level of consumer protection would be reduced as the cooling-off period would be made shorter (in two cases by 5 days and in 9 countries by 4 days, which is a substantial reduction).</p> <p>10 days would decrease consumer confidence in countries where the consumers have been used for years to a longer period. A reduced period might be very confusing, at least when the new legislation is put in place. Consumers may be confused about the deadlines in the transition period and miss them. A learning process will be necessary.</p>								
<b>Environmental effects</b>									
	No environmental effects anticipated.								
<b>Public sector administration/enforcement costs</b>									
<b>Stakeholder views</b>									
<b>Consumers</b>									
<b>Consumer organisations survey</b>	<p>More than 30% of the consumer organisations estimated that a common period of 10 days for doorstep and distance selling would decrease the consumers' ability to exercise their right of withdrawal. More than 20% could not identify any negative nor positive impacts, whilst a minority (around 12%) could perceive positive impacts.</p> <p>Many emphasise that the effects of any changes to the length of withdrawal period would be strongly dependent on how the beginning of the withdrawal period would be regulated.</p>								
<b>ECCG workshop</b>	<p>Very significant (4.29). Setting 10 days for direct and distance selling would to some extent reduce EU consumer protection levels (-0.6) and would mean some reduction of domestic consumer protection (scoring -1.5). It would have rather a negative effect on consumer confidence also (-1.1).</p>  <table border="1"> <thead> <tr> <th>Category</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>Protection (EU)</td> <td>-0.6</td> </tr> <tr> <td>Protection (national)</td> <td>-1.5</td> </tr> <tr> <td>Confidence</td> <td>-1.1</td> </tr> </tbody> </table>	Category	Value	Protection (EU)	-0.6	Protection (national)	-1.5	Confidence	-1.1
Category	Value								
Protection (EU)	-0.6								
Protection (national)	-1.5								
Confidence	-1.1								
<b>Consumer focus</b>	Whilst harmonisation of the cooling-off period in general would increase consumer confidence in cross-border shopping. The								



<b>group</b>	participants were however adamant that any change proposed should aim at the highest possible level of protection, and not lower existing standards.										
<b>Businesses</b>											
<b>Business survey</b>	<p>The impact of option 2 was considered negative by businesses, although the scale was seen to be as somewhat more restricted than in option 1 (-0.7 to -0.8).</p> <p>Around 35% of the business organisations consider the costs of adapting the management of returns to comply with different national legislations to be significant or highly significant.</p> <p>Around 30% of the business organisations considered that 10 calendar days would not have an impact on their costs for handling returns, whilst another 30% considered that it would increase costs.</p>										
<b>Business workshop</b>	<p>Very significant for all groups.</p> <p>Views of the participants were mixed within the different groups of sellers. Overall, the change would lead to a minor reduction of the current burden (scores of 0.1 to 0.5 out of possible 3).</p> <table border="1"> <thead> <tr> <th>Seller Group</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>0.4</td> </tr> <tr> <td>Retail</td> <td>0.1</td> </tr> <tr> <td>Distance</td> <td>0.2</td> </tr> <tr> <td>Doorstep</td> <td>0.5</td> </tr> </tbody> </table>	Seller Group	Score	Total	0.4	Retail	0.1	Distance	0.2	Doorstep	0.5
Seller Group	Score										
Total	0.4										
Retail	0.1										
Distance	0.2										
Doorstep	0.5										
<b>Business interviews</b>	Overall, interviewees were highly in favour of a harmonised cooling-off period and indeed preferred the proposal of 10 days.										
<b>Preconditions necessary to ensure positive impacts accrue</b>											
	Depending on / linked to decisions in relation to proposals 9, 10 and 11, and to a lesser extent to proposal 4.										

## Setting the start of the withdrawal period and its extension

### *Problem*

In addition to differences in the length of the withdrawal period, the starting point of withdrawal (direct selling and distance selling) currently varies across Directives and in the Member States. The Doorstep Directive states that the consumer has the right to withdraw from the contract by sending notice within not less than seven days from receipt of the information about the right to withdraw. Under the Distance Selling Directive, the withdrawal period begins from the day of the receipt of the goods by the consumer, or in the case of services, from the day of conclusion of the contract.

In some Member States the period starts as prescribed by the Doorstep Selling Directive, with the receipt of the notice of the right of withdrawal (normally at the time of the conclusion of the contract) and in others with the receipt of goods. For distance selling, the period starts as prescribed by the Directive at the time of the receipt of the goods. For services (distance and doorstep), the starting point is in general the conclusion of the contract. The following table indicates how Member States stipulate rather different provisions for the beginning of the period in doorstep selling.

### **Start of the withdrawal period – Doorstep selling**

Member State	Start of withdrawal period				Comments
	withdra of right of contract	conclusi on of contract	receipt of goods		
Austria	X				
Belgium		X			Only the date of the conclusion of the contract is decisive - given that the information has been provided before or simultaneously
Cyprus		X	X		Period starts at the day following the date of conclusion of the contract or at the day of the trader's performance
Czech Republic		X			
Denmark		X	X		Starts with delivery if trader supplies good. If service-contracts, period begins with the conclusion of the contract.
Estonia		X			If the consumer receives the notice before entering into the contract
Finland	X		X		Starts with delivery of the goods, if delivery is later than the receipt of the door-to-door selling document
France		X			Only the date of the conclusion of the contract is decisive - given that the information has been provided before or simultaneously
Germany	X				
Greece		X	X		Receipt of the written contract or, as the case may be, upon the later receipt of the goods

Member State	Start of withdrawal period			
	withdra of right	contract on of conclusi	receipt of goods	Comments
Hungary		X	X	Starts with delivery if trader supplies good. If service-contracts, period begins with the conclusion of the contract.
Ireland		X		
Italy	X		(X)	Starts with delivery of goods in case of contracts for supply of goods where contract concluded without the trader being present, or where the product presented different from the one in the contract.
Latvia		X		
Lithuania	X			
Luxembourg			X	
Malta		X		Only the date of the conclusion of the contract is decisive - given that the information has been provided before or simultaneously
Netherlands		X		
Poland		X		If the consumer receives the notice before entering into the contract
Portugal		X	X	Receipt of the written contract or, as the case may be, upon the later receipt of the goods.
Slovakia		X	X	Upon the receipt of the goods or upon the conclusion of the contract
Slovenia		X	X	Starts with delivery if trader supplies good. If service-contracts, period begins with the conclusion of the contract.
Spain	(X)		X	Law does not specify whether the withdrawal period starts with the receipt of the information or of the goods. Some courts have decided that the period begins with the reception of the goods
Sweden		X	X	Starts with delivery if trader supplies good. If service-contracts, period begins with the conclusion of the contract.
United Kingdom		X		
Total	5	18	11	

### ***Extension of the withdrawal period***

Regarding the failure to comply with the information obligations, there is currently no consistent scheme of sanctions for a failure to comply with such an obligation in the Directives. The extension of the period for the right of withdrawal in case of failure to provide information is regulated in an incomplete and inconsistent way. In several cases no

remedies are available when information duties are ignored by professionals. The only concrete rule on sanctions for non-fulfilment of information duties is in Art. 6(1) of the Distance Selling Directive. This provision leads to a prolongation of the withdrawal period in the case that the information obligations laid down in Art. 5 (written information on the conditions and procedures for exercising the right of withdrawal) have not been fulfilled, or fulfilled late. If the supplier has failed to fulfil the information obligations laid down in Art. 5, the period shall be three months.

The Doorstep Directive leaves it up to the Member States to lay down the consequences of failure to provide the notice of the right of withdrawal. The ECJ has ruled that the withdrawal period does not begin before the consumer has been informed about his right of withdrawal.<sup>30</sup> Thus, the consumer has an eternal right to withdraw if the information has not been given.<sup>30</sup> In many Member States the contract can be rendered unenforceable (failure to provide this information results in the nullity of the contract). In addition, fines or more severe sanctions are foreseen by national transposition law in Belgium, Estonia, France, Greece, Hungary, Italy, Luxembourg, Latvia, Portugal, Poland, Finland, Slovenia, Slovakia and Ireland.

### **Prolongation of withdrawal period along Art. 6(1) in Distance Selling**

<b>Prolongation of withdrawal period</b>	<b>Member States (EU 25)</b>
As in the Directive	Austria, Belgium, Denmark, Estonia, France, Hungary, Ireland, Luxembourg, Malta, Poland, Portugal, Slovakia, Slovenia, Spain (14)
Variations	Cyprus, Czech Republic, Germany, Finland, Greece, Italy, Latvia, Lithuania, Netherland, Sweden, UK (11)
E.g. Longer additional period	Germany (6 months or no time limit if information not provided), Sweden (one year)

### ***Problems encountered by consumers:***

There is evidence of traders not complying with their information obligations. In the UK, a study found that only 2% of respondents having experienced doorstep selling could recall being given cancellation details.<sup>31</sup> The OFT found that the majority of consumers are unaware that they may enjoy a cooling off period when buying in their home and 34% thought that they had more rights when purchasing in a shop.<sup>32</sup>

In distance selling, the ECC study on Internet shopping found that in 28% of the cases the webtraders had not informed the consumer about the cooling-off period prior to the purchase.<sup>33</sup>

<sup>30</sup> Heining case, ECJ judgment of 13 December 2001 C-481/99.

<sup>31</sup> Ofgem's Consultation. 'The Regulation of gas and electricity sales and marketing', August 2003

<sup>32</sup> Doorstep Selling, A Report on the Market Study, May 2004, OFT [http://www.of.gov.uk/shared\\_of/reports/consumer\\_protection/oft716.pdf](http://www.of.gov.uk/shared_of/reports/consumer_protection/oft716.pdf)

<sup>33</sup> Realities of the European Online Marketplace. A cross-border e-commerce project by the European Consumer Centre's Network, 2003.

## ***Solution proposed***

### **Option 1**

A first option is to devise common rules for all withdrawals. The withdrawal period shall begin on the day of the conclusion of the services contract. If the contract involves the delivery of goods, the period shall begin on the day the consumer receives the goods.

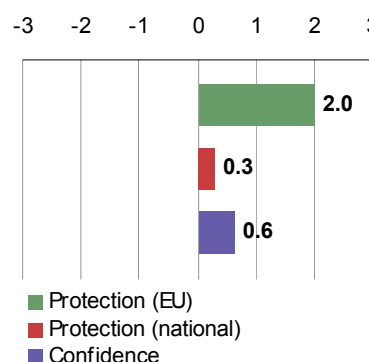
If the professional has not given notice of withdrawal prior to the conclusion of the contract the period shall be extended by three months. If notice is given within this three-month period, the withdrawal period shall begin as from that moment.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	++	Creating a level playing field is economically positive for internal market.
<b>Minimising the burden of EU legislation for businesses</b>	+	Minor positive effects arising from uniform rules for distance and doorstep selling for companies operating cross-border (but the cumulative effect of all harmonisation steps is substantial).  The burden would increase for doorstep selling companies in 14 Member States where withdrawal starts with the signature of the order form/contract or notice of withdrawal.
<b>Enhancing consumer confidence</b>	++	On the one hand, harmonisation is not likely to have any conceivable direct effect on consumer confidence in distance selling, as the start and extension of the cooling-off period under Rome I is already governed by their respective national law. However, some increased consumer confidence in cross-border shopping would occur as a result of full harmonisation.  Confidence would also increase significantly as in 14 Member States the start of the withdrawal period (in doorstep selling) would effectively be delayed until delivery of the good (thus allowing the consumer to actually have material possession of the good during the cooling-off period).
<b>Improving the quality of legislation</b>	++	The change proposed would harmonise the withdrawal rules for distance and off-premises contracts. This one-size-fits-all approach would have advantages (simplification and consistency) but also disadvantages (applying the distance selling regulations to off-premises sales without taking into account the specificities of such sales would not be sensible and may be unfair in certain

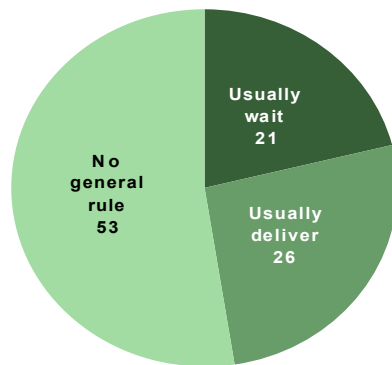
		circumstances). It would improve the quality of legislation by defining a consistent scheme of sanctions for failure to comply with information obligations.
Economic effects		
Effects on business (administrative and compliance costs)	<p>Current withdrawal rates are up to 10% overall, but most often between 2 – 5%. Costs in relation to return management (including repackaging, reprocessing, damages) are relatively high representing around 2-5% of the total operating costs of companies.</p> <p>With regard to Doorstep selling, this change would affect businesses in 14 countries (e.g. France) where the period starts with the signing of the contract or the notice of receipt of the notice of withdrawal. Withdrawal period currently starts with receipt of goods in 11 countries.</p> <p>The change would be a cost to direct sellers who do not deliver the product until the end of the withdrawal period (especially high value goods). In some countries (e.g. France) the withdrawal period always starts when the order form is signed. Delivery takes place at the end of the withdrawal period. Starting the withdrawal period on the day the consumer receives the goods would increase administration costs (one-off to amend contractual and information material) but could also increase compliance costs. If withdrawal were possible after delivery, the direct seller would have to visit the consumer twice.</p> <p>The main cost is the risk taken by the business as a result of the use/damage of the product delivered. This risk is lower if goods are not delivered before the expiration of the withdrawal period.</p> <p>Overall beneficial effects of harmonisation: reduces costs to businesses engaged in cross border trade (Rome I) – monitoring of legislation, taking account of the different starting periods in return management, etc.</p> <p>A consistent rule of three months extension would increase legal certainty and reduce costs for businesses in countries where this period is longer or unlimited, in particular in the case of doorstep selling where there is a real need for regulation.</p>	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade	Minor, but all harmonisation steps together will significantly alleviate the burden on distance sellers imposed by Rome I upon them.	
Social effects		
Effects on the level of consumer	The proposed change would raise the level of consumer protection in at least 14 countries (period would start when consumer is able to inspect the good) whereas currently the period starts with	



<b>protection</b>	<p>signing the contract or the notice of withdrawal. In addition, the extension of the three month period might slightly increase consumer protection in distance selling since it would require full performance by the trader's obligations. The number of traders not notifying this information is estimated to be significant, in doorstep as well as distance selling (30%).</p> <p>However in direct selling it would decrease the protection level as the period is currently unlimited if no information on withdrawal has been given.</p>
<b>Environmental effects</b>	
	Increased travel by doorstep sellers to visit, deliver and possibly retrieve products could have a minor negative environmental effect.
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	The start and extension of the withdrawal period was not raised in the survey. However, many commented on the need to harmonise the start of the period as a precondition for agreeing on any length.
<b>ECCG workshop</b>	<p>The group considered the proposed change relatively significant (4.14).</p> <p>The participants mentioned that consumers needed to test the service before they could decide to withdraw.</p> <p>Whilst the change would increase consumer protection at EU level significantly (a score of 2.0 out of 3), it would have less (but still positive) impact on domestic protection levels (0.3). There would be some increase in consumer confidence (0.6).</p> <p>Most participants expressed their preference for this option. This proposal will harmonise rules and makes things clearer than they are now. Under the second option, consumer would not have the possibility to look at a product again in doorstep situations.</p>



	It was noted that in Germany the three months would decrease the current level of protection (6 months if information is not provided).
<b>Consumer focus group</b>	Half of the participants preferred common rules for all types of contracts. All agreed with the application of the three months rule in case of lack of information on their right of withdrawal.
<b>Businesses</b>	



<b>Business survey</b>	<p>Around 35% of the business organisations consider the costs of adapting the management of returns to comply with different national legislations to be significant or highly significant.</p> <p>In doorstep contracts, 26% of companies usually deliver the good or provide the service as soon as the contract is concluded regardless of the cooling-off period. 21% usually wait until the end of the cooling-off period before delivering the good or providing the service. 53% deal with delivery of orders on a case-by-case basis</p>
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<b>Business workshop</b>	<p>In terms of significance of the issue, the change proposed was considered very important for doorstep sellers, and relatively significant for the other two groups.</p> <p>The doorstep sellers considered that the change would substantially increase their current burden (-2.7, whereby the lowest possible score was -3), whilst retail and distance sellers considered that there would be a minor decrease in their burden (0.5 and 0.9 respectively).</p> <div data-bbox="957 134 1356 492"> <table border="1"> <thead> <tr> <th>Group</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>-0.3</td> </tr> <tr> <td>Retail</td> <td>0.5</td> </tr> <tr> <td>Distance</td> <td>0.9</td> </tr> <tr> <td>Doorstep</td> <td>-2.7</td> </tr> </tbody> </table> </div>	Group	Score	Total	-0.3	Retail	0.5	Distance	0.9	Doorstep	-2.7
Group	Score										
Total	-0.3										
Retail	0.5										
Distance	0.9										
Doorstep	-2.7										
<b>Business interviews</b>	<p>Direct sellers expressed concerns that the change would increase their costs (see also above).</p> <p>Direct sellers from France highlighted problems related to the interpretation of the national legislation which forbids sellers to deliver the good or to accept any payment before the end of cooling-off period.<sup>34</sup> This means that higher costs for businesses as they have to visit the consumer twice. In France and Belgium the delivery of the goods always takes place after the expiration of the withdrawal period. In other Member States, direct sellers tend to avoid delivering before the expiration of the withdrawal period, especially for high-value products, in order to limit the costs associated with used/damaged products.</p> <p>According to FVD, the extension of 3 months is not effective. If the consumer is not aware of his right, it will not make a difference to extend the period. The contract should be made unenforceable (void).</p>										
<b>Preconditions necessary to ensure positive impacts accrue</b>											
	<p>Depending on / linked to decisions in relation to proposals 4, 9, 10 and 11.</p>										

## Option 2

A second option is to set different fully harmonised rules for the three directives. The starting point in distance selling will be the receipt of the goods (or conclusion of the contract for services). In doorstep situations (both for goods and services) the starting point will be the signature of the order form by the consumer (since the consumer has seen the goods and the justification of the withdrawal right is rather the psychological pressure or surprise element in

<sup>34</sup> The legislation only forbids the performance of a service but in practice the delivery of goods has not been considered as illegal).

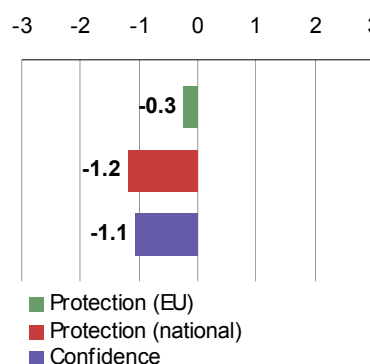
an off-premises context). The current rule in distance contracts whereby the withdrawal period ends when the service begins being performed with the prior express agreement of the consumer would be maintained.

As in option 1, a three month limitation period (applicable where no notice of withdrawal is given to the consumer) would be introduced both for distance and doorstep selling but a further condition would be added (i.e. that the trader has fully performed his obligation under the contract, e.g. goods have been delivered and services have been fully performed). If notice is given within this three-month period, the withdrawal period shall begin as from that moment.

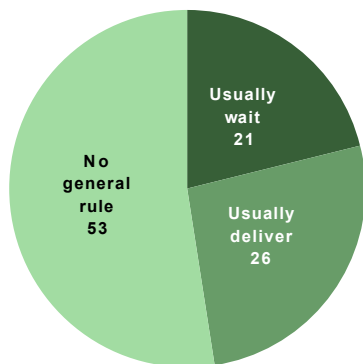
<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	++	Creating a level playing field is economically positive for internal market.
<b>Minimising the burden of EU legislation for businesses</b>	++	<p>Some positive effects mainly for direct sellers as it would decrease their burden in domestic trade. Minor positive effects for distance and direct selling for companies operating cross-border (but the cumulative effect of all harmonisation steps is substantial).</p> <p>The burden would especially be decreased for direct selling companies in 11 Member States where withdrawal starts at delivery rather than at the signature of the order form.</p>
<b>Enhancing consumer confidence</b>	-	<p>On the one hand, harmonisation is not likely to have any conceivable direct effect on consumer confidence in distance selling, as the start and extension of the cooling-off period under Rome I is already governed by their respective national law. However, some increased consumer confidence in cross-border shopping could occur as a result of full harmonisation.</p> <p>The difference between the start of the cooling-off period in doorstep and distance selling could reduce confidence as consumers would expect this period to start upon receipt of the goods in both cases in 11 MS where that is currently the case.</p>
<b>Improving the quality of legislation</b>	+	<p>The change proposed would improve the quality of consumer protection legislation as it would remove inconsistencies by setting standard starting and extension periods in the EU, with a consistent scheme of sanctions for a failure to comply with information obligations.</p> <p>However different rules would continue to apply</p>

		for distance and for doorstep selling contracts.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>Current withdrawal rates are up to 10% overall, but most often between 2 – 5%. Costs in relation to return management (including repackaging, reprocessing, damages) are relatively high, representing around 2-5% of the total operating costs of companies.</p> <p>Starting the withdrawal period when the order form is signed would mean cost savings for direct sellers as it would reduce the number of visits they would undertake and the risk of use/damage of the product delivered.</p> <p>Overall beneficial effects of harmonisation: reduces costs to businesses engaged in cross border trade (Rome I) – monitoring of legislation, taking into account the different starting periods in return management, etc.</p> <p>Consistent rule of three months extension would increase legal certainty and reduce costs for businesses in countries where this period is longer or unlimited, in particular in the case of doorstep selling where there is a real need for regulation.</p>	
<b>Effects on SMEs</b>		
<b>Effects on consumers</b>		
<b>Effects on cross-border trade</b>	Minor, but all harmonisation steps together will significantly alleviate the burden on distance sellers imposed by Rome I upon them.	
<b>Social effects</b>		
<b>Effects on the level of consumer protection</b>	<p>Consumer protection in 11 countries would be lowered. When the withdrawal period begins upon receipt of the goods (e.g. in Spain) and that it does not coincide with the consumer signing the order form, this gives a second opportunity to consumers to have a look at the product. In these countries consumer confidence in doorstep selling could be significantly affected. Consumers will have to be clearly informed in a standard notice of the length and the starting point of the withdrawal period for the particular contract they have concluded (learning process).</p> <p>However, the very purpose of off-premises contract is to show the product (often demonstration product) to the consumer. The rationale for the right of withdrawal in off-premises contract is not the need to look at the product (which has been seen by the consumer) but rather to deal with the psychological pressure (social pressure in home-parties or pressure at home or workplace) and the lack of possibility given to the consumer to compare with other competing offers. Consumer protection would not be lowered if the consumer has been given the opportunity to examine the good before. However when the consumer has not really seen the good (e.g. catalogue) the rationale for the withdrawal period</p>	

	<p>could be the same as in distance selling.</p> <p>The extension of the three month period might slightly increase consumer protection in distance selling since it would require full performance by the trader's obligations. The number of traders not notifying this information is estimated to be significant, in doorstep as well as distance selling (30%). However in direct selling it would decrease the protection level as the period is currently unlimited if no information on withdrawal has been given.</p>
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	The start and extension of the withdrawal period was not raised in the survey.
<b>ECCG workshop</b>	<p>The participants considered the proposed change relatively significant (4.14), implying a slight reduction of EU consumer protection and of domestic protection levels (-0.3 and -1.2 respectively). It would also risk to decrease consumer confidence (-1.1).</p> <p>Most did not see any reason to make a distinction by type of contract. Consumers would in general expect that they can withdraw after having received a good. Also, consumer would not have the possibility to look at a product again in doorstep situations (which would not help them in situations were they had feel having been 'pressed' into a decision to purchase something).</p> <p>The participants mentioned that consumers needed to test the service before they could decide to withdraw.</p>
<b>Consumer focus group</b>	Some participants preferred this option, even though the majority agreed that consumers would prefer the cooling-off period to start



	when a good is delivered, rather than after having signed a contract. All agreed with the application of the three months rule in case of lack of information on their right of withdrawal.
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<b>Businesses</b>											
<b>Business survey</b>	<p>Around 35% of the business organisations consider the costs of adapting the management of returns to comply with different national legislations to be significant or highly significant.</p> <p>In off-premises contracts, 26% of companies usually deliver the good or provide the service as soon as the contract is concluded regardless of the cooling-off period. 21% usually wait until the end of the cooling-off period before delivering the good or providing the service. 53% deal with delivery of orders on a case-by-case basis.</p>										
<b>Business workshop</b>	<p>The legislative issue was considered to be very important by direct sellers and relatively significant by the other two groups. All indicated that there would be some reduction of the current burden (although for distance sellers this was close to no effect).</p> <table border="1"> <caption>Importance of Legislative Issue (Scale -3 to 3)</caption> <thead> <tr> <th>Group</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>0.8</td> </tr> <tr> <td>Retail</td> <td>0.8</td> </tr> <tr> <td>Distance</td> <td>0.1</td> </tr> <tr> <td>Doorstep</td> <td>1.2</td> </tr> </tbody> </table>	Group	Score	Total	0.8	Retail	0.8	Distance	0.1	Doorstep	1.2
Group	Score										
Total	0.8										
Retail	0.8										
Distance	0.1										
Doorstep	1.2										
<b>Business interviews</b>	<p>Direct sellers expressed strong support to the change proposed (see also above). Rules have to be different for the two channels, because their sales methods and business models are very different.</p> <p>Distance sellers overall agreed with the proposal but emphasised</p>										

	<p>that much depended on the definition of delivery (see proposal 4 above).</p> <p>According to FVD, the extension of 3 months is not an effective sanction. If the consumer is not aware of his right, it will not make a difference to extend the period. The contract should be made unenforceable (void).</p> <p>Direct sellers from France highlighted problems related to the interpretation of national law which forbids sellers to deliver the good or to accept any payment before the end of cooling-off period. This means higher costs for businesses as they have to visit the consumer twice. In France and Belgium the delivery of the goods always takes place after the expiration of the withdrawal period. In other Member States, direct sellers tend to avoid delivery before the expiration of the withdrawal period, especially for high-value products, in order to limit the costs associated with used/damaged products.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	Depending on / linked to decisions in relation to proposals 4, 9, 10 and 11.



## 10. Introducing a common set of rules for exercising the right of withdrawal

### *Problem*

The way in which consumers can exercise the right of withdrawal is currently regulated differently across the Consumer Acquis and in the Member States. The Directives do not foresee a formal requirement for the withdrawal, however, some Member States do. In some countries, withdrawal is to be communicated in a written form, in others by registered letter with return receipt. In some countries there are no formal requirements (and a phone call or email, or simply returning the good could be sufficient, i.e. the trader has to accept the withdrawal).

These differences constitute a barrier to trade, because it might force the business to include any formal requirement for the exercise of the withdrawal right into the information of the consumer about his right (e.g. Art. 5 of Directive 97/7).

The Doorstep Selling Directive (Article 5) states that the consumer can exercise his right of withdrawal by sending notice which must be dispatched before the end of the withdrawal period. The formal requirements the consumer must fulfil when he exercises his right of withdrawal are not coherent in the transposition laws of the member states. The following table shows some of the main differences.

### *Formal requirements in direct selling*

<b>Right of Withdrawal - Formal Requirements</b>	<b>Member States (EU 25)</b>
None	Denmark, Estonia, Finland, Hungary, Netherlands, Malta, Portugal, Spain, Sweden (9)
Written	Austria, Cyprus, Czech Republic, Ireland, Latvia, Lithuania, Poland, Slovenia, Slovakia, UK (9)
Text form	Germany (1)
Return of goods	Germany, Finland, Spain (3)
Registered letter with return receipt	Belgium, France, Greece, Italy, Luxembourg (5)

The Distance Selling Directive does not contain an explicit provision allowing the member states to regulate formal requirements for the exercise of the withdrawal right by the consumer.

### *Formal requirements in Distance selling*

<b>Right of Withdrawal - Formal Requirements</b>	<b>Member States (EU 25)</b>
None (consumer can withdraw by any means, including oral declaration)	Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Ireland, Latvia, Luxembourg, Malta, Netherlands, Portugal, Slovenia, Sweden, Spain (17)
Return of goods	Germany, Finland, Slovenia (3)

Notice of cancellation given in writing	Cyprus, Lithuania, Poland, Slovakia (4)
Notice of cancellation given in writing or other durable medium	UK (1)
Notice in text form (allows other durable medium)	Germany, Greece (2)
Registered letter	Italy (1)

### ***Solution proposed***

It is proposed to adopt common rules for all types of contract which would provide sufficient proof both for consumers and traders of what measures have been taken and at what point in time. New rules considered:

*Withdrawal may be communicated to the trader either by means of a standard form annexed to the directive (in all Community languages) or through a mere declaration of withdrawal sent by the consumer within the withdrawal period.*

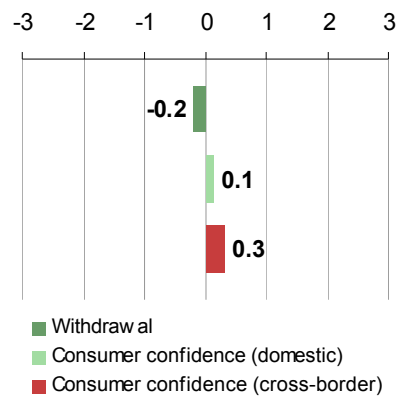
*Whatever form is used by the consumer (standard form or mere declaration), it must be communicated to the trader on a durable medium (see proposal 3 above).*

*If filling in a web-form is required/requested by the trader, the latter must send an acknowledgement of receipt on a durable medium.*

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	++	Reduced cost and increased legal certainty if a standard form (set out by legislation) is used by businesses
<b>Minimising the burden of EU legislation for businesses</b>	++	Reduction of costs for professionals as common rules are established: clear rules, no ambiguity whether they are obliged to accept withdrawal (from consumers in some MS) e.g. by phone or if the good is simply returned.
<b>Enhancing consumer confidence</b>	0	Consumer confidence may increase moderately as rules will be clear how consumers can claim their right of withdrawal in all Member States. There could be a reduction of disputes as withdrawal will be clearly established (durable medium).  Additional burden in at least 10 MS where there are currently no formal requirements at all.
<b>Improving the quality of legislation</b>	+	Increased legal certainty with the notification of withdrawal, whereas in some countries the absence of a notice creates uncertainty.
<b>Economic effects</b>		
<b>Effects on</b>	- Increasing legal certainty through a clear medium would reduce the	

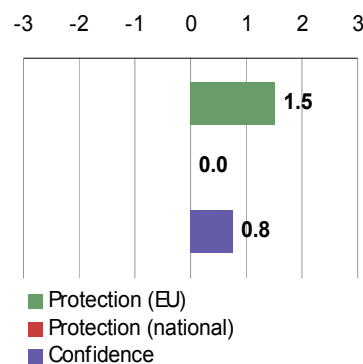
<b>business (administrative and compliance costs)</b>	<p>current burden: businesses would know when and whether consumers withdraw. Currently, consumers' intentions are not always clear.</p> <ul style="list-style-type: none"> <li>- Use of a standard form: would not increase costs if the form is short and easy to use.</li> <li>- Potential administrative costs for distance sellers: In 17 Member States there is no formal requirement at all on how to withdrawal. Potential additional administrative costs in countries (e.g. UK) where traders prefer using websites, webforms and PDF files. Additional administrative burden in terms of the flow of communication (need to handle both notifications and returned products) with the customer, for companies obliged to change their present service policy (e.g. use of telephone by some companies in the Netherlands and Ireland).</li> <li>- In direct selling the use of a standard form would not increase the burden in countries where a standard form is already common use. Formal requirements are already imposed on the consumer for the exercise of the withdrawal right in 15 MS. It would increase legal certainty in 10 MS where the consumer can withdraw by any means or simply returning the goods.</li> </ul>
<b>Effects on SMEs</b>	
<b>Effects on consumers</b>	One uniform procedure for the notice of the cancellation should be desirable provided it avoids unnecessary formalities.
<b>Effects on cross-border trade</b>	
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>One single form (annexed to the order form)/statement would bring certainty for consumers, if the form is simple and easy to use. The OFT survey shows that consumers are generally unaware of their rights when buying through doorstep selling. The majority are even unaware that they may enjoy a cooling off period when buying in their home. The use of a standard form would be a tool to remind consumers that they have a right to withdraw. In addition, businesses could not hide the information on the withdrawal right in lengthy terms and conditions which consumers may not read.</p> <p>If consumers have to notify their decision to withdraw on a durable medium, this could contribute to a reduction of disputes between traders and consumers where the latter claim to have notified for example by phone or by returning the good without any declaration in writing. This could increase the level of consumer awareness and confidence.</p> <p>However in 17 MS there is no formal requirement at all on how to withdraw in distance selling. This is also the case for 10 MS in the context of doorstep selling. It would mean an additional burden on consumers in these countries. Consumer confidence and protection levels may in those cases not increase. Consumers in certain MS previously simply returning goods or expressing their wish to withdraw by phone may be denied the termination of the contract (learning process).</p> <p>Regarding web-forms, the consumer should always have the choice as to</p>

	the use of a web-form or the other forms available.
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	



<b>Consumer organisations survey</b>	<p>Regarding the effects of communicating withdrawal to the professional in a textual form on a durable medium, most respondents indicated limited effects:</p> <p>The number of consumers exercising their right of withdrawal would decrease only marginally (-0.2 point where the score for a significant decrease would have been – 3).</p> <p>The confidence of consumers in domestic purchases would not be affected.</p> <p>The confidence of consumers buying cross-border would also only be marginally be affected (0.3)</p>
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ECCG workshop	<p>Not considered significant.</p> <p>Generally It was felt that the requirement of filling in a web-form would weaken consumer protection if consumers cannot choose another durable medium.</p> <p>It may be better to indicate, in the definition, that the consumer has to agree with filling in a form on a web-based platform.</p> <p>Overall the protection at EU level would be increased (1.5 points out of 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	<div><div><div>020406080100</div><div><div><div>Same content for distance and doorstep</div><div><div>249153021</div></div></div><div><div>Standardised information across EU</div><div><div>8882847</div></div></div><div><div>Cost of information provision reduced</div><div><div>9993737</div></div></div><div><div>Cost of processing withdrawal reduced</div><div><div>9993241</div></div></div><div><div>Strongly disagree</div><div>Disagree</div><div>Neutral</div><div>Agree</div><div>Strongly agree</div></div></div></div></div>
<div>Business workshop</div>	<div><div><div>Mixed views in distance selling</div><div>Relatively important for distance and doorstep, both 4.07</div><div>The current burden was rated as being relatively high by Doorstep sellers. They also indicated that the proposed change would reduce this burden (1.5 points out of 3). It would not have a notable effect on the current burden for distance sellers.</div></div><div><div><div>-3-2-10123</div><div><div><div>0.5</div></div><div><div>-0.2</div></div><div><div>0.0</div></div><div><div>1.5</div></div></div><div><div>Total</div><div>Retail</div><div>Distance</div><div>Doorstep</div></div></div></div></div>
<div>Business interviews</div>	<div><div>Interviewees from the direct and distance selling sector highlighted the need for legal certainty when the consumer decides to withdraw from a contract. Uncertainty arises when goods are simply returned for instance.</div><div><div><div>- Vorwerk requires an unambiguously worded declaration on paper from the consumer on withdrawal (proof to avoid legal disputes). In France, legislation foresees a standard form that is a mandatory annex to the order form.</div><div>- FEDSA: there must be a paper support (phone call is not enough). A standard EU-wide form for consumers to express their wish to withdraw from the contract would be appreciated. Such declaration is now contained in the Amway order form. The option to use electronic means of communication with the form should be left open.</div><div>- FVD: standard form (avoiding too much formalism) is easy to apply to any type of product. A durable medium for the withdrawal must be a certified mail, with proof of receipt.</div><div>- FEVAD: It is important that the consumer expresses clearly his decision to withdraw. Companies such as La Redoute send a withdrawal form at the back of the order form. The rules should not be too rigid, especially for companies which recently have started to sell on the internet and which use the method of the “tracing” (consumer prints a return number that he sticks on the package that he sends back to the seller).</div><div>- ACSEL: the rule should be flexible enough to respect the freedom of contract. It should be made clear that the consumer bears the burden of proof of sending the notice.</div></div></div></div>
<div>Preconditions necessary to ensure positive impacts accrue</div>	

	<p>Language requirements could be specified.</p> <p>A European withdrawal form would have positive benefits as long as it is short and simple to use.</p>
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### **Introducing common rules on the effects of withdrawal (reimbursement, refunds, etc)**

#### ***Problem***

The effect on the contract when the consumer exercises his or her right of withdrawal is regulated differently for different types of contracts in the Consumer acquis.

In the case of off-premises contracts, there is no standard procedure after the consumer has exercised his rights to withdrawal, for example in relation to the costs of returning goods, the time limit for returns, reimbursements and compensations for decreases in the value. Art 7 of the Doorstep Selling Directive says expressly that the effects of withdrawal shall be governed by national laws. Thus, the differences between the Member States are remarkable.

In the case of distance contracts, there is a deadline of 30 days for reimbursing the sum paid but the starting point of this deadline is not always clear.<sup>35</sup> Some Member States have adopted stricter rules, and in some countries traders may have to reimburse without having got the goods returned (e.g. UK).

According to Art. 6(2) of the Distance selling Directive, only the costs of returning the goods can be charged to the consumer. Most Member States have used this option allowing the trader to charge the costs to the consumer, some with variations. In two countries, companies have to cover the costs of the consumer returning a good or service (if this can be returned by post/courier).

#### **Effects of withdrawal in Distance selling contracts**

##### *Obligation for the trader to reimburse the sums received*

<b>Deadline of 30 days to reimburse the sums</b>	<b>Member States (EU)</b>
Reimburse immediately	Cyprus (1)
Reimburse within 15 days	Lithuania, Slovenia, Slovakia (3)
Retailer obliged reimburse as soon as possible and in any case within 30 days regardless of whether the item has been returned to the retailer and of the condition of the good	UK (1)
Additional sanctions if reimbursement delayed	Spain, Slovenia (2)

##### *Obligation for the consumer to return the goods received*

<b>Time limit for consumer to return the goods received</b>	<b>Member States (EU)</b>
Within 10 or 15 days	Italy, Slovenia, Portugal (3)

<sup>35</sup> The Directive states "as soon as possible and in any case 30 days".

*Costs borne by consumers when returning the goods*

<b>Costs of return borne by consumer only in certain conditions</b>	<b>Member States (EU 25)</b>
Costs of returning the goods charged to the consumer, if agreed between the parties	Italy, Austria (2)
Costs of returning the goods charged to the consumer only if product or service did match the offer, and the seller did fulfil his information duties	Belgium (1)
<b>Additional costs borne by consumer</b>	<b>Member States (EU 25)</b>
Compensation for the use of the good, mainly in case of depreciation in value	Germany, Austria (2)
Compensation for damage due to the improper use of the good	Hungary (1)
Obligation to take good care of the goods while in his possession	Italy, Cyprus (2)



### *Costs borne by traders when returning the goods*

<b>Costs of return borne by trader</b>	<b>Member State</b>
Costs of returning the goods borne by trader where alternative goods or services were provided	Poland (1)
Costs of returning the goods borne by trader if goods can be returned normally by post	Finland (1)

### ***Problems encountered by consumers***

The existence of serious problems related to the effects of withdrawal was confirmed by the experiment carried out by a number of ECCs in 2003 to test the difficulties arising from e-commerce.<sup>36</sup> Researchers returned 57 products they had received after ordering them on the internet. In 18 of those cases, they did not receive any refund, which represents a refund rate of 68.5%, which means that almost one third of returned goods were not refunded.

Regarding the sums that were reimbursed, only half of the webtraders that issued reimbursements included delivery charges in the refund. The rest simply ignored the delivery fee.

The second most frequent restriction to exercising the right of withdrawal resulted to be the requirement that the consumer had to give a reason for the withdrawal. According to the Distance Selling Directive, the consumer has the right to withdraw from the contract without reason within a specific number of days. Nevertheless, 24% of the web traders to whom products were returned asked for a reason. The question was often presented in such a way that the consumer might believe that an acceptable reason was a pre-condition for reimbursement.

The average time taken for the webtraders to issue the reimbursement was 13 days. Almost 60% of the reimbursements took place within 7-14 days after the date that the researchers returned the goods. However, one must keep in mind reimbursement was not received at all almost in a third of the cases and those results are not included in this part.

### ***Solution proposed***

It is proposed to introduce common rules to harmonise the provisions on the effects of withdrawal. New rules considered (note – these are not alternatives but cumulative rules):

1. Withdrawal from a contract terminates the obligations to perform the contract.
2. If the goods have been delivered before the expiration of the cooling-off period, the consumer must timely (e.g. 7 days) return any goods received under the contract to the trader unless the trader has offered to collect the goods himself.
3. The consumer shall only be charged for the direct cost of returning the goods unless the trader has agreed to bear that cost.

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<sup>36</sup> Realities of the European Online Marketplace. A cross-border e-commerce project by the European Consumer Centre's Network. 2003.

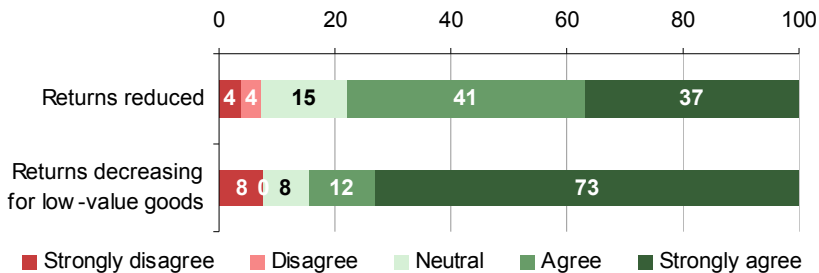
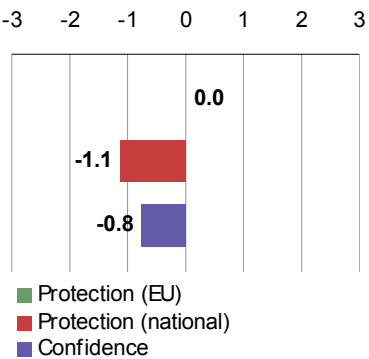
4. The trader must reimburse any payment received from the consumer, as soon as possible and in any case no later than thirty days from having been informed of the consumer's withdrawal. For the sale of goods, the trader may however withhold the reimbursement until the consumer supplies evidence of having returned the goods or the trader has received the goods, whichever is earlier.
5. The consumer shall be liable for any diminished value of the goods as a result of any use other than what is necessary to ascertain the nature and functioning of the goods (in the same manner as a consumer would do in a shop as for example he would do with a demonstration item in a shop), unless the trader has failed to provide notice of the withdrawal right.
6. No cost borne by the consumer for services contracts (even if partly or fully performed) in off-premises contracts, unless an exemption applies (emergency services or craftsmen services genuinely requested by consumers).<sup>37</sup>

Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	+++	Change would significantly improve legal certainty and reduce the costs of trading cross-border.
<b>Minimising the burden of EU legislation for businesses</b>	+++	<p>Increased legal certainty for businesses as they can now withhold reimbursements until the consumer provides evidence that he or she has sent back the good (key problem in distance selling).</p> <p>The clarification of the Directive to establish a link between the return of the goods and the refund will reduce the burden significantly in countries such as the UK.</p> <p>Costs to businesses of handling returns or cancellations would decrease as returns would decrease, especially for low value goods</p> <p>Reduction of return costs in countries where companies have to cover the costs of the consumer returning a good or service.</p>

<sup>37</sup> Services contracts sold at doorstep are usually high-value contracts (such as home improvement works via unsolicited or fake "solicited" visits) which give rise to an increasing number of consumer complaints. Except where such services are urgent or clearly requested by consumers (exclusions from the right of withdrawal), no cost should be borne by the consumer during the withdrawal period in order to avoid "fait accompli" situations where consumers even if they withdrew from the contract, would have to pay the costs of the services already performed. Under the proposal, doorstep service providers could delay the performance of the service after the expiration of the withdrawal period to avoid incurring costs if withdrawal was to be exercised.

<b>Enhancing consumer confidence</b>	-	Confidence may decrease in countries where consumers were previously not made liable for damage within the cooling-off period, where consumers were not required to return the goods within a specified time, and in the few countries where consumers do not pay the costs of return.
<b>Improving the quality of legislation</b>	+++	<p>The change proposed fills a gap, in particular for direct selling, regarding the effects of withdrawal (time limit for returns, reimbursement etc).</p> <p>It also clearly establishes the right of the trader to claim a remedy if the goods were damaged (currently varies across Member States).</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p><b>Cost of returning the good:</b></p> <p>Decreased costs for companies previously covering the direct cost of returning the products (at least 2 MS).</p> <p>The initial shipping costs would still have to be borne by the trader in the future as it is currently the case under the Distance Selling Directive (no change).</p> <p><b>Possibility to withhold reimbursement:</b></p> <p>Important reduction of costs in countries where retailer must refund the consumers money even if the item has not been returned or collected (such as UK). In practice this means that the consumer can cancel his contract, not send the product back, or send a damaged product, and still be refunded within 30 days. The cost of fraud for retailers is important, between 1 to 3 % of turnover in the UK.</p> <p>However, the fact that reimbursement is only linked to the proof of dispatch would mean additional costs in a number of countries where the current practice for distance sellers is to reimburse when the goods are received (e.g. France).</p> <p><b>Point 5 – diminished value of the good:</b></p> <p>Although the Distance Selling Directive does not permit the use of a product during the cooling off period, currently compensation systems for abuse of the right of withdrawal by the consumer are in place in only 5 MS.</p> <p>Decreased costs for companies in the majority of MS which previously could not charge for the diminished value of goods (e.g. in France the law prevents them from claiming any compensation) – only if the terms used (‘to ascertain the nature and functioning of the goods’) are sufficiently clear (withdrawal period is <i>not</i> a testing period).</p> <p>The damage inventory or depreciation in value of goods has been identified as the most important costs in relation to the management of returns. Main concern for companies is depreciation in the value of the goods that have been returned. For companies selling</p>	

	<p>expensive products (e.g. top-of-the-range electrical appliances), withdrawals are particularly costly when consumers send back used or damaged products. In the UK consumers must be refunded, even if the goods have been used or damaged.</p> <p>Direct sellers: returns are less an issue for direct sellers in countries where sellers wait till the end of the cooling-off period to deliver the product. However if Proposal 9.1 is accepted, this issue will become more significant. Point 5 would decrease their costs.</p> <p>- Point 6 could lead to delaying the launch of the service: doorstep traders will have to wait before starting the service if they want to avoid this situation.</p>
<b>Effects on SMEs</b>	<p>A primary concern and difficulty for SMEs wishing to open their business to other countries is to know the legislation in other countries (e.g. different rules concerning the reimbursement). Harmonisation of the rules on withdrawal would strongly alleviate the current burden.</p>
<b>Effects on consumers</b>	<p>Costs to consumers in some MS previously not obliging them to pay the direct costs of returning the product and not making them liable for the diminished value of goods may increase.</p> <p>Consumers will, as a default rule, bear the costs of return. As is the case today, it is up to the trader to take a commercial decision whether or not to charge the consumer.</p>
<b>Effects on cross-border trade</b>	<p>Harmonisation will significantly alleviate the burden on distance sellers imposed by Rome I upon them. The new rules considered would be an improvement for cross-border trade.</p>
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<ul style="list-style-type: none"> <li>- Point 6 (no costs borne by the consumer for services contract in off-premises contracts) is an improvement for consumer protection.</li> <li>- Cost of return: Consumer protection will be decreased in 2 MS where traders currently bear these costs, and in at least 2 countries where the consumer has to agree first to bear that cost.</li> <li>- Consumers have to send back the goods in a timely manner stated as 7 days. Regarding the maximum 30 days for reimbursement, Spain has established the right of the consumer to claim for double the sum when it has not been paid in that period of time. Similar rule in Slovenia.</li> <li>- Consumers have to send back the goods without being sure they will be reimbursed (trader can withhold reimbursement). This represents a decrease in the level of protection in countries such as UK where retailers must refund consumers as soon as possible even if the item has not been returned or collected.</li> </ul>
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	

	Withholding payment is an issue which affects national procedural laws able to deal with such situations.
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	<p>Regarding the impacts on consumer behaviour if consumers have to cover the costs of returning goods or cancelling contracts within the cooling-off period:</p> <ul style="list-style-type: none"> <li>• 78% agreed or strongly agreed that the number of consumers returning products or cancelling contracts would decrease</li> <li>• 85% agreed or strongly agreed that the number of consumers returning products or cancelling contracts would decrease, especially for low value goods</li> </ul>  <p>Comments:</p> <p>Cancellation costs should normally be seen as an acceptable cost for a business. If consumers had to cover the costs of returning low value goods this would de facto abolish the right of withdrawal.</p> <p>Returning costs are very often a matter of complaints and source for disputes between consumer and business. In Germany, the first transposition of the EU legislation foresaw that the seller always has to cover the costs for the returning of ordered goods. After many complaints from businesses about consumers abusing their right of withdrawal the legislation has changed. The costs can now partly be charged to the consumer.</p>
<b>ECCG workshop</b>	<p>Only somewhat significant (3.83)</p> <p>It was estimated that the change would reduce the level of consumer protection at national level (-1.1 while no effect is expected at EU level). It would also reduce consumer confidence slightly (-0.8).</p> 
<b>Consumer focus group</b>	<ul style="list-style-type: none"> <li>• Notion of ‘diminished value’ of the good was deemed unclear by a number of participants. The Directive would also have to define very clearly what was meant by ‘use necessary to ascertain the nature and functioning of the goods’ that the</li> </ul>

	<p>consumer was entitled to (e.g. regarding assembly products).</p> <ul style="list-style-type: none"><li>• The vast majority (20) of the participants considered that a common set of rules would have a positive influence on making purchases in other Member States. An equally high number also felt that it would increase their confidence in cross-border shopping.</li></ul>
<b>Businesses</b>	
<b>Eurobarometer</b>	<p>Obstacles to cross-border trading: e) Differences in the treatment of costs of return</p> <div><div><div>Trading cross-border</div><div>Not trading cross-border</div></div><div><div><div>36</div><div>18</div><div>23</div><div>16</div></div><div><div>21</div><div>16</div><div>32</div><div>21</div></div></div><div><div><div>■ Not at all an obstacle</div><div>■ Not an important obstacle</div><div>■ Fairly important obstacle</div><div>■ Very important obstacle</div></div></div></div>
<b>Business survey</b>	<ul style="list-style-type: none"><li>• In the rating of the significance of the costs of handling returns (Q 9), the most significant costs were related to:</li><li>• Damaged inventory or depreciation in value of returned goods (55% of respondents)</li><li>• Labour costs in managing returns (54%)</li><li>• Costs of reimbursing clients for returns (34%)</li><li>• Delivery, postage, shipping (30%)</li><li>• 73% of respondents believe that consumers should be liable for any diminished value of the goods resulting from the use or damage.</li><li>• Regarding the impact of consumer behaviour if consumers had to cover the costs of returning goods or cancelling contracts within the cooling-off period:</li><li>• 38% agreed or strongly agreed that the number of consumers returning products or cancelling contracts would decrease</li><li>• 61% agreed or strongly agreed that the number of consumers returning products or cancelling contracts would decrease, especially for low value goods</li><li>• 72% agreed or strongly agreed that the costs to businesses of handling returns or cancellations would decrease</li></ul>

	<div><div><div><div><div>0</div><div>20</div><div>40</div><div>60</div><div>80</div><div>100</div></div><div><div><div>Returns reduced</div><div><div><div>3</div><div>3</div><div>57</div><div>24</div><div>14</div></div></div></div><div><div><div>Returns decreasing for low-value goods</div><div><div><div>3</div><div>8</div><div>26</div><div>37</div><div>26</div></div></div></div><div><div><div>Cost of handling returns reduced</div><div><div><div>8</div><div>3</div><div>18</div><div>49</div><div>23</div></div></div></div></div><div><div><div>Strongly disagree</div><div>Disagree</div><div>Neutral</div><div>Agree</div><div>Strongly agree</div></div></div></div></div></div></div></div>
Business workshop	<div><div><div>Mixed views in distance selling only.</div><div>The change was considered most significant by distance sellers (4.47), and quite significant for the two other groups as well.</div><div>The current burden was rated as being relatively high by retail and distance selling representatives and very high by doorstep sellers.</div><div>The three groups also estimated that the proposed change would reduce the burden. Positive impacts were anticipated, with ratings ranging from moderate reduction (0.5 for distance sellers) to important reduction (2.3 for doorstep sellers).</div></div><div><div><div><div>-3</div><div>-2</div><div>-1</div><div>0</div><div>1</div><div>2</div><div>3</div></div><div><div><div><div></div><div>1.3</div></div><div><div></div><div>1.5</div></div><div><div></div><div>0.5</div></div><div><div></div><div>2.3</div></div></div><div><div><div>Total</div><div>Retail</div><div>Distance</div><div>Doorstep</div></div></div></div></div></div></div>
Business interviews	<div><div>Overall, interviewees welcomed the proposal.</div><div><div>- FEVAD emphasised that it is absolutely necessary that the consumer bears the costs of returning the goods. The German case demonstrates that putting the burden of this cost on the seller can potentially ruin the distance selling sector (with the first transposition of the Directive the costs of returning the goods were borne by sellers; consumers started to order an excessive number of items, and rates of withdrawal reached 50% in the textile sector).</div><div>The Directive should make clear that reimbursement is linked to the <i>return</i> of the good. The current practice for FEVAD members is the following “you will be reimbursed when we receive the good”. ACSEL also argued that reimbursement should be withheld until the <i>reception</i> of the good by the seller. The evidence must be the effective return of the good. This is usually the practice in France. This approach prevents rogue consumers from claiming reimbursement fraudulently. The trader should still be allowed to bear the costs of return, as a commercial policy.</div></div></div>

	<ul style="list-style-type: none"> <li>- IMRG highlighted the key problem of the misuse of withdrawal right, and the problem of refund due the particular situation in the UK. It is crucial that the Directive clearly establishes the link between the return of the goods and the refund, providing that any refund must be made within 30 days from the date of the consumer making available the item for collection or from the date the consumer returns the item. From the experience of IMRG members, many consumers use the item before it is returned to the retailer. The cost of fraud for retailers is important, between 1 to 3 % of turnover.</li> </ul> <p>Limits have to be established to reduce these costs. For instance retailers could charge a “restocking fee” (when the goods are not sent back in original package the retailer has to repackage the item).</p> <ul style="list-style-type: none"> <li>- Vorwerk: The drafting of the expression “ascertain the nature and functioning of the goods” leaves too much room for interpretation. It should be made clear that the withdrawal period is <i>not</i> a testing period.</li> </ul>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<ul style="list-style-type: none"> <li>- The notion ‘timely’ (point 2) must be clearly defined and the concept of “necessary use to ascertain the nature and functioning of the goods” should be exemplified.</li> </ul>

## **Introducing a set list of unfair contract terms ("clauses abusives") with set legal effects**

### ***Problem***

The list attached to the current Unfair Contract Terms Directive (93/13) provides guidance to the Member States as to what contractual terms can be normally challenged under the unfairness test.

Because the current list of unfair terms is purely indicative, this has led to divergent applications in Member States and no legal certainty neither for consumers nor for traders as to which terms are unfair (it is not clear whether a selective transposition of the list was acceptable, as it would easily mislead consumers about their rights, see ECJ case C-478/99 Commission v. Kingdom of Sweden). The list does not make a distinction between terms which are unfair per se and terms which under certain circumstances become unfair.

Many member states have blacklisted the entire Annex No. 1 of the Directive and therefore provide a higher level of consumer protection. Moreover, the blacklist in some Member States contains more clauses than the Annex of the Directive 93/13. Variations across Member States as to the transposition of the Annex can be classified as follow:

- In Austria, Belgium, Czech Republic, Estonia, Greece, Latvia, Lithuania, Luxembourg, Malta, Slovenia and Spain the clauses in the Annex – insofar as they have been transposed – are always regarded as unfair (black list). The blacklist in some member states (e.g. Belgium, Estonia, Malta, Portugal and Spain) contains more clauses than the Annex of the Directive 93/13.



- Germany, Hungary, Italy, Netherlands, Portugal in contrast have opted for a combination of both black and grey lists.
- In Cyprus, France, Ireland, Poland, Slovakia and United Kingdom on the other hand there are only non-binding grey lists.
- In Denmark, Finland and Sweden, no part of the Annex is explicitly transposed.

While Annex No. 2 of the Directive 93/13 establishes certain exceptions with regard to clauses used by suppliers of financial services, many member states provide a higher level of consumer protection by having not transposed Annex No. 2.

### ***Problems encountered by consumers***

Results from the Special Eurobarometer on Consumer Protection show that one out of ten European consumers have come across what they considered to be unfair consumer contract terms in the past twelve months. When looking at the different sectors, cases related to unfair terms concern mostly contracts in the domain of financial services (18%), real estate (18%) and basic services (including the following sectors: electricity, telephone, gas, water, postal services) (11%).

According to the European Online Marketplace study (2005), consumer complaints related to contract terms represented 8% of all e-commerce complaints and disputes reported to the ECC Network in 2005. The main problem concerns the consumer's right to cancel the order and return the goods during the 'cooling-off' period.

### ***Solution proposed***

The introduction of a black list and a grey list is proposed:

The new option proposed would introduce a black list (terms which will be automatically considered unfair and which will thus be banned upfront in all circumstances) and a grey list (terms which will be presumed to be unfair unless the business proves otherwise). The scope of the unfair contract terms chapter would be limited (like today) to standard (non-individually negotiated) terms.

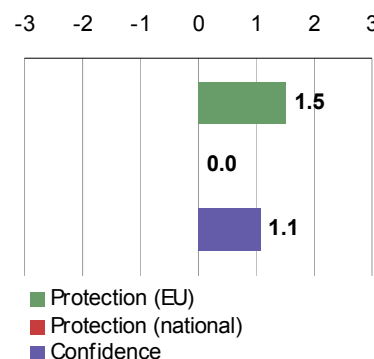
Both lists would be reviewed on a regular basis through a Comitology procedure so that new terms can be added or updated.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+++	<p>Increasing legal certainty due to a harmonisation of the list of unfair contract terms may encourage cross-border trade, especially for SME distance sellers. Long-term beneficial effects on cross-border shopping as consumers would know that they were not protected less.</p> <p>The different benchmarks in Member States when reviewing contractual terms are a barrier to cross-border trade.</p>

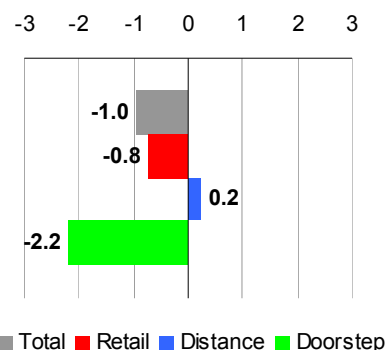
<b>Minimising the burden of EU legislation for businesses</b>	++	<p>Positive effects (lower legal costs) arising from uniform use of the black and grey lists of unfair terms (currently different Member States may have different appreciations of unfair contract clauses, also in view of the evolution of national case law).</p> <p>Some initial additional burden to companies having to review their terms and conditions and possibly change them (though it is assumed that the black list will only contain terms that are already considered to be unfair in all MS) or explain why their terms appearing on the grey list are not unfair (potential administrative cost).</p>
<b>Enhancing consumer confidence</b>	+	<p>Harmonisation would moderately increase confidence as consumers would know that the terms which are deemed unfair in their country would also be unfair in other Member States. Indirectly, a full harmonisation of national consumer protection frameworks may increase the overall confidence of consumers in cross-border shopping.</p> <p>It would increase consumer protection except if there is a significant reduction of the content of the current national lists.</p>
<b>Improving the quality of legislation</b>	+	<p>The change proposed would slightly improve the quality of consumer protection legislation as it consolidates the lists of unfair terms, increasing legal certainty for both businesses and consumers. Moreover, the proposed solution would maintain the required flexibility and time-proof of the lists by providing a procedure for updating them.</p> <p>However, the quality of the procedure to elaborate and update the list could be limited due to transparency issues (Comitology procedure).</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>At present (especially under Rome I), businesses that wish to trade cross-border face great difficulties in adapting their terms and conditions to those of other Member States. It was estimated by businesses that in terms of legal fees, adapting the terms and conditions to another Member State's legislation would cost at least 1000 euros for an average trader, not including the need to monitor legislation continuously and to update contractual documents. This is likely to amount to a similar figure annually.</p> <p>The adoption of a single list of unfair terms would reduce the legal costs incurred by companies as they would no longer have to check 27 different lists (or case law, etc) and thereby no longer apply different terms and conditions. It would reduce the risk of litigation and increase legal certainty.</p> <p>Compliance costs: Initial costs for businesses to adapt their terms</p>	

	and conditions.
<b>Effects on SMEs</b>	SMEs could particularly benefit from the proposal. Whilst large companies often have their own legal services, SMEs cannot afford to employ lawyers or pay substantial legal fees. SMEs sometimes 'cut & paste' the terms and conditions from websites of other companies in countries they wish to trade in, but this causes substantial problems due to a lack of understanding of these terms. Furthermore, they often disregard the need for a continuous monitoring of consumer (and other relevant) legislation.
<b>Effects on consumers</b>	
<b>Effects on cross-border trade</b>	Cross-border trade might be encouraged marginally by harmonisation unfair terms.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>The change proposed would increase legal certainty for consumers. Having a binding list of unfair contract terms banned under all circumstances (black list) and a binding grey list of unfair contract terms, instead of an indicative list where traders can argue differently depending on circumstances, increases consumer protection. It would be sufficient for consumers to claim that a black-listed or grey-listed term is unfair.</p> <p>However maximum harmonisation could bring about a reduction in consumer protection in those countries where it is particularly high (e.g. the blacklist in member states such as Belgium, Estonia, Malta, Portugal and Spain, contains more clauses than the Annex of the Directive 93/13).</p>
<b>Environmental effects</b>	
	No effects anticipated.
<b>Public sector administration/enforcement costs</b>	
	The introduction of the black and grey lists would imply high administrative costs in at least a number of Member States (e.g. France, UK, with only non-binding lists) which operate different systems in relation to unfair terms (new legislation, detailed regulation, development of a new case law framework, training of enforcement bodies and courts).
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	This proposed change was not addressed in the consumer organisation survey.

<b>ECCG workshop</b>	<p>Seen as relatively significant (4.00). The introduction of the black and grey lists would increase EU consumer protection (1.5) but views were mixed as regards the impact on national consumer protection levels (a zero score on average). The latter mainly reflects the fact that in some countries similar lists already exist. The group considered that the lists would also increase consumer confidence (1.1 points out of 3).</p> <p>Some expressed concerns that a single list for all countries may not take into account national specifics. The Comitology procedure was also perceived as insufficiently transparent. Finally, there were concerns as to what would happen with interpretations given by court decisions, as this may affect legal certainty.</p>
<b>Consumer focus group</b>	This proposed change was not addressed in the consumer focus group. It was commented that consumers do not sufficiently read the terms and conditions.
<b>Businesses</b>	
<b>Business survey</b>	<p>51% of the business organisations do not consider that the introduction of the black and grey lists would decrease their compliance costs. 13% deem that the lists would lead to a decrease in compliance costs, while 23% does not anticipate any effects. In a number of countries (including Germany and the Netherlands) similar lists are already in use.</p> <p>Some refer to high initial costs for businesses to adapt their terms and conditions. Others comment that a general black list can always be interpreted in different ways, thus not contributing to legal certainty. Member States should not be allowed to add terms at national level.</p>



<b>Business workshop</b>	<p>Very mixed views in the retail and distance sector, with retailers considering the proposed change somewhat significant (3.64) and distance sellers considering it very significant (4.47).</p> <p>Doorstep sellers considered that the lists would imply a high increase of their current burden (-2.2), followed by retailers who anticipated it would mean a minor increase (-0.8). Distance sellers did not believe the lists would have a particular effect.</p> <p>Concerns were expressed about the Comitology procedure to revise the lists, since it would not be sufficiently transparent and would limit the role of the European Parliament.</p>
<b>Business interviews</b>	<p>Overall, interviewees somehow agreed with the proposal but considered that defining unfair terms in the EU27 would be very difficult. One interviewee explained that the terms they used in one country were considered unfair in another. The Comitology procedure for updating the list was questioned. Finally, some referred to good examples of self-regulation.</p> <p>The FVD explained that in France there is only one black listed term. Contractual terms are assessed by judges, who can be guided by recommendations of the Commission on unfair terms. There should be no presumption and the judge should be free to appreciate the unfair character of a term, in relation to the rest of the contract and the general context. Having presumed unfair terms makes it more complicated for professionals as for certain terms, it is impossible to say “a priori” if they are unfair or not.</p> <p>ACSEL recommends a very short list similar to the one used in France, limited to three unfair terms.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>The black list should be rather short and could only include clear cases.</p> <p>The Comitology procedure may not be fully legitimate under public law. Member States would also need to keep lists of instances in which they apply the lists, to exchange this information with other Member States (report system on national courts to set up). The consequence for other Member States when one term has been proven unfair in one Member State would have to be clarified.</p>



## **Introducing new rules on the content and form of information to be provided to the consumer**

### ***Problem***

EU consumer protection rules require companies to provide information to the consumer, either before the conclusion of the contract or, in the case of distance selling, both before and after the conclusion of the contract. The information requirements cover, for example: the identity of the supplier, the main characteristics of the good or service, the price of the goods or services including taxes, delivery costs, etc. Relating in particular to off-premises and distance contracts, consumers must be given information on their right of withdrawal and on the way that they may exercise this right.

However, there is no consistency between the information requirements imposed by the different Directives, which differ with regard to the circumstances in which information must be supplied, the nature of the information to be supplied, and the time at and manner in which it is to be supplied. The Doorstep Selling Directive requires information to be supplied 'in writing'. More recent directives on the other hand, such as Distance Selling or Sale of Goods, are more flexible and expressly permit the use of modern technology, requiring information to be supplied 'in writing or other durable medium'.

These obligations are regulated differently between the Member States. In some EU countries, information must be provided in writing in a specific form or in the form of a durable medium. For example, consumers may be provided with a standard form informing them of their right of withdrawal and with another standard form which they could use on a durable medium for notifying the seller of their withdrawal from the contract.

National consumer protection rules also provide for specific information requirements in terms of contents and form. In addition there is no common core of pre-contractual information requirements in the acquis. The following tables summarise the main differences in national provisions.

### **Main Additional Pre-contractual Information Obligations - Distance Selling**

<b>Additional Information</b>	<b>Member States (EU 25)</b>
Supplier's address (in any event)	Austria, Cyprus, Czech Republic, Germany, Denmark, , Finland, France, Luxembourg, Malta, Poland, Sweden, Slovakia, Slovenia, Spain (14)
Supplier's telephone number	France, Hungary, Luxembourg (3)
Non-existence of the withdrawal right	Belgium, Germany, Finland, Italy, Slovenia, Spain (6)
Identification number	Czech Republic, Hungary (2)
Conditions and procedures for exercising withdrawal right	Italy, Slovenia (2)
Costs of the return of goods after withdrawal	Belgium, Luxembourg (2)
Right of the consumer to withdraw from a related credit contract	Estonia (1)

Estimated time of entry into force of the contract	Estonia (1)
Place and procedure for submitting complaints	Poland (1)

Art. 5 of the Distance Selling Directive obliges the supplier to provide, in good time during the performance of the contract, some of the information to be given prior to the contract, as well as written information on the conditions and procedures for exercising the right of withdrawal, at the latest at the time of delivery, unless the information has already been given to the consumer in such form.

### **Formal Requirement for the Written Confirmation in Art. 5 – Distance Selling**

<b>Formal requirements</b>	<b>Member States (EU 25)</b>
As in the Directive: written confirmation (or confirmation in another durable medium) of some of the information to be given prior to the contract	Austria, Belgium, Cyprus, Estonia, France, Ireland, Luxembourg, Portugal, UK (9)
Variations with regard to the term “another durable medium available and accessible” (mostly variation in wording)	Denmark, Finland, Germany, Hungary, Latvia, Malta, Slovenia, Sweden (8)
No transposition of the term “another durable medium”: supplier must always provide confirmation of the information in written form	Czech Republic, Greece, Lithuania, Netherlands Poland and Slovakia (6)
Supplier can only use another durable medium if the consumer chooses to do so	Italy (1)
Supplier can use another durable medium unless the consumer rejects this explicitly	Spain (1)

Article 4 of the Doorstep Selling Directive provides that traders must give consumers written notice of their right of withdrawal but leaves it up to the Member States to lay down the form of the notice.

### **Variations in the information requirement in Direct selling**

<b>Information requirement</b>	<b>Member States (EU 25)</b>
Information on withdrawal right in writing	Austria, Czech Republic, Denmark, Spain, France, Hungary, Ireland, Luxembourg, Lithuania, Poland, Sweden, Finland, Slovenia, Slovakia (14)
Information on withdrawal right to be either in writing or on a durable medium accessible to the consumer	Estonia, Germany
Whole contract (including notice on right of withdrawal) in writing	Belgium, Greece, Malta, Netherland, Portugal, Spain (6)
Detachable document of withdrawal containing	France, Cyprus, Lithuania (3)

information on cancellation right or standard cancellation form which the consumer can use to exercise his right of withdrawal	
Use of 'cancellation notice' provided with the contract	UK, Ireland (2)
Additional information obligations imposed on the trader	Lithuania, Poland (2)

### ***Problems encountered by consumers***

There is evidence of consumers being confused over cancellation rights. In the UK, a study shows that only 2% of respondents visited on the doorstep could recall being given cancellation details.<sup>38</sup> Overall, 27% of respondents who decided to cancel encountered problems when cancelling, nearly half of these arising because of a lack of awareness of the cancellation period available to them.

Across all categories of direct sales the OFT found that consumers are generally unaware of their rights when buying through doorstep selling. The majority are unaware that they may enjoy a cooling off period when buying at home (if the visit was unsolicited) and 34% thought that they had more rights when purchasing in a shop. Only 6 % of consumers were aware that they may have additional rights when buying through doorstep selling.<sup>39</sup>

In distance selling, the ECC study on Internet shopping found that 28% of the cases the webtraders had not informed the consumer about the cooling-off period prior to the purchase.<sup>40</sup>

### ***Problems encountered by businesses***

The burden represented by the variations in information requirements across Member States is important. For SMEs in particular the burden of the legislative requirements is important. In France 45% of sellers do less than 100 transactions per months (between 11 and 100) and 35% do less than 10 transactions per month.<sup>41</sup> Many of them do not have their in-house teams of lawyers and the compliance costs to engage in e-commerce with consumers in other EU member states are substantial. In terms of legal fees, the Federation of Small Business estimates that the cost for a business to engage in cross-border trade could be approximately 8,850.00 euro per Member State.<sup>42</sup>

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<sup>38</sup> Ofgem's Consultation. 'The Regulation of gas and electricity sales and marketing', August 2003

<sup>39</sup> Doorstep Selling, A Report on the Market Study, May 2004, OFT  
[http://www.offt.gov.uk/shared\\_offt/reports/consumer\\_protection/oft716.pdf](http://www.offt.gov.uk/shared_offt/reports/consumer_protection/oft716.pdf)

<sup>40</sup> Realities of the European Online Marketplace. A cross-border e-commerce project by the European Consumer Centre's Network. 2003

<sup>41</sup> Panel iCE/FEVAD

<sup>42</sup> A consumer lawyer in the relevant country would need to research the specific case, check local compliance and draft an amended set of country specific terms and conditions with annexes. Assuming that a consumer lawyer's time is billed at approximately \_ 295 per hour and that such an exercise might require 5 days work (checking compliance would require a number of different legal disciplines) the cost to a business could be approximately 8,850.00 euro per Member State



These costs are important for all sellers trying to engage in cross-border trade. For distance sellers legal costs would significantly increase with the adoption of Rome since all distance B2C contracts concluded via Internet will be subject to the consumer protection rules of the country where the consumer has his habitual residence. A large number of terms and conditions would need to be changed to comply with mandatory provisions of the law of the consumer's country. Amazon estimates the adaptation of their standard terms and conditions to 27 national legislative systems to be very costly (in the range of 400,000 euro) and extremely difficult to achieve in practice.

In the OFT survey on internet shopping, 28% of UK-based online traders were not aware or only slightly aware of the laws applying to internet shopping, and two-thirds (66 per cent) had never sought advice on them. One fifth of online electrical retailers did not think that buyers had a right to cancel.

### ***Solution proposed***

One option could be to introduce rules which would make the content and form of the information to be provided to consumers standardised for distance and doorstep contracts : some basic pre-contractual information based on the current text of the Unfair Commercial Practices Directive ("UCPD") would be required and notice on the withdrawal right which would be standardised at EU level would have to be provided to the consumer both for distance and doorstep contracts.

In addition, in distance contracts, further information would need to be included in the confirmation to be sent to the consumer on a durable medium after contract conclusion (as is the case today); in doorstep contracts, all the information items would need to be included in the order form to be signed by the consumer. Currently, the doorstep selling Directive only contains one information requirement (related to the right of withdrawal) and UCPD adds some more items without specifying the modalities of providing them for this particular method of sale.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+++	Information requirements varying highly across Member States represent a heavy burden on cross-border trade (it forces businesses to draft special information notices for specific Member States). Fully harmonized information requirements across the European Union would guarantee legal certainty for businesses and remove disincentives for cross-border trade, allowing for cross-border use of information.
<b>Minimising the burden of EU legislation for businesses</b>	++	Significant reduction of costs (Alignment with the UCPD provisions minimises burden) and reduction of legal uncertainty for professionals as common rules are established in all MS (and standard forms used).  Standardised information also reduces the cost of providing the information (advantage to be able to

		use the same set of contract terms everywhere).
<b>Enhancing consumer confidence</b>	++	<p>Indirectly, a full harmonisation of national consumer protection frameworks may increase moderately the overall confidence of consumers in cross-border shopping. Standard forms and rules across the EU could increase consumer confidence (improving transparency).</p> <p>Consumer confidence and protection levels will depend on the content. Increased confidence will occur due to improved information base in certain sectors or MS. Particular improvements in direct selling, where at present information requirements are less detailed (However, UCPD rules must be respected already today).</p>
<b>Improving the quality of legislation</b>	+++	<p>Fully harmonised information requirements across the European Union would guarantee legal certainty. Use of UCPD requirements would create a general system of obligations in all consumer contracts and increase the coherence of the acquis. A general information standard aligned with the UCP would be a significant improvement.</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<ul style="list-style-type: none"> <li>- Volume and amount of information to be provided to consumers is crucial for businesses. The exact content that will form this core of information requirements will determine the costs incurred. The UCPD provisions would reduce the burden compared with the current obligations in Distance selling.</li> <li>- In many countries the amount of information to be provided in distance selling may decrease. In at least 9 countries additional pre-contractual information has to be provided. In those cases, this new rule will simplify the requirements.</li> <li>- For all sectors, important reduction of the current burden represented by the fact that information packs and brochures differ for each market. In addition, regular monitoring of consumer rules in each country is necessary to identify possible changes. Full harmonisation of information requirements will enable companies to save important costs.</li> <li>- Administrative costs: one-off cost of amending standard terms and information material for companies</li> <li>- Standard order form could reduce cost and legal uncertainty. Standardised information reduces the cost of providing the information for companies.</li> </ul>	
<b>Effects on SMEs</b>	<p>As a large number of SMEs cannot afford to take the legal advice necessary to adapt their websites or other sales material to fulfil the information requirements in force in the countries which they intend to conduct business in, they decide to rather not trading cross border, limiting themselves instead to national markets. For</p>	

	SMEs and micro-enterprises the burden of the legislative requirements is huge: in terms of legal fees the cost to engage in cross-border trade is estimated to 8,850.00 euro per Member State. Many of them are not even aware of these requirements and simply do not apply the legislation. Simplifying the information requirements would reduce their burden significantly.
<b>Effects on consumers</b>	Consumers will be ensured one and the same set of basic information wherever they buy from.
<b>Effects on cross-border trade</b>	<p>Having the same information requirements across the EU would be beneficial for cross border trade, provided the information is not be too complicated to provide, and that not too much is added to existing information requirements.</p> <p>Harmonisation will significantly alleviate the burden on distance sellers imposed by Rome I upon them.</p>
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>Information requirement is one of the most important instruments for consumer protection. The alignment with the UCPD requirements would have a positive effect on consumer protection, especially in the doorstep selling sector. An OFT study found that more than half (56 per cent) of the internet shoppers surveyed online did not know about their right to withdraw from the contract. Standardisation would improve the transparency of the information provided to consumers.</p> <p>Use of minimum clauses by the Member States has caused barriers to trade without substantially increasing consumer protection. In some countries too much information might have decreased consumer protection as consumers do not read the information.</p> <p>However the level of consumer protection will depend on what is included in the information requirements. A too limited number of requirements might not increase consumer protection (i.e. if the proposal leads to reducing excessively the information currently provided in some Member States)</p>
<b>Environmental effects</b>	
	The environmental burden caused by extensive paperwork is considered significant (in Internet shopping the pre-contractual information can be available on the website and the confirmation can be sent on any durable medium including emails which do not need to be printed). Having the same information requirements would be positive if the information is not too lengthy.
<b>Public sector administration/enforcement costs</b>	
	A consistent core of information requirements may render the authorities' enforcement work more efficient, especially in the context of cross-border public enforcement. One off costs at the introduction of new legislation.
<b>Stakeholder views</b>	

Consumers											
<p><b>Consumer confidence</b></p> <table border="1"> <thead> <tr> <th>Category</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>Consumer confidence (domestic)</td> <td>0.4</td> </tr> <tr> <td>Consumer confidence (cross-border)</td> <td>1.6</td> </tr> <tr> <td>Domestic sales</td> <td>0.2</td> </tr> <tr> <td>Cross-border sales</td> <td>1.4</td> </tr> </tbody> </table> <p> <span style="color: green;">■</span> Consumer confidence (domestic)  <span style="color: lightgreen;">■</span> Consumer confidence (cross-border)  <span style="color: red;">■</span> Domestic sales  <span style="color: pink;">■</span> Cross-border sales </p>	Category	Score	Consumer confidence (domestic)	0.4	Consumer confidence (cross-border)	1.6	Domestic sales	0.2	Cross-border sales	1.4	<p>problems that consumers experience with their information concerning the right to obtain information, identified the following problems:</p> <ul style="list-style-type: none"> <li>is not provided (47% agreed or strongly agreed)</li> <li>provided is not clear (56%)</li> <li>of information is not sufficient (50%)</li> </ul> <p>Regarding the harmonisation of information requirements across the EU, a slight increase in consumer confidence in domestic purchases was anticipated (scoring 0.4 out of 3) while the positive impact on consumer confidence in cross-border sales was considered as significant (1.6).</p> <p>Concerning the possibility of introducing standardised information on the right of withdrawal for distance and doorstep contracts:</p> <ul style="list-style-type: none"> <li>• 93% agreed or strongly agreed that the content of the information should be the same for distance &amp; doorstep contracts</li> <li>• 82 % agreed or strongly agreed that the content of the information should be standardised and be the same for all EU MS</li> <li>• 93% agreed or strongly agreed that standardised information improves the transparency of the info made available to consumers</li> <li>• 81% agreed or strongly agreed that standardised information makes it easier for consumers to provide the information to companies</li> </ul>
Category	Score										
Consumer confidence (domestic)	0.4										
Consumer confidence (cross-border)	1.6										
Domestic sales	0.2										
Cross-border sales	1.4										

	<div><div><div>020406080100</div><div><div><div>Same content for distance and doorstep</div><div><div>7</div><div>61</div><div>32</div></div></div></div><div><div><div>Standardised information across EU</div><div><div>4</div><div>14</div><div>46</div><div>36</div></div></div></div><div><div><div>Transparency of information improved</div><div><div>7</div><div>54</div><div>39</div></div></div></div><div><div><div>Information provision easier</div><div><div>19</div><div>46</div><div>35</div></div></div></div><div><div><div>Strongly disagree</div><div>Disagree</div><div>Neutral</div><div>Agree</div><div>Strongly agree</div></div></div></div></div>
ECCG workshop	<div><div>Only somewhat significant (3.80)</div><div>Participants considered that the change would increase protection at EU level quite significantly (2.1 out of a possible 3). Consumer confidence would also increase (1.5).</div><div><div><div>-3-2-10123</div><div><div><div>Protection (EU)</div><div>2.1</div></div><div><div>Protection (national)</div><div>1.0</div></div><div><div>Confidence</div><div>1.5</div></div></div></div></div></div>
Consumer focus group	
Businesses	
Eurobarometer	<div><div>Obstacles to cross-border trading: b) Differences in information to be provided to the consumer</div><div><div><div>Trading cross-border</div><div><div><div>37</div><div>23</div><div>22</div><div>14</div></div></div></div><div><div><div>Not trading cross-border</div><div><div><div>25</div><div>19</div><div>28</div><div>19</div></div></div></div><div><div><div>Not at all an obstacle</div><div>Not an important obstacle</div><div>Fairly important obstacle</div><div>Very important obstacle</div></div></div></div><div><div>Obstacles to cross-border trading: c) Differences in the case of failure to provide information</div><div><div><div>Trading cross-border</div><div><div><div>33</div><div>18</div><div>25</div><div>19</div></div></div></div><div><div><div>Not trading cross-border</div><div><div><div>21</div><div>14</div><div>32</div><div>24</div></div></div></div><div><div><div>Not at all an obstacle</div><div>Not an important obstacle</div><div>Fairly important obstacle</div><div>Very important obstacle</div></div></div></div></div></div></div></div>

<b>Business survey</b>	<p>Concerning the use of standardised information on the right of withdrawal for distance and doorstep contracts:</p> <ul style="list-style-type: none"><li>• 75% of respondents agreed/ strongly agreed that the content of the information should be standardised and be the same for all EU countries.</li><li>• 74% agreed/ strongly agreed that standardised information reduces the cost of providing the information for companies</li><li>• Only 51% agreed/ strongly agreed that the content of the information should be the same for distance and doorstep contracts</li></ul> <p>The importance of the coherence with E-commerce Directive was pointed out.</p> <div><div><div>020406080100</div><div><div>Same content for distance and doorstep</div><div>249153021</div></div><div><div>Standardised information across EU</div><div>8882847</div></div><div><div>Cost of information provision reduced</div><div>9993737</div></div><div><div>Cost of processing withdrawal reduced</div><div>9993241</div></div><div><div>Strongly disagree</div><div>Disagree</div><div>Neutral</div><div>Agree</div><div>Strongly agree</div></div></div></div>
<b>Business workshop</b>	<p>Mixed views in distance selling only</p> <p>The change was considered significant by all groups.</p> <p>The current burden was rated as being rather high by distance selling and retail representative. In terms of impact, distance sellers considered that the change proposed would to some extent increase this burden (-0.3), whereas doorstep sellers anticipated a positive impact with a slight reduction of their burden (0.5). Distance sellers were concerned about the exact content that will form this core of information requirements (potential additional information). Direct sellers (e.g. AVEDISCO) also expressed their concern at a possible increase of information requirements. All participants welcomed the harmonisation of information to be provided to</p> <div><div><div>-3-2-10123</div><div><div><div>0.3</div><div>0.7</div><div>-0.3</div><div>0.5</div></div><div><div>Total</div><div>Retail</div><div>Distance</div><div>Doorstep</div></div></div></div></div>

	<p>the consumer.</p> <p>A large proportion of retail representatives did not express views on this option.</p>
<b>Business interviews</b>	<p>Interviewees agreed that there is a need to rationalise and shorten the information to be provided, especially for SMEs and micro-enterprises. Too much formalism is burdensome.</p> <ul style="list-style-type: none"> <li>- FEVAD is regularly contacted by SMEs wishing to open their business in other countries. The main difficulty is to know the legislation in other countries. FEVAD provides models of contracts on its website, such as a model of pre-contractual information. SMEs represent the majority of FEVAD members. In terms of number of transactions, almost half (45%) of sellers do less than 100 transactions per months (between 11 and 100) and 35% do less than 10 transactions per months.</li> <li>- ACSEL welcomed the generalisation of the UCPD provisions. The pre-contractual information are more adapted to distance selling (especially m-commerce). The current provisions for distance selling are too precise and detailed. In France additional information are required.</li> <li>- Direct sellers emphasised the importance of keeping the provision of the information at one point in time (e.g. all the information on the order form).</li> <li>- Amway estimated the burden represented by the variations between the information packs and brochures that differ for each market to be between 25 to 40,000 euro per year (costs include legal review to monitor consumer rules in each country, to make sure that the contracts comply with national legislation). Although France and Belgium use the same language for instance, they have different information requirements, i.e. businesses cannot use the same brochure. Full harmonization will enable companies to save important costs.</li> </ul>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<ul style="list-style-type: none"> <li>- Not turning information requirements into an information overload. Too much information can be counter productive as a consumer might not read the information.</li> <li>- Enforcement of the legislation and better awareness are necessary: problems are not only caused by national consumer legislation but by professionals not fulfilling their duties.</li> <li>- The crucial issue is to draw consumers' attention to the key information relating to contractual rights and obligations.</li> <li>- Information requirements should be fully harmonised (no additions by national rules)</li> </ul>

## **Introducing an obligation for the consumer to notify the seller, within a reasonable period of time, of the lack of conformity of the product**

### ***Problem***

The duty of the seller to deliver goods in conformity with the contract is the cornerstone of the Directive 1999/44/EC on Consumer Sales. Articles 3(1) and 5(1) of the Directive state that the seller shall be held liable to the consumer for any lack of conformity which exists at the time the goods are delivered and that become apparent within two years from the delivery of the goods<sup>43</sup>. In some Member States, this period is longer (for instance there is no limit in Finland, and a six years period in Ireland and the United Kingdom while this extended timeframe traditionally concerns repair and redress for damages, but not replacement, price reduction or rescission as an available remedy).

The Consumer Sales Directive leaves it up to the Member States to determine whether a consumer must inform the seller of the lack of conformity within a certain period, which is not less than two months from the moment of discovery. 15 Member States have made use of this option; some have included exceptions to this rule under certain circumstances. In 10 Member States, the lack of notification does not deprive the consumer from his right to rely on lack of conformity.

### **Transposition of the option on notification requirements in the Consumer Sales Directive (as of Compendium)**

<b>Member State</b>	<b>Notification period</b>	<b>No period</b>	<b>Comments</b>
Austria		<b>x</b>	
Belgium		<b>(x)</b>	Parties can agree on a notification period (of not less than the 2 month) and the consequences of non-complying. Consumer must act within one year however.
Cyprus	<b>x</b>		
Czech Republic		<b>x</b>	
Denmark	<b>x</b>		Consumer has to notify the trader within a reasonable time, which is not less than two months. The period starts when the lack of conformity has actually been discovered by consumer.
Estonia	<b>x</b>		
Finland	<b>x</b>		Consumer has to notify the trader within a reasonable time, which is not less than two months.
France		<b>x</b>	
Germany		<b>x</b>	

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<sup>43</sup> There is an option – as of Article 7(1) – to reduce this liability period for second-hand goods. According to the Compendium, this option was applied by 14 Member States.



Member State	Notification period	No period	Comments
Greece		x	
Hungary	x		Consumer needs to inform the seller within “the shortest time permitted by the prevailing circumstances”, while two months are considered as satisfactory in all cases.
Ireland		x	
Italy	x		
Latvia		x	
Lithuania	x		
Luxembourg		x	
Malta	x		The period starts when the consumer actually discovered the lack of conformity.
Netherlands	x		Notification is required within a “due period of time” after discovering the defect (two months are sufficient).
Poland	x		It is sufficient to send a written statement before this period expires. Consumer can only enforce his rights if he takes action within one year of discovering the lack of conformity.
Portugal	x		
Slovakia	x		The consumer is obliged to notify the trader “immediately”.
Slovenia	x		The consumer is also required to describe the defect and to enable the seller to examine the goods.
Spain	x		The presumption is that the consumer has notified the trader within two months. The burden of proof of non-compliance lies with the trader.
Sweden	x		
United Kingdom		x	

### ***Solution proposed***

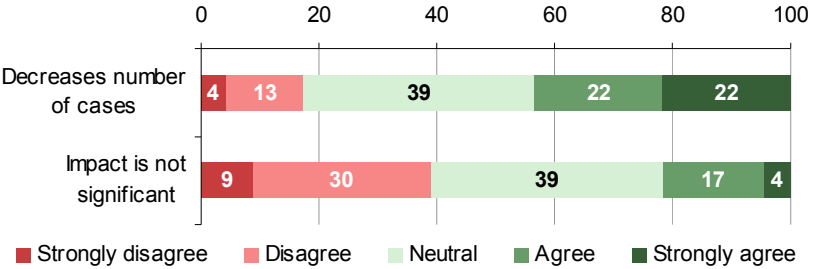
#### **Option 1**

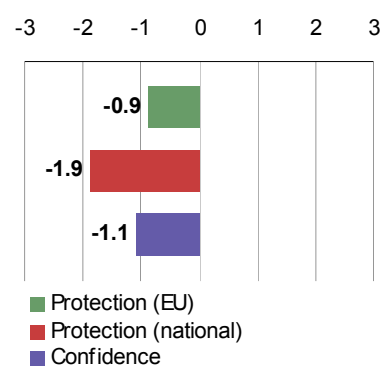
A first option could set a certain - obligatory - limit for notifying a lack of conformity. New rules could be (note – these are not alternatives but cumulative rules):

1. *If the consumer does not give notice to the seller specifying the nature of a lack of conformity within a reasonable time after the consumer discovered it, the consumer loses the right to rely on the lack of conformity.*
2. *A notice given within two months is always regarded as given within a reasonable time for the purposes of paragraph (1).*

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+	Some positive effect on the level of cross-border transactions (and competition), as the case for excluding customers will diminish due to harmonisation.
<b>Minimising the burden of EU legislation for businesses</b>	++	Harmonisation will slightly reduce the burden on companies in relation to monitoring national legislation.  Legal certainty will however also be reduced during a transitional period, until a new legal framework has been established.
<b>Enhancing consumer confidence</b>	0	Consumer confidence might increase through harmonisation (better understanding of consumer protection rules), but might decrease in 10 Member States due to a small reduction in the level of protection.
<b>Improving the quality of legislation</b>	+	Harmonisation will bring additional clarity in legislation on cross-border transactions. However, legal uncertainty in the transition period will slightly increase, until a new case law framework is in place.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>The proposal would bring a change to national legislation in 10 Member States (including the three largest markets).</p> <p>A one-off cost to traders is involved when revising their standard terms, including the obligation of notification.</p> <p>The number of consumers losing their right to rely on lack of conformity by making a claim for a remedy, outside the two-month period (or a “reasonable time”) after they discovered the lack of conformity will be marginal only, as it is today in the Member States where a notification period exists.</p> <p>Some traders will try to discourage consumers to invoke the right of referring to the lack of conformity (as reported by</p>	

	<p>consumer organisations), although proving that the consumer has missed the deadline will be difficult. Consumers could simply state that they discovered the lack of conformity only recently.</p> <p>The option might initially involve court costs and a period of legal uncertainty.</p> <p>The harmonisation aspect will bring some reduction of legal and business operating costs: cross-border traders will not have to monitor national legislation (Rome I) and will not have to check case by case what law will apply. .</p>
<b>Effects on SMEs</b>	SME distance sellers with rather limited cross-border activities will profit most of the harmonisation:
<b>Effects on consumers</b>	<p>For consumers in 10 Member States, a deadline will be introduced to exercise their right to rely on the lack of conformity.</p> <p>The number of consumers effectively losing their right will only be very minor, as companies are not likely to often challenge claims that are in theory not legitimate by proving that the consumer ought to have discovered the lack of conformity at an earlier stage without acting.</p>
<b>Effects on cross-border trade</b>	A minor effect on traders, encouraging them not to exclude potential consumers from certain countries can be expected.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	The level of protection will in theory be reduced in 10 Member States, but the effects in practice are considered to be minor only.
<b>Environmental effects</b>	
	No conceivable effects.
<b>Public sector administration/enforcement costs</b>	
	One-off costs of establishing and communicating detailed national regulation on how to interpret the notion of the time when the consumer “ought to have discovered” the lack of conformity, as well as potential guidance on longer deadlines for certain product categories.
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	Many respondents (44%) reckoned that that the number of consumers relying on the lack of conformity might decrease with the implementation of Option 1. This proposed change was considered to be moderately important: only 21% of respondents thought that the impact of Option 1 was not significant to businesses and consumers.

	 <p>As regards of the propensity of traders to invoke the expired deadline for notification as a reason for not providing remedies, almost half of the respondents did not provide a judgement. However, 69% of the remainder said that this is common or very common. In these countries, a lot of traders have these rules written down in their terms and conditions, and invoke them in case of disputes.</p> <p>Even in countries where no deadline for notification exists, many traders still refer to the terms of the manufacturer warranty. In the UK, some retailers tell consumers they are too late to access redress, claiming it to be 'their policy', despite this has no legal standing. Consumers often believe this claim is valid.</p> <p>Consumers often make no distinction between legal guarantee and commercial guarantee, and forget relying on legal guarantee.</p> <p>Many consumer organisations did see this obligation only as an obstacle for consumers to exercise their rights, and advocated that the obligation to notify the trader should not be made compulsory by the Directive. Some organisations suggested that notification requirements should be dropped altogether from the law, or the period should be sufficiently long. Consumers may have different understandings of the conformity of a product, and determining the moment in which the lack of conformity becomes apparent can easily be controversial (e.g. if a problem seems fixed, and re-emerges later).</p> <p>The gains in consumer confidence if the rules were harmonised across the EU were mentioned by some.</p>
<p><b>ECCG workshop</b></p>	<p>Participants said that the level of consumer protection in the EU and especially in the respective Member States would considerably be reduced by Option 1 (2 of the 5 Member States represented do not have such a period). Although a harmonisation could be beneficial in theory, consumer confidence as also assessed to decrease (-1.1).</p>



	<p>The issue was considered only somewhat significant (3.71 on a scale of 1 to 5) by respondents.</p> <p>Some participants opposed the introduction of the time limit. Consumers often do not have the technical knowledge to assess whether there is a lack of conformity.</p> <p>The participant from Luxembourg however favoured this option: the longer the consumer waits the easier it will be for the trader to say that the defect is linked to improper use. Consumers have to act quickly – and the proposed time limits are reasonable. EuroCoop also agrees that Option 1 is legally the most correct one, but it would be required that mentality change.</p> <p>It can however be problematic to decide at which time the consumer ought to have discovered the non-conformity. The Italian representative favoured the simple rule of no deadline, but 2 years legal guarantee for lack of conformity.</p>
<b>Consumer focus group</b>	<p>Participants were slightly divided on the legislative changes proposed, with six favouring the first option, which sets a certain limit for notifying a lack of conformity and 14 participants indicating that the second option, not setting a limit, would most positively influence the extent to which they engaged in cross-border shopping. Some argued that a consumer acting in good faith would have interest in notifying the seller as soon as possible. A fair attitude towards the seller would also imply the notification before the problem gets worse, thus avoiding higher costs for the latter. Another participant said that a small defect could on the longer term even become a safety issue. If option 1 was adopted, the way in which the consumer must notify the seller should however be clearly defined.</p> <p>On the other hand, some participants argued that this rule would make things very complicated (opening the door to endless litigations and complaints). The first option would clearly limit the rights of the consumers who might overlook a problem for more than 2 months and lose his guarantee rights unfairly. In addition, consumers would not always be able to notice straight away whether a good was defective: they usually only realise this when goods stop functioning, which does not necessarily coincide with the start of a defect.</p> <p>Whatever option was chosen, all participants felt that a common</p>

	rule would increase their confidence in cross-border shopping.																								
Businesses																									
Business survey	<p>The effects on the number of cases when the consumer will use his right to rely on the lack of conformity were considered to be minor. Only 13% of respondents thought the number of cases may decrease. Some respondents think it might even increase, as consumers will be made more cautious.</p> <div><table><thead><tr><th>Category</th><th>Strongly disagree</th><th>Disagree</th><th>Neutral</th><th>Agree</th><th>Strongly agree</th></tr></thead><tbody><tr><td>Decreases number of cases</td><td>26</td><td>19</td><td>42</td><td>13</td><td>0</td></tr><tr><td>Decreases business costs</td><td>10</td><td>16</td><td>42</td><td>29</td><td>3</td></tr><tr><td>Impact is not significant</td><td>7</td><td>25</td><td>32</td><td>29</td><td>7</td></tr></tbody></table></div> <p>The respondents expressed mixed opinions about the effect of the change on business costs. 32% reckoned that the costs will decrease with the implementation of the option, while 26% did not agree with this statement.</p> <p>Some believed a notification requirement is disadvantageous for the buyer but does not bring significant advantages to the seller either, because he could not know when the buyer would discover the non-conformity and thereby trigger the notification period. A notification requirement would create a not insignificant conflict potential without in fact bringing advantages.</p> <p>There was also some disagreement on the conceived significance of the option: 34% thought that this was not important, but 32% of respondents deemed it significant. Most consumers would want to have a fault rectified as soon as possible anyway. The issue is clearly not relevant for certain sectors, like most of personal care products.</p>	Category	Strongly disagree	Disagree	Neutral	Agree	Strongly agree	Decreases number of cases	26	19	42	13	0	Decreases business costs	10	16	42	29	3	Impact is not significant	7	25	32	29	7
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Business workshop	<p>The opinions of participants were relatively in accordance about effects of the option. In general, they expect a small decrease in business costs (scores of 0.1 to 0.4), while doorstep delivery a relatively larger decrease (1.3). Mixed views expressed by retail traders only.</p> <div><table><thead><tr><th>Category</th><th>Score</th></tr></thead><tbody><tr><td>Total</td><td>0.7</td></tr><tr><td>Retail</td><td>0.4</td></tr><tr><td>Distance</td><td>0.1</td></tr><tr><td>Doorstep</td><td>1.3</td></tr></tbody></table></div>	Category	Score	Total	0.7	Retail	0.4	Distance	0.1	Doorstep	1.3														
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	<p>The issue was not considered as significant for doorstep traders, but relatively significant for distance (3.54) and retail (3.79).</p> <p>The UK indicated that in their country consumers had six years to notify a lack of conformity. This added a very heavy burden on businesses.</p> <p>A few participants have raised some concerns with the phrasing ‘within a reasonable time’. It was suggested that while it might mean something in certain countries (i.e. UK), it would not determine any particular period of time in other countries and may therefore lead to misunderstandings. UPIM agreed with the two months, although they also mentioned that it was not really an issue.</p> <p>The German Retail Federation indicated that it would however be very hard to prove whether a consumer had discovered a lack of conformity within a certain timeframe or not.</p> <p>The participants agreed that Option 1 did increase legal certainty for businesses especially in certain sectors. It would, to some extent, have the ‘educational’ purpose of warning consumers that they had to notify in time, thus reducing the risk of abuse. The definition of discovery should perhaps be further elaborated, as well as the ‘starting date’ of a discovery.</p>
<b>Business interviews</b>	<p>FVD: the lack of conformity is a minor issue in direct selling. In terms of mediation (figures collected by the mediation commission set up by FVD), there are about 200 complaints per year in France (nothing compared with total number of transactions per year, about 22 million). They mainly concern building work (execution of the contract not satisfactory). 80% of the complaints are solved.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

### Option 2

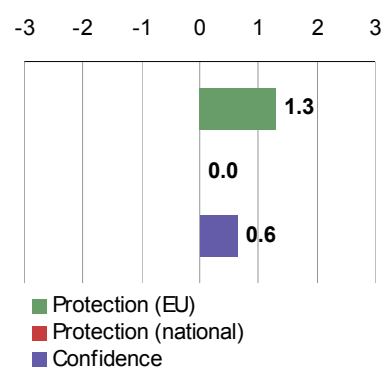
A second option would introduce a rule whereby the fact that the consumer does not give notice to the seller specifying the nature of a lack of conformity within a reasonable time after the consumer discovered or ought to have discovered it, does not deprive him of the right to rely on the lack of conformity.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of</b>	-	Harmonisation will have no significant impact on cross-border transactions. Competition is not likely to increase and prices are not likely to

<b>the Internal Market</b>		decrease, due to the limited effects of the option. On the contrary, prices might increase if the costs for businesses rise significantly.
<b>Minimising the burden of EU legislation for businesses</b>	<b>0</b>	Some decrease of the burden on traders is expected by the harmonisation, this is however offset in some Member States by the slight increase in obligations to redress (with the abolition of the notification period).
<b>Enhancing consumer confidence</b>	<b>++</b>	EU-wide harmonisation will create a transparent rule and strengthen confidence in cross-border transactions.  The level of consumer protection will increase in 15 Member States.
<b>Improving the quality of legislation</b>	<b>+</b>	Harmonisation will bring additional clarity in legislation on cross-border transactions.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>Option 2 will result in a change of the national legislation in 15 Member States. Traders will have to delete from their standard terms (one-off cost) the obligation of the consumer to notify traders in case of lack of conformity.</p> <p>The number of consumers now legitimately relying on the lack of conformity – claims for remedy made later than two months (or a “reasonable time”) after the consumers “ought to have discovered” the lack of conformity will increase only marginally (defects that seemed to be fixed, but then reappearing, consumers confused about exactly what type of product they have ordered, etc.).</p> <p>Business operating costs will increase only insignificantly: the risk of consumers claiming redress after the previous deadline, but within the legal guarantee period will be marginally higher (especially if the order of remedies will be freely chosen by consumer).</p> <p>Legal certainty in general will increase: the consumer can rely on the lack of conformity irrespective of the notification given.</p> <p>The harmonisation of the rules will result in a reduction of legal and business operating costs: cross-border traders will not have to monitor national legislation (Rome I) and will not have to check case by case what law that applies. .</p>	
<b>Effects on SMEs</b>	The harmonisation will be most beneficial for SME distance sellers.	
<b>Effects on consumers</b>	For consumers in 15 Member States, the previous notification deadline to exercise their right to remedies in case of lack of conformity will be abolished. A small number of consumers previously not having the right of remedies (because of missing the deadline) will be in a better position.	
<b>Effects on cross-border trade</b>	No perceivable effect can be expected.	



<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	The level of protection will increase slightly in 15 Member States.
<b>Environmental effects</b>	
	No conceivable effects.
<b>Public sector administration/enforcement costs</b>	
	No additional costs anticipated (except revising and communicating national consumer legislation).
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	<p>The proposed legislative change was considered to be moderately significant by respondents.</p> <p>69% of organisations which give an answer to this question thought that it is common or very common for traders currently to invoke the expired deadline for notification as a reason for not providing remedies. In the countries concerned, a lot of traders have these rules written down in their terms and conditions, and invoke them in case of disputes.</p> <p>Even in countries where no deadline for notification exists, many traders still refer to the terms of the manufacturer warranty in case the period to notify has already passed). In the UK, some retailers tell consumers they are too late to claim their rights to remedies, claiming it to be 'their policy', despite this has no legal standing.</p> <p>Consumers often make no distinction between legal guarantee and commercial guarantee, and forget relying on the legal guarantee.</p> <p>Many consumer organisations suggested that the obligation to notify the trader should not be made compulsory by the Directive. Some organisations said that notification requirements should be dropped altogether. Consumers may have different understandings of the conformity of a product, and determining the moment in which the lack of conformity becomes apparent can easily be controversial (e.g. if a problem seems fixed, and re-emerges later).</p>
<b>ECCG workshop</b>	Workshop participants anticipated some increase (1.3) in the level of consumer protection at EU level, and, on average, no increase in their respective countries (2 of the 5 MS's represented do not currently have deadlines).



	<p>The issue was seen as only somewhat significant (3.71).</p> <p>The time limit was opposed by many of the participants. Consumers often do not have the technical knowledge to assess whether there is a lack of conformity.</p>										
<b>Consumer focus group</b>	<p>Participants were slightly divided on the legislative changes proposed, with 14 indicating that the second option, not setting a limit, would most positively influence the extent to which they would engage in cross-border shopping.</p> <p>The time limit rule would make things very complicated (opening the door to endless litigations and complaints). The first option would clearly limit the rights of the consumer who might overlook a problem for more than 2 months and lose his guarantee rights unfairly.</p> <p>Whatever option was chosen, all participants felt that a common rule would increase their confidence in cross-border shopping.</p>										
<b>Businesses</b>											
<b>Business survey</b>	<p>Questions on Option 2 were not raised. However, one can derive from the results in relation to Option 1 that some respondents were rather in favour of abolishing the notification requirement. According to some, a notification requirement would create a not insignificant conflict potential without in fact bringing advantages.</p> <p>The benefits of harmonisation of this aspect were also mentioned by respondents.</p> <p>There was also some disagreement on the conceived significance of the option: 34% thought that this was not important, but 32% of respondents deemed it significant.</p> <p>The issue is not relevant for certain sectors, like most of personal care products, but is certainly a very important issue in distance selling.</p>										
<b>Business workshop</b>	<table border="1"> <thead> <tr> <th>Category</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>-1.7</td> </tr> <tr> <td>Retail</td> <td>-1.8</td> </tr> <tr> <td>Distance</td> <td>-2.0</td> </tr> <tr> <td>Doorstep</td> <td>-1.5</td> </tr> </tbody> </table> <p>overall negative effect of the proposed on businesses (-1.5 to -2.0). Views did oups: the variance was low.</p> <p>red significant by doorstep traders, but instance sellers (3.54) and on-premises</p>	Category	Score	Total	-1.7	Retail	-1.8	Distance	-2.0	Doorstep	-1.5
Category	Score										
Total	-1.7										
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	<p>The UK indicated that in their country consumers had six years to notify a lack of conformity. This added a very heavy burden on businesses.</p>
<b>Business interviews</b>	<p>According to FVD, the lack of conformity is a minor issue in direct selling.</p> <p>IMRG: Complaints due to lack of conformity are fairly low. Return rates vary depending on the type of product. The types of products most affected are electronic products, power tools, and fashion items. However it is very difficult to distinguish those from other returns.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## **Introducing new rules or clarifying existing rules on the order in which remedies may be invoked**

### ***Problem***

EU consumer protection rules currently provide for a particular order in which remedies can be invoked. As of Article 3(3) of Directive 1999/44/EC, the consumer may require repair or replacement in first place. Reduction of price or termination of the contract can only be invoked if repair and replacement are impossible or disproportionate, or if repair or replacement could not be completed within a reasonable time or without significant inconvenience to the consumer.

However, Member States are still allowed to regulate differently, with a few allowing consumers the free choice of remedies. Greece, Lithuania, Portugal and the UK have not adopted the two-stage hierarchy of remedies, and all four remedies are available for the consumer (subject to some restriction). From above countries, Portugal has not transposed the proportionality test outlined in Article 3(3) into national legislation, and rescission is also possible if the lack of conformity is minor. In theory, traders may be obliged to accept rescission if requested by the consumer in any case, although this "free" choice can not be "abused" by the consumer. The practical interpretation of this provision (court cases) may however lead to a significant amount of uncertainty.

Consumers may be restricted in their choice to rescind the contract, in the sense of Article 3(6), if the lack of conformity is minor. Five Member States (CZ, EE, PT, SI, UK) have not transposed this paragraph in their respective national legislation. The adverse effects on businesses are however limited in most of these countries: in Slovenia, rescission is only available if the trader has had reasonable time to attempt repair or replacement; while in the Czech Republic, Estonia and the UK, a two-tier remedy structure is in place. The right of

consumers to rescind the contract enters into force only if repair or replacement is not possible or is not done within reasonable time and without reasonable inconvenience to the consumer. Additionally, in the UK, the proportionality clause applies to all four available remedies – if the burden of cancelling the contract is disproportionate for traders, they may offer another remedy (price reduction).

First choice of remedy	Proportionality clause	Application in Member States
Consumer may first choose between: - repair - replacement	Applies, scope not clarified	AT, BE, CY, DK, EE, FR, HU, IE, IT, MT, SK, ES, SE  FI, PL (proportionality criteria established, though the exact reference to proportionality is missing)
	Applies, between repair and replacement only	CZ (criteria for establishing proportionality not transposed)  DE (can not ask for price reduction even if the inconvenience was significant)
	Applies, for all four remedies	LU, NL, UK
	Does not apply	-
Consumer may first choose between: - repair - replacement - reduction	Applies	-
	Does not apply	SI (rescission only available if trader has had reasonable time to attempt repair or replacement)
Consumer may choose between: - repair - replacement - reduction - rescission	Applies	GR (proportionality criteria can be inferred from another Article)
	Does not apply	LV (only within 6 months of the contract) LT PT (rescission also possible if lack of conformity is minor)

Both paragraphs 2 and 3 of Article 3 require that in the case of lack of conformity, goods have to be brought into conformity by repair or replacement free of charge. As of paragraph 4, the term “free of charge” refer to necessary costs incurred to bring the good into conformity, particularly cost of postage, labour and materials. This is interpreted in practice as referring to all possible costs incurred. No costs can be imposed on the consumer. However in Germany, if the good not in conformity is to be replaced, the trader may charge a fee for the period during which the consumer has used the goods (this in relation to the option allowed under Recital 15)<sup>44</sup>.

<sup>44</sup> Not clear whether this is in line with the Directive

In certain countries (Netherlands, Finland, Sweden, Denmark), consumers are also entitled to ask a third party to repair the good if the trader has not done so within a reasonable time.

### ***Solution proposed***

#### Option 1

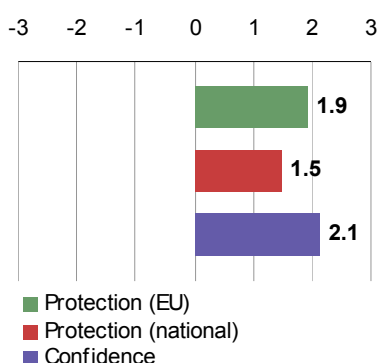
New rules considered (note – these are not alternatives but cumulative rules):

1. *When the goods do not conform to the contract the consumer is entitled:*
  - (a) *to have the lack of conformity remedied by repair or replacement ;*
  - (b) *to reduce the price or (c) to terminate the contract.*
2. *The consumer is entitled to have the lack of conformity remedied free of charge.*
3. *The consumer may choose whether the lack of conformity is to be remedied through any of the available remedies, unless the consumer's choice is unlawful or impossible.*
4. *The consumer may only terminate the contract if the lack of conformity is not minor.*

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	The option is not likely to encourage cross-border trade, its effects will be rather negative.  Prices are likely to increase slightly as traders will have to cover increased losses arising from more requests for refund.
<b>Minimising the burden of EU legislation for businesses</b>	<b>+</b>	The positive effects of harmonisation (reducing the legal and operating costs of businesses) are limited. The free choice of remedy by the consumer will increase the burden on the trader.
<b>Enhancing consumer confidence</b>	<b>+++</b>	Consumer confidence will be significantly improved if consumers will obtain the right to choose freely between remedies in all MS's (effective increase in the level of protection, plus uniform rules across the EU)
<b>Improving the quality of legislation</b>	<b>+</b>	Harmonisation will bring some clarity, though national differences in the detailed provisions may remain.  Ambiguity of what is considered a “minor” lack of conformity, as well the “abuse” of the right to choose freely from remedies may weaken the clarity of legislation.
<b>Economic effects</b>		

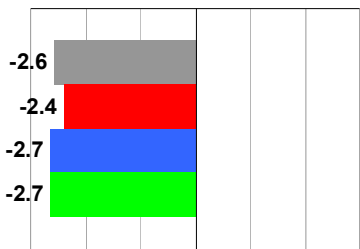
<b>Effects on business (administrative and compliance costs)</b>	<p>The cost to businesses in the MS's currently employing a two-level structure will increase slightly, due to increased requests from consumers to rescind the contract and refund the price (if the proportionality clause applies: only in cases where the costs to the seller are not unreasonable).</p> <p>In case of refund, the loss is the sale price (plus returns handling) minus the remaining value of the good returned. This can be zero for certain product categories (foodstuff, personal care, etc.). The loss in case of replacement is considered to be only the production cost of the replacement good concerned (plus returns management).</p> <p>In the transition period, some legal uncertainty is expected of what costs (as compared to alternative remedies) could be regarded as disproportionate, thus allowing the trader to deny refund.</p> <p>If the proportionality clause will not be applied, effects are assumed to be dramatic in, for example, the automobile sector and amongst high-value appliances. The price level may increase in all the countries concerned.</p> <p>The interpretation of what is considered a "minor" problem can have an impact on the rate of termination of contracts, in cases where repair or replacement may not be done within a reasonable time or without significant inconvenience to the consumer.</p> <p>The harmonisation aspect is less significant, as the detailed national rules and case law have still to be explored and monitored.</p>
<b>Effects on SMEs</b>	SMEs which rely on (multiple) repair so far will be disproportionately disadvantaged by a new regime.
<b>Effects on consumers</b>	<p>The freedom of choice will help consumers to cancel their contractual relationship with traders whom they do not trust, and who have made multiple attempts to repair and/or replace the goods (which was not necessarily considered to cause significant inconvenience to the consumers by courts).</p> <p>If the proportionality clause was not applied, this will allow consumers to upgrade their defective used goods to a new one of the same type (replacement) or an alternative. For goods with a short shelf-life, but also cars (the value of a new car diminishes by around 20% on the first day of use), the consumer will benefit most: with the refund, he will be able to change to cheaper or better equipment.</p>
<b>Effects on cross-border trade</b>	The option is not considered to encourage cross-border transactions. On the contrary, SMEs might be more cautious to sell abroad, as distance consumers might be more likely to ask for refund (not accepting the inconvenience of lengthy repairs or waiting for a replacement).
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	Option 1 would be a very clear improvement in the level of consumer protection. Consumers losing their trust in a trader will have the opportunity to terminate the contract, while potentially also benefiting from having the opportunity to use the refund to a better

	and/or cheaper alternative available on the market.
<b>Environmental effects</b>	
	The environmental burden will increase if more refund will be requested and thus fewer repairs will be undertaken.
<b>Public sector administration/enforcement costs</b>	
	<p>One-off cost to establish and communicate detailed regulation and guidance (on “minor” lack of conformity, “abuse” of the right to freely choose remedy).</p> <p>Substantial judicial costs may be anticipated until a new legal framework is in place (what is a “minor” lack of conformity).</p>
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	<p>In general, respondents seemed to favour Option 1. A slight majority of respondents (53%) agreed that consumers would generally tend to invoke refund or price reduction in case Option 1 was implemented.</p> <p>It was suggested that the proportionality test had to be taken into account (e.g. comparison of remedies available considering the type and value of the item as well as the significance of the lack of conformity), while it is also paramount that the remedy chosen is completed without significant inconvenience to the consumer. In the case of distance selling and purchasing abroad, returning the good to the trader for repair (potentially several times) can be very burdensome.</p> <p>According to Dutch experience, the order of preference of consumers is generally: 1. replacement, 2. refund, 3. price reduction and 4. repair. If he experiences problems with the replacement equipment, he will ask for a refund. For simple products, repair will be more likely to be acceptable.</p> <p>In Germany, the particular order of remedies is already a step backwards regarding previous consumer protection level. Some sellers insist on several trials of repair which can be rather annoying for consumers. In some cases, the lack of conformity can be easily considered as a lack of the general quality of a certain product. In these cases repair and replacement is a loss of time.</p> <p>In the UK the right to rescission provides a valuable backstop for negotiating fair settlement of a dispute between the parties. Usage of the product prior to its failure is also taken into account.</p>



<b>ECCG workshop</b>	<p>This issue has been seen as relatively significant (4.14). Participants were in favour of Option 1: in their opinion, both consumer protection and consumer confidence would increase considerably (ratings of 1.5 to 2.1).</p> <p>Euro Coop did not consider Option 1 too radical, as it is already law in Portugal. It would be an improvement in consumer protection. Consumers generally do not want to trick, but want goods that work.</p> <p>The free choice is also provided already by a number of traders as a commercial gesture (very common in the US).</p> <p>It should be specified what "free of charge" means, and that it includes all costs incurred. Shipping costs are sometimes charged additionally by traders.</p> <p>Also, it is not clear what a "minor" lack of conformity means? This can create a loophole in practice. The examples of Belgium or Sweden might be considered (although disputes sometimes emerge).</p>
<b>Consumer focus group</b>	<p>The vast majority of the participants (18) considered that the first option would most positively influence their cross-border shopping behaviour. They did indicate that the notion of 'minor defect' was to be clarified; otherwise such notion could cause many complaints.</p> <p>With the exception of one participant, the group considered that common rules would increase their confidence in cross-border shopping in general.</p>
<b>Businesses</b>	
<b>Business survey</b>	<p>The average rate of returns is estimated to be 2.7% (simple average of category means), based on 18 individual estimates.</p> <p>The most important cost factors are, according to respondents: damaged inventory or depreciation in value of returned goods (19 responses with its significance rated above average), labour costs in</p>



	<p>managing returns (18), cost of reimbursing clients for returns (12), delivery, postage and shipping (10), and the cost of reprocessing in order to resell returned goods (9). This varies strongly across product categories: e.g. food and personal care product returned are destroyed, other products may be resold (as new in some cases, though this is not allowed in a number of Member States, e.g. the UK).</p> <p>A large majority of respondents (76%) think that – if the order of remedies were free – consumers would generally tend to ask for a refund or a price reduction instead of a repair or replacement (except e.g. for fitted kitchen, etc. equipment). 96% said that this would represent significant costs to businesses. For most traders, repair or replacement was by far the most frequent remedy. They presumed however, that consumers will try to negotiate reimbursement or price reduction if allowed by law.</p> <p>In general, traders took the view that cancellation of the contract must always be the ultimate remedy (has to be seen as a consequence of the principle "pacta sunt servanda"). A free choice of the available remedies by the consumer – including, in particular, the right of cancellation – would damage traders massively, especially considering cars or hi-tech equipment (high-value and fast-depreciating goods).</p> <p>The current legal situation (repair/replacement first, followed by price reduction or termination of the contract) corresponds to the sense of justice of the parties to the sale contract. This also corresponds to the legal conscience of the consumer, i.e. he/she expects the defective (or otherwise non-conform) good to be repaired or replaced.</p> <p>Furthermore, replacement is not obligatory for a minor lack of conformity in some Member States. This is not mentioned in the new proposal.</p> <p>In addition, the maintenance of the contract and the hierarchy of remedies with repair at the first level are also deemed beneficial with regard to a sustainable environmental policy.</p> <p>The full harmonisation of the legal guarantee period (currently minimum 2 years) was also endorsed by some respondents.</p> <p>Another point of importance mentioned was the right to recourse: i.e. in case of non-conformity the trader should always be eligible to reclaim from the producer (the warranty given by the producer might have been already exceeded). Otherwise, especially SME traders will only get further squeezed between consumers and producers.</p>										
<b>Business workshop</b>	<p>Participants expressed the view almost unilaterally that Option 1 meant significant increases in compliance costs (ratings</p>  <table border="1"><thead><tr><th>Category</th><th>Rating</th></tr></thead><tbody><tr><td>Total</td><td>-2.6</td></tr><tr><td>Retail</td><td>-2.4</td></tr><tr><td>Distance</td><td>-2.7</td></tr><tr><td>Doorstep</td><td>-2.7</td></tr></tbody></table> <p>ed to be relatively significant, especially</p>	Category	Rating	Total	-2.6	Retail	-2.4	Distance	-2.7	Doorstep	-2.7
Category	Rating										
Total	-2.6										
Retail	-2.4										
Distance	-2.7										
Doorstep	-2.7										

	<p>Overall, participants agreed that it would be better to stay with the Status Quo, especially considering that this order had only been relatively recently introduced and was already at the time of introduction quite heavily debated. Some participants pointed out that in their view the legislation seems to be effective in its current form, and saw no need for drafting new rules. This was particularly emphasised by business representatives from the UK who affirmed that the national rules are effective as they are.</p> <p>Participants remarked that most companies offer more generous guarantees and possibilities than the provisions in the Directive. However, including these in the law represents an extra cost for businesses, insofar as the competitive advantage that they offer would be lost.</p> <p>Retailers stressed that it is not always possible to assess whether a certain defect was minor or major. For example, whilst a car salesman might consider that the need to replace an engine in a new car is a major problem, the car manufacturer could actually consider this a minor issue (and would not wish the contract to be terminated).</p> <p>The UK participants also mentioned that for low value products they usually directly provided a refund. Increasingly however, retailers are faced with consumers insisting on repair rather than replacement for environmental reasons (e.g. small electronic appliances).</p> <p>The BRC indicated that for some countries, including the UK, the lack of the order of the remedies would not make a major difference as consumers could seek remedy to damages in alternative ways.</p>
<b>Business interviews</b>	<p>For FEVAD member Members, the value of orders is on average between 60 and 90 euro. Most transactions are around 25, 30 or 40 euro. If there is a defect, it is excessive to reimburse the client immediately, especially for low value products. E.g. a consumer buys a radio for 15 euro, uses it for one year, and gets the price reimbursed. This means he used a radio for free for one year.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

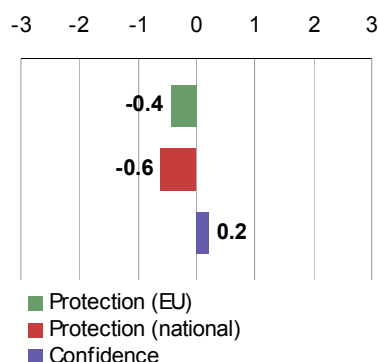
## Option 2

Status quo subject to minor clarification of the text considered.

It is noted that the Status quo would however be fully harmonised.

Expected impacts		
Main Policy Objectives		
	Rating	Explanation
Contribution to the better functioning of the Internal Market	+	Harmonisation of the Status quo across all Member States would have a positive influence on the functioning of the internal market. SMEs might be persuaded to accept consumers from those countries where previously the order of remedies could be freely chosen (and where they did not trade in order to avoid losses arising from extensive claims for refund)
Minimising the burden of EU legislation for businesses	+	The change proposed would reduce the burden on companies from countries where remedies are freely chosen by consumers and on companies from other countries engaged in cross-border trade with the latter.
Enhancing consumer confidence	0	The change would clarify the rules across the EU. It would however also reduce consumer protection in 5 countries, which could lead to lower levels of consumer confidence.
Improving the quality of legislation	+	Harmonisation will improve the quality of legislation.
Economic effects		
Effects on business (administrative and compliance costs)	The harmonised Status quo will alleviate the risks associated with Rome I and reduce the burden of companies that were based in or traded with countries where the free choice of remedies was applied.	
Effects on SMEs	The relative burden on SMEs might be further decreased, as these companies were probably most hesitant to engage in cross-border trade with countries which had adopted the free choice of remedies.	
Effects on consumers	Consumers in countries where the order of remedies may be freely chosen will suffer from a reduction in consumer protection.	
Effects on cross-border trade	Some positive effects on cross-border trade as a result of harmonisation of rules across the EU.	
Social effects		
Effects on the level of consumer protection	The level of consumer protection will be decreased in 5 MS.	
Environmental effects		
	Some positive effects in those countries which previously had the free choice and where consumer may have had a higher tendency to directly ask for contract rescission.	
Public sector administration/enforcement costs		
	Some limited costs anticipated as initially disputes could arise as a	

	result of the harmonised rules in those countries where previously the free order applied.
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	



<b>ECCG workshop</b>	<p>The question was considered as being relatively significant (4.14). The workshop participants expressed the view that Option 2 would bring a slight decrease in consumer protection (-0.4 at EU level; -0.6 at national level), although consumer confidence would not change conceivably.</p> <p>Currently, free choice is provided already by a number of traders as a commercial gesture (very common in the US).</p> <p>It should be specified what "free of charge" means, and that it includes all costs incurred. Shipping costs are sometimes charged additionally by traders.</p> <p>Also, it is not clear what a "minor" lack of conformity means. This can create a loophole in practice.</p>
<b>Consumer focus group</b>	Two of the 21 participants favoured the second option, which was a clarification of the status quo.
<b>Businesses</b>	
<b>Business survey</b>	<p>The average rate of returns is estimated to be 2.7% (simple average of category means), based on 18 individual estimates.</p> <p>The most important cost factors are, according to respondents:</p>

	<p>damaged inventory or depreciation in value of returned goods (19 responses with its significance rated above average), labour costs in managing returns (18), cost of reimbursing clients for returns (12), delivery, postage and shipping (10), and the cost of reprocessing in order to resell returned goods (9). This varies strongly across product categories: e.g. food and personal care product returned are destroyed, other products may be resold (as new in some cases, though this is not allowed in a number of Member States, e.g. the UK).</p> <p>In general, traders took the view that cancellation of the contract must always be the ultimate remedy (has to be seen as a consequence of the principle "pacta sunt servanda"). The current legal situation (repair/replacement first, followed by price reduction or termination of the contract) corresponds to the sense of justice of the parties of the sale contract. This also corresponds to the legal conscience of the consumer, i.e. he/she expects the defective (or otherwise non-conform) good to be repaired or replaced.</p> <p>In addition, the maintenance of the contract and the hierarchy of remedies with repair at the first level are also deemed beneficial with regard to a sustainable environmental policy.</p> <p>The full harmonisation of the legal guarantee period (currently minimum 2 years) was also endorsed by some respondents.</p>										
<b>Business workshop</b>	<p>Participants said in relative unison across and within groups that the burden on companies would be very slightly reduced by this option</p> <table border="1"> <thead> <tr> <th>Trader Type</th> <th>Change in Burden</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>0.2</td> </tr> <tr> <td>Retail</td> <td>0.3</td> </tr> <tr> <td>Distance</td> <td>0.0</td> </tr> <tr> <td>Doorstep</td> <td>0.3</td> </tr> </tbody> </table> <p>at distance sellers, who thought that the</p> <p>ficant for traders, especially for retailers</p> <p>Overall, participants agreed that it would be better to stay with the Status Quo, especially considering that this order had only been relatively recently introduced and was already at the time of introduction quite heavily debated. Some participants pointed out that in their view the legislation seems to be effective in its current form, and saw no need for drafting new rules. This was particularly emphasised by business representatives from the UK who affirmed that the national rules are effective as they are.</p> <p>Participants remarked that most companies offer more generous guarantees and possibilities than the provisions in the Directive.</p>	Trader Type	Change in Burden	Total	0.2	Retail	0.3	Distance	0.0	Doorstep	0.3
Trader Type	Change in Burden										
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Retail	0.3										
Distance	0.0										
Doorstep	0.3										

	However, including these in the law represents an extra cost for businesses, insofar as the competitive advantage that they offer would be lost.
<b>Business interviews</b>	For FEVAD members, the value of orders is at average between 60 and 90 euro. Most transactions are around 25, 30 or 40 euro. If there is a defect, it is excessive to reimburse the client immediately, especially for low value products. E.g. if a consumer has bought a radio for 15 `euro, has used it for one year, and gets the price reimbursed, then this means he has used a radio for free for one year.
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## **The clarification of the notion of auctions in the Distance selling directive**

### ***Problem***

The Distance Selling Directive, which was prepared before the recent expansion of e-commerce, allows the Member States to exempt auctions from the scope of the Directive. The key rationale for exempting auctions is the fundamental difference between a sale by mutual agreement between seller and buyer, and the bidding system which implies the fair competition of several potential buyers. The universal principle of the auction (fair competition between potential buyers) means that the highest bidder must buy the item, without any possibility to withdraw. However, it is possible to provide for an obligation of information even in the context of auctions, as is already the case for auctioneers in for example France.

The exemption of auctions of the scope of the Directive has been differently transposed. The different usage of this regulatory option by the Member States creates fragmentation and has led to a rise in consumer complaints in respect of online auctions. Important divergences between Member States exist (e.g. in Denmark auctions by electronic means are not exempted from the Directive). It is an unsatisfactory situation regarding the uncertainties as to the consumers' rights and variations between Member States.

The fact that Community law does not provide for of an authoritative notion of 'auction' might be a source of legal uncertainty. It is unclear today whether the so-called E-bay auctions should fall under the notion of auctions and should be exempted from the right of withdrawal. The fact that e-auctions fall outside the scope of the Directive in some Member States for instance has been criticised for allowing traders to 'circumvent' distance selling obligations.

The increase in popularity of on-line auctions since the adoption of the Directive has led to a significant rise in consumer complaints. Whereas originally websites such as eBay were geared towards C2C transactions of second hand goods, they are increasingly being used for B2C transactions of new goods. The distinction has been drawn by many business stakeholders between traditional auctions, generally conducted by auction houses both in a physical location and at a distance, and online auction platforms. There are also different means to auction (e.g. internet, TV) and unfair competition between these means can sometimes take place (especially with TV auctions allowing competitors to sell the same items on a different channel, but with no right of withdrawal, i.e. circumventing the Distance Selling Directive).

### Exemptions provided by Art. 3 of the Distance Selling Directive

Exemption	Member States (EU 25)
Auctions exempted as in the Directive	Austria, Cyprus, Czech Republic, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, UK (13)
Variations	Denmark, Estonia, Finland, France, Germany, Latvia, Slovakia, Slovenia, Spain, Sweden (10)
- Auctions are only exempted from the right of withdrawal	Germany, Estonia (2)
- Auctions by electronic means not exempted from Directive	Denmark, Spain, Finland, Sweden (4)
Not transposed	Belgium, Greece (2)

#### *Problems encountered by consumers*

The European Online Marketplace reports on Consumer Complaints highlighted the increasing number of complaints in relation to Internet auctions, the vast majority of which involved the non-delivery of goods. These cases often involve an element of fraud and/or are C2C (consumer to consumer) transactions, which fall outside the scope of consumer protection legislation.<sup>45</sup>

The OFT internet shopping study shows that these rapidly growing electronic marketplaces represent millions of transactions every year, accounting for payment cards use amounting to £2.8 billion in 2005. The study revealed that about half of the respondents who had bought items from an auction site in the last 12 months had experienced at least one problem. Most of these problems mirrored those of internet shopping generally, although some buyers perceived that they had been victims of deceptions (such as counterfeiting, or sellers bidding up their items).

Of those who had experienced problems buying an auction, only 26 per cent had bought from a business, while 60 per cent stated that it was a matter of a private seller. This implies that consumers may be more likely to experience a problem when buying from a private seller, although it is difficult to identify businesses at online auction sales. The two most common problems are the difficulty to contact the seller and the items not being as described. Misleading claims and omissions are a particular issue for online auction sites, with a higher proportion of such complaints relating to sales on internet auctions than over the internet generally (26% of complaints).

Sixty per cent of online survey respondents who bought items from an online auction wanted to know whether they were buying from a business. This affects both their confidence and their rights. However, it is not always clear whether sellers are trading as a business. The failure of some businesses selling through online auctions to provide their name and address to buyers can also be a problem. It is estimated that sellers on Ebay are increasingly

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<sup>45</sup> The European Online Marketplace: Consumer Complaints 2005

professionals: private sellers with a professional behaviour could represent 60% of the sellers registered as 'private'.<sup>46</sup>

### ***Solution proposed***

#### Option 1

Notion of auction clearly defined, but status quo maintained.

Expected impacts		
Main Policy Objectives		
	Rating	Explanation
Contribution to the better functioning of the Internal Market	0	
Minimising the burden of EU legislation for businesses	0	
Enhancing consumer confidence	0	Important variations between Member States in terms of consumer protection would remain.
Improving the quality of legislation	(+)	Clarification of the definition could increase legal certainty.
Economic effects		
Effects on business (administrative and compliance costs)	The current situation creates not insignificant competitive distortions because of the presence of suppliers on auction websites, who as they are clearly operating an organised distance sales system but are exempted from the Directive provisions.	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade		
Social effects		
Effects on the level of consumer protection	Uncertainties as to the consumers' rights and variations between Member States.  The number of complaints related to e-auctions has increased and the current situation potentially undermines consumer trust in the channel (lack of core, essential information to provide).	
Environmental effects		

<sup>46</sup> Conseil des Ventes, rapport annuel 2006



<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	n/a
<b>ECCG workshop</b>	<p>(One participant remarked that in Germany, E-bay is not considered as an auction and is subject to information requirements.)</p> <p>BEUC highlighted that exempting e-auctions from the distance selling rules is not a good idea in terms of protection. The phenomenon has developed immensely, and the EC should look ahead.</p>
<b>Consumer focus group</b>	n/a
<b>Businesses</b>	
<b>Business survey</b>	n/a
<b>Business workshop</b>	<p>The issue of certain e-auction organisers competing unfairly with other distance selling not having to respect distance sales requirements, was raised by QVC with regard to the different kinds and means of auctions (e.g. internet, TV).</p> <p>According to EMOTA, the problem is that E-Bay hosts B2C as well as C2C transactions, thus transactions on E-bay are presently not subject to the same regulations as Distance Sellers regarding for instance the right of withdrawal. Furthermore, within the E-bay platform, there are different selling mechanisms (e.g. fixed prices), which once again are not subject to the same rules.</p> <p>It might be possible to differentiate between classic auctions (selling on behalf of someone) and auctions where retailers sell their own products.</p>
<b>Business interviews</b>	<p>According to Sotheby's the definition proposed is clear. It should be made clear that auctions cannot be subject to distance selling legislation. Buyers/dealers are often bidding via telephone, or via other means of distance communication. As the contract is effectively concluded when the hammer falls (i.e. transfer of ownership), the risk is that this may be eventually seen as distance selling.</p> <p>The right of withdrawal would obviously disrupt the whole auction business. People would make very different decisions if they knew they had the right to withdraw, e.g. outbidding others – without the intention to actually purchase – ensuring that for instance the art pieces stay on the market. This would seriously disadvantage sellers. Also, certain information requirements regarding auctioned goods do not apply: the identity of the</p>

	<p>seller is not disclosed in art auctions for instance.</p> <p>IMRG: Genuine auctions should not be covered by the Directive. However the exception should be auctions with a “buy it now” element whereby retailers actually sell goods without a proper bidding system through auction sites while evading the Directive requirement.</p> <p>It is not appropriate to allow persons selling items through some form of organised activity via an auction, such as eBay shops, to benefit from an exemption from the Directive. They should fall within the definition of suppliers, as they are clearly operating an organised distance sales system. Exempting such a wider range of sellers of whatever size from the Directive would serve to undermine consumer trust in the channel and create not insignificant competitive distortions.</p> <p>ACSEL: the notion of auction should be defined in a restrictive way, to ensure a similar protection in all cases. A number of online platforms are simply doing distance selling. There are also many professionals selling goods on these platforms, as a way to sidestep legislation.</p> <p>The Conseil des Ventes considers that auctions must be excluded from the provisions applying to distance selling, because of the fundamental difference between a sale by mutual agreement between seller and buyer, and the bidding system which implies the fair competition of several potential buyers. However, it is possible to provide for an obligation of information, as is already the case for auctioneers in France.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## Option 2

Auctions will continue to be excluded from a withdrawal right but would be subject to information requirements.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+	Harmonisation of rules across the EU would facilitate cross-border trade.
<b>Minimising the burden of EU legislation for businesses</b>	+	This would ensure competition on the same grounds, without imposing withdrawal rights that would put the whole idea of an auction at stake.
<b>Enhancing consumer confidence</b>	+	Increased consumer confidence as more information would be provided.

Improving the quality of legislation	++	Legal certainty would be increased, with clarification of the rules.
Economic effects		
Effects on business (administrative and compliance costs)	<p>Some initial increased administrative costs for businesses engaging in online auctions for complying with information requirements. In at least 15 MS auctions are currently exempted from the Directive provisions. However, the information requirements arising from the Unfair Commercial Practices Directive already apply.</p> <p>Additional costs limited to additional information to be provided.</p> <p>In at least 8 MS auctions are already subject to information requirements of the Directive and are only exempted from the right of withdrawal. No additional costs would be incurred.</p> <p>According to Ebay, information requirements are not a problem; their auctions are already subject to information requirements.</p>	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade		
Social effects		
Effects on the level of consumer protection	<p>The information given to consumers would ensure a better protection, in particular in the context of the most common problems encountered and reasons for complaints (difficulty to contact the seller, items not as described).</p> <p>Consumer protection would increase in at least 13 countries.</p>	
Environmental effects		
Public sector administration/enforcement costs		
Stakeholder views		
Consumers		
Consumer organisations survey	n/a	
ECCG workshop	<p>One participant remarked that in Germany, E-bay is not considered as an auction and is subject to information requirements.</p> <p>BEUC highlighted that exempting e-auctions from the distance selling is not a good idea in terms of protection. The phenomenon has developed immensely, and the EC should look ahead.</p>	

<b>Consumer focus group</b>	n/a
<b>Businesses</b>	
<b>Business survey</b>	n/a
<b>Business workshop</b>	<p>The issue of certain e-auction organisers competing unfairly with other distance selling not having to respect distance sales requirements, was raised by QVC with regard to the different kinds of auctions, and the different means to auction (e.g. internet, TV). Unfair competition between these means can take place (especially with TV auctions with regard to the lack of regulations for right of withdrawal).</p> <p>According to EMOTA, the problem is that E-Bay hosts B2C as well as C2C transactions, thus transactions on E-bay are presently not subject to the same regulations as Distance Sellers regarding for instance the right of withdrawal. Furthermore, within the E-bay platform, there are different selling mechanisms (e.g. fixed prices), which once again are not subject to the same rules.</p> <p>E-bay representatives argued that all auctions are subject to information requirements. In their view, information requirements were not a problem with regard to E-bay; rather, they were concerned about the loose exercising of the right of withdrawal by some customers.</p>
<b>Business interviews</b>	<p>Sotheby's: It should be made clear that auctions cannot be subject to distance selling legislation. The right of withdrawal would obviously disrupt the whole auction business. People would make very different decisions if they knew they had the right to withdraw, e.g. outbidding others – without the intention to actually purchase – ensuring that the art pieces stay on the market. This would seriously disadvantage sellers. In addition, certain information requirements regarding auctioned goods do not apply: the identity of the seller is not disclosed in art auctions for instance.</p> <p>IMRG: Genuine auctions should not be covered by the Directive. However the exception should be auctions with a 'buy it now' element whereby retailers actually sell goods through auction sites while evading the Directive requirement.</p> <p>It is not appropriate to allow persons selling items through some form of organised activity via an auction, such as eBay shops, to benefit from an exemption from the Directive. They should fall within the definition of suppliers, as they are clearly operating an organised distance sales system. Exempting such a wider range of sellers of whatever size from the Directive would undermine consumer trust in the channel and create not insignificant competitive distortions.</p> <p>ACSEL: notion of auction should be defined in a restrictive way, to ensure a similar protection to all consumers buying</p>

	<p>online. The key element is to set up a uniform regime for all providers, and a minimum level of protection for all consumers. A number of online platforms are simply doing distance selling. There are many professionals selling goods on these platforms, as a way to sidestep legislation.</p> <p>The Conseil des Ventes considers that auctions must be excluded from the provisions applying to distance selling, because of the fundamental difference between a sale by mutual agreement between seller and buyer, and the bidding system which implies the fair competition of several potential buyers. However, it is possible to provide for an obligation of information, as is already the case for auctioneers in France.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	There might be a need to make a distinction between different auction models. The definition of what an auction is should be very clear.

### **The specific rules for m-commerce (mobile commerce) and t-commerce (television-commerce)**

#### ***Problem***

It is necessary to investigate the need for derogations/specific rules for m-commerce and t-commerce<sup>47</sup> regarding in particular information requirements (small screen problem, limited number of space and time). An alternative may be to provide complementary information by a link to a web page or telephone service which is free of charges or at basic rate.

#### ***Solution proposed***

*Including m-commerce in the Directive with adapted provisions for the modalities to fulfil the information requirements*

This option would reflect the difficulties to produce information on a screen with limited space. The proposal may be to provide link to web page for certain information items and requiring the display of the key information on the screen.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	
<b>Minimising the burden of EU legislation for</b>	<b>++</b>	Change proposed minimises the burden for business.

<sup>47</sup> M-commerce: to order goods or services by mobile phone. T-commerce or television commerce is e-commerce undertaken using digital television.

businesses		
Enhancing consumer confidence	0	Confidence would remain the same as key information would be immediately available and other types of information would be accessible via other means. Facilitating for M-commerce trade may positively affect Market offer and prices.
Improving the quality of legislation	+	Legal certainty strengthened as new types of commerce would be covered by law.
Economic effects		
Effects on business (administrative and compliance costs)	Decreased costs for businesses as the solution addresses the difficulty to provide information in m-commerce services.	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade		
Social effects		
Effects on the level of consumer protection	The most relevant information should be produced directly to the consumers to ensure a sufficient level of protection.	
Environmental effects		
Public sector administration/enforcement costs		
Stakeholder views		
Consumers		
Consumer organisations survey	n/a	
ECCG workshop	The Italian representative highlighted that referring consumers to website links could further reduce the extent to which they become informed (they simply would not read it). It is difficult to mix the general aspects of distance selling law and these very specific technical issues.  Euro Coop believes that the most relevant information has to be directly accessible to the consumers.  According to BEUC, there is a risk that consumers are not sufficiently informed before concluding a contract.	
Consumer focus group	n/a	
Businesses		
Business survey	n/a	

<b>Business workshop</b>	<p>QVC suggested that TV commerce should be included in the scope of m-commerce as the final sale is effectively made over the phone or through text messaging and too much information would not be a feasible option in the context of telesales. It would not be possible for the person trying to make the sales to disclose so much information orally.</p> <p>A majority of participants were very concerned with the amount of information that was required by the Directive. It was argued that so much information would not fit in a small screen in the context of m-commerce. A link to an internet page disclosing all the information should be given to allow customers to check all their rights.</p> <p>Finally, participants agreed that the definition of m-commerce should be independent of any particular platform. This would avoid the use of another platform as a means of circumventing regulatory constraints.</p>
<b>Business interviews</b>	<p>IMRG: M-commerce should be included in the directive with adapted provisions for the modalities to fulfil the information requirements. The challenge is that this industry is still very new, and represents at the moment a minimal share of the products sold – main products are limited to cinema tickets and vouchers. However it is a growing sector and it might increase significantly in the next 12 – 18 months.</p> <p>The industry is working on a voluntary code. The technology is moving very quickly and legislation has to be flexible enough to take change into account.</p> <p>Bouygues Telecom: the proposed option addresses effectively the difficulty to provide information in m-commerce services. It would be useful to specify that the provision of the information is free but connection costs may still occur when consulting the information. It is also important to make clear that m-commerce services are exempted from the right of withdrawal as the service is instantaneous.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>The technology is moving very quickly and legislation has to be flexible enough to take change into account.</p> <p>Technologically neutral options will be favoured.</p>

## **Exemptions from the scope of the Distance Selling Directive**

### ***Problem***

Article 3(1) of Directive on 97/7/EC on distance contracts generally excludes from its scope certain types of contracts<sup>48</sup>, while Article 3(2) provides for a partial exclusion of two

<sup>48</sup> Contracts relating to financial services; concluded by means of automatic vending machines or automated commercial premises; concluded with telecommunications operators through the use of public payphones;

categories of products: i) the supply for foodstuffs, beverages or other goods intended for everyday consumption supplied to the home of the consumer, to his residence or to his workplace by regular roundsmen; and ii) contracts for the provision of accommodation, transport, catering or leisure services, where the supplier undertakes, when the contract is concluded, to provide these services on a specific date or within a specific period.

The partial exclusion concerns the obligations on prior information (Article 4), on written confirmation of information (Article 5), the right of withdrawal (Article 6) and the obligation to execute the order within a maximum of 30 days (Article 7(1)).

The first group to be exempted includes for instance the traditional British milk men, and French roundsmen trading bread and other food products (when the contracts are concluded e.g. on phone). The application of the abovementioned articles would be impossible or disproportionately burdensome for them.

The second group includes hotel reservations, airplane, train or theatre tickets, etc. Since the ECJ ruling in the “Easycar” case car, car rentals are also understood as transport services for which this exemption applies. For this group, withdrawal (at short notice) is the biggest problem, while the 30-day deadline is by the nature of the contract inapplicable. However many companies already offer prior information or confirmation. For some transport services particular information requirements in EU transport legislation or in conventions may apply.

According to the Compendium, all but one Member States have transposed the partial exemption of foodstuff, beverages and other goods intended for everyday consumption – 11 of them with some variations.

Concerning the partial exemption of accommodation, transport, etc. services, all Member States have transposed the Directive. However, 22 countries have implemented the exemption with slight variations.

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concluded for the construction and sale of immovable property or relating to other immovable property rights, except for rental; concluded at an auction.



Partial exemption of foodstuff, beverages, etc.	Member States
As in Directive	AT, DE, DK, FR, IT, LU, MT, NL, PL, PT, ES, SE, UK (13)
Variations	EE (Article 7(2) does not apply) FI (Articles 4-6 apply for the “cold calling” cases) LT (no reference to regular roundsmen) CZ, GR, SK, SI (general exclusion from the scope of the law <sup>49</sup> ) HU, GR (only home delivery of consumer goods mentioned) CY (delivery to all places except sellers workplace) IE, LV (11)
Not transposed	BE (1)

Partial exemption of car rental, etc.	Member States
As in Directive	CY, PT, UK (3)
Variations	CZ, GR, LT, SK, SI (full exemption <sup>50</sup> ) EE (Article 7(2) does also not apply) FR (information and confirmation requirements apply) AT, BE, DK, DE, ES, FI, HU, IE, IT, LV, LU, MT, NL, PL, SE (22)
Not transposed	0

### ***Solution proposed***

Article 3 of the Directive shall be updated to include the full exemption of car rental, or a partial exemption (information obligations but no withdrawal right, or right of withdrawal up until a certain point in time before the pickup date), as well as exempting “vins en primeur” (i.e. wines sold at a fixed price but delivered a few years after the order when the market price may be different since the price depends on the quality of the wine and the fluctuations in the market which cannot be controlled by the trader) from the right of withdrawal.

### **Expected impacts**

<sup>49</sup> This might be regarded as an infringement of the Directive, as noted in the Compendium.

<sup>50</sup> Might be an infringement of the Directive

<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	No perceivable effects
<b>Minimising the burden of EU legislation for businesses</b>	+	<p>The introduction of a requirement for car rentals to provide information, but exclusion of car rentals regarding the right of withdrawal would increase the compliance burden on businesses slightly. The impact would be limited as they already have to adapt to UCPD. Introducing a withdrawal right would on the contrary have important negative effects.</p> <p>The partial exclusion of “vins en primeur” is key to the viability of this business model, it would result in a substantial reduction of the burden.</p>
<b>Enhancing consumer confidence</b>	+	Consumer confidence will not be affected given that car rental after the ECJ ruling is not covered by the Distance Sales rules. The coverage of car rental by the information requirements would slightly improve consumer protection.
<b>Improving the quality of legislation</b>	+	<p>Specifying car rentals as a sector partially excluded (after a ECJ ruling) would improve the transparency of the Distance Selling rules.</p> <p>The partial exclusion of “vins en primeur” (and possibly, in addition, products of a similar nature, i.e. rare pre-ordered, of a speculative investment character) contributes to the transparency of consumer legislation.</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>The exclusion of car rentals from the scope of the Distance Selling Directive would not bring any significant change to the industry. Car rentals are already (following ECJ ruling on the Easycar case) excluded from most of the requirements of the Distance Selling Directive.</p> <p>Maintaining the partial exemption is key. The cost of applying withdrawal rules to car rental was estimated by the industry to amount to €249 million per annum. The industry also claims that the number of complaints is only 0.0012% out of 44 million transactions per year (this seems however to refer only to the number of official complaints that were brought forward by consumers, either to ADRs or in court cases).</p> <p>The partial exclusion of vins en primeur from withdrawal rights is regarded as a key issue for the industry. En primeur wine purchases may be regarded more as a financial investment of a speculative</p>	

	<p>nature than a normal consumer contract. The buyer can pre-order wines that are not yet on the market two (or more) years in advance with a very significant discount, but also takes the risk that prices of the product might drop later, because the vintage or the quality of a specific wine would later be rated lower than expected. If purchasers had the right to withdraw (shortly before or after the delivery), they could easily ask the trader to refund their initial investments whenever the market prices of the wine dropped.</p> <p>A withdrawal period of 10-14 days that started from the conclusion of the contract would not be harmful, as alternative buyers could be easily found. But granting withdrawal after this initial period would render this current business practice completely unviable. Counterbalancing the risks with higher prices might be a possible effect, or the introduction of purely financial products to cover the risks (which will also have an effect on prices).</p> <p>The same applies to other goods with an investment character of a speculative nature, ordered long before their production or before they actually enter the consumer markets (e.g. pre-ordered special editions, other rare foods or drink specialities)</p>
<b>Effects on SMEs</b>	<p>No particular effects on the car rental industry, which is dominated by large companies.</p> <p>Small and medium-sized wine producers and traders will benefit equally as large ones, as the risk of losses if a right of withdrawal would be imposed, goes parallel with sales volume.</p>
<b>Effects on consumers</b>	The exclusion of car rental from the scope of the Directive would deprive consumers from a right of withdrawal.
<b>Effects on cross-border trade</b>	No specific effect.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>Consumer protection in the car rental sector would not change as at EU level that sector is already exempted from the distance sales rules due to the ECJ ruling.</p> <p>The additional protection in the vins en primeur segment is rather perceived as investors' protection than consumer protection.</p>
<b>Environmental effects</b>	
	No effects
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	Question not raised

<b>ECCG workshop</b>	Question not raised
<b>Consumer focus group</b>	Question not raised.
<b>Businesses</b>	
<b>Business survey</b>	Question not raised
<b>Business workshop</b>	The exclusion of underwear, bed sheets and similar products from withdrawal rights was suggested by distance sellers (trying products and then return them is not allowed in retail either). Traders cannot resell these for health safety reasons. A solution is making consumers liable for diminished value of such products.
<b>Business interviews</b>	<p>Vorwerk: Supermarket home delivery schemes should be exempted and regular roundsmen are a disappearing business practice. The exemption of food and drink is acceptable, but a general exemption for all goods intended for daily (current) consumption is not advisable. This would then also include cosmetics and personal care products.</p> <p>FEDSA: the right of withdrawal should not be exercised where the products traded are of a nature that makes their return impractical or a total loss for the seller. Referring to the example of Article 3(2) of the Distance Selling Directive, a modernised version could benefit from using the Community Law definition of “food” (making the reference to “beverages” superfluous).</p> <p>IMRG: several exemptions are advocated, especially with regard to withdrawal rights: goods of personal hygiene, personalised goods (especially those designed for the consumer), combined / mixed goods (e.g. mobile phone + software: once the software is opened the consumer is not allowed to return it even if he used it in a reasonable way to see if the phone was fit for purpose), self-assembly products (duty of care should be introduced, reduction of reimbursement possible), gift vouchers.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## 21. Exemptions from the scope of Doorstep Selling Directive

### *Problem*

Some categories of products would, because of their nature (e.g. foodstuffs, beverages) or their modalities (e.g. supplied by regular roundsmen or through home delivery schemes) suffer from inclusion in the Doorstep Selling Directive and in particular from rules of withdrawal. In addition the same difficulties arise when applying a withdrawal right to the provision of specific services such as emergency services.

The Directive currently excludes from its scope contracts for the supply of foodstuffs or beverages or other goods intended for current consumption in the household and supplied by

regular roundsmen (Article 3, para 2). However, contracts for repairing immovable property fall within the scope of the Directive.

The exemption of contracts on goods for current consumption provided by regular roundsmen has been transposed by at least 14 Member States (e.g. Belgium, Denmark, Italy, Portugal, UK). There are a number of variations across Member States in the way this exemption has been implemented. In the Netherlands, for instance, contracts in case of a standing relationship between the parties concerning the selling of food are exempted. In Spain the doorstep selling of foodstuffs and beverages is prohibited, but not their delivery at the request of the consumer.

In addition, the Doorstep Selling Directive allows Member States to exclude direct sales below 60€ from its scope. This option has given rise to fragmentation between the Member States: 10 Member States (France, Belgium, Cyprus, Czech Republic, Denmark, Greece, Hungary, Slovakia, Luxembourg and Latvia) have no threshold, 15 Member States have applied a threshold between 10€ and 58€ and only 2 Member States have applied the minimum 60€-threshold of the Directive (Portugal and Bulgaria).

These varying amounts do not necessary depend on the differences in living conditions between Member States. However, the different living standards between Member States make it difficult to harmonise the threshold for 27 Member States. In particular, the new Member States' buying power is lower than that of the old Member States in 1985 (in Romania the net income today is approximately €251 per month).

#### Use of the regulatory option (60 euro threshold)

Member State	Threshold	Member State	Threshold
Austria	15 € / 45 €	Latvia	No threshold
Belgium	No threshold	Lithuania	58 € (200 Ltl)
Bulgaria	61,35 € (120 BGN)	Luxembourg	No threshold
Cyprus	No threshold	Malta	47 € (20 Mtl)
Czech Republic	No threshold	Netherlands	34 €
Denmark	No threshold	Poland	10 €
Estonia	15 €	Portugal	60 € (but not applicable to the right of withdrawal)
Finland	15 € (unless several goods)	Romania	30 €
France	No threshold	Slovakia	No threshold
Germany	40 €	Slovenia	12,5 € (3000 Sit)
Greece	No threshold	Spain	48 €
Hungary	No threshold	Sweden	32 € (300 Sek)
Ireland	51 €	United Kingdom	51 € (35 £)
	Italy	26 €	

## ***Solution proposed***

### Option 1

Introduction of the following rules and exemptions

1. *Exclusion of:*

- *Emergency services and some craftsmen services requested by consumers*
- *Home-delivery schemes (i.e. supermarkets delivering foodstuffs, beverages and goods for current consumption at consumer's home)*
- *Foodstuffs and beverages supplied by regular roundsmen (such as the milk man or the sellers at beaches or the baker going around villages)*

2. *Keeping the current 60 Euro in minimum harmonisation in particular in order to take into account different living standards between the Member States (status quo)*

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	No perceivable effects.
<b>Minimising the burden of EU legislation for businesses</b>	<b>+</b>	Exemption of certain services would reduce the burden for traders who are currently covered by the Directive.
<b>Enhancing consumer confidence</b>	<b>0</b>	No perceivable effect.
<b>Improving the quality of legislation</b>	<b>+</b>	New exemptions would be coherent with market developments (supermarket delivery schemes)
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	The exemption of emergency services and some craftsmen services would reduce the current burden for traders in countries where they are currently included in the scope of the legislation.  Applying the right of withdrawal for such services would create difficulties for these professions.	
<b>Effects on SMEs</b>		
<b>Effects on consumers</b>		

<b>Effects on cross-border trade</b>	Although there would be benefits to both cross-border trade and consumer confidence of having a common monetary threshold across the Single Market, a 60 euro limit could be quite high in some countries and yet quite low in others.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	Exemption of some services (craftsmen) could lower the level of consumer protection in countries where they are currently included.  Keeping the threshold can work as an incentive for traders to circumvent withdrawal rights by offering products or services for less than the minimum threshold or to split an offer into several offers to remain under the threshold.
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	
<b>ECCG workshop</b>	Euro coop: The exclusion of emergency services requested by the consumer and for home-delivery schemes as well as foodstuffs and beverages supplied by regular roundsmen is acceptable because of the nature of the services provided.
<b>Consumer focus group</b>	
<b>Businesses</b>	
<b>Business survey</b>	
<b>Business workshop</b>	<p>The German craft association highlighted the importance of excluding craftsmen from the scope of the Directive. In Germany craftsmen providing home repairs or improvements are currently excluded from the Directive because they are solicited by consumers who contact them in order to request their services.</p> <p>A number of businesses are in favour of increasing this threshold to €400 or even €500. In particular FEDSA explained that the right of withdrawal is mostly used in the case of high ticket goods. For low value transactions, the paperwork to comply with information requirement is very burdensome. Therefore the issue is not the existence of a right of withdrawal (which is fully accepted by businesses) but the legal requirements that go with it, such as the information on the existence of the right of withdrawal and the modalities to exercise such a right.</p> <p>The Spanish Direct Selling Association noted that although there is a</p>

	<p>threshold in Spain (around 48 euros) there are no particular complaints or problems linked to the threshold. Amway also expressed the view that there are no problems in relation to small transactions.</p> <p>The FVD, Vorwerk and AVEDISCO expressed a different view. They believe that increasing the threshold would encourage companies to apply no rules and this would open the door to rogue traders, for example individuals going in staircases and selling low value products. This would be bad publicity for the profession (and bad media coverage as soon as the first “cases” would emerge). The problem is that consumers buying products under a certain amount would not be protected anymore. This would be detrimental to consumer’s confidence. Consumers need the same level of protection, regardless of the amount. There would be a possibility, for example, of splitting the order forms to remain under a certain threshold. The strong consumer protection in the field of direct selling has allowed the industry to grow.</p> <p>The “burden” of the documents containing the information requested is not a problem for companies. Vorwerk also emphasised that all federations, in their codes of conduct, provide consumers with rights of withdrawal whatever the amount. Therefore, since sellers already provide this right, deleting the threshold will not add a new burden.</p>
<b>Business interviews</b>	<p>The French Federation (FVD) is opposed to any threshold since the experience of French legislation which applies no threshold, has proved to work effectively. The perception of a certain amount is different from one country to another. Information requirements are also essential in a situation of direct selling, whatever the amount of the product sold.</p> <p>Vorwerk points out the fact that the industry's codes of conduct do not apply any threshold. The perception of a certain amount is different from one country to another. Information requirements are also essential in a situation of direct selling, whatever the amount of product sold.</p> <p>Regarding exemptions, Vorwerk believes that exemptions can be made, e.g. for plumbing and similar services, where the right of withdrawal would not be sensible. Supermarket home delivery schemes should be exempted, and regular rounds men are a disappearing business practice. However a general exemption for all goods intended for daily (current) consumption is not advisable. This would then also include cosmetics and personal care products sold by direct selling / MLM companies.</p> <p>FEDSA believes that the rules should be the same across the EU. They remarked that the average transaction in direct selling is about 50 euros. High value transactions represent a small percentage of the sales. Substantial information requirements required by legislation are a problem in direct selling. For items of considerable value, special rules are justifiable. Otherwise, the rules should be the same as the ones applying to on-premises retailers. The provisions with which direct sellers have to comply are excessively complicated for</p>



	<p>low ticket goods (e.g. withdrawal form) and put direct sellers at a disadvantage compared with high street retailers. A de minimis rule for direct selling would allow for legal certainty in transactions with a limited turnover. A reasonable threshold has to be determined (60 euros is far too low). FEDSA strongly advises a much higher threshold which could justifiably be at least 400 Euro.</p> <p>Regarding exemptions, the right of withdrawal should not be exercised where the products traded are of a nature that makes their return impractical or a total loss for the seller. Referring to the example of Article 3(2) of the Distance Selling Directive, a modernised version could benefit from using the Community law definition of ‘food’ (making the reference to ‘beverages’ superfluous)</p> <p>Amway: Maintaining – or even reinforcing – the threshold to applying the legislation makes sense, from an administrative burden point of view, Amway’s commercial decision is to apply the legal requirements protecting consumers in every Member State irrespective of the value of the good sold (if there is a threshold). This should however remain a commercial decision, not a legal obligation. Also, Amway expresses some doubts as whether consumers need that level of protection for low-value goods and whether this burden might not be detrimental to SMEs.</p> <p>According to Mary Kay, there should be a minimum threshold under which the obligations of direct selling legislation do not apply. The same formal procedures (notably the order form and other information requirements) at the sale of low-value goods, normally intended for current consumption (e.g. a lipstick) would put a disproportionate administrative burden on both business and consumer.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## Option 2

Introduction of the following rules and exemptions:

1. *Exclusion of:*
  - *Emergency services and some craftsmen services requested by consumers*
  - *Home-delivery schemes (i.e. supermarkets delivering foodstuffs, beverages and goods for current consumption at consumer’s home)*
  - *Foodstuffs and beverages supplied by regular roundsmen (such as the milk man or the sellers at beaches or the baker going around villages)*
2. *Removing the current 60 Euro.*

Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	+	Having the same rules across the EU (no threshold) could facilitate cross-border trade.
<b>Minimising the burden of EU legislation for businesses</b>	0	Exemption of certain services would reduce the burden for traders who are currently covered by the Directive.  In 17 Member States where there is currently a threshold some businesses might incur small adjustment costs.
<b>Enhancing consumer confidence</b>	+	In 17 Member States where a threshold currently applies consumer confidence may increase due to the new coverage of the Directive.
<b>Improving the quality of legislation</b>	++	New exemptions would be coherent with market developments (supermarket delivery schemes)  In addition the removal of the threshold would simplify and improve the consistency of the legislation. It would also close potential loopholes.
Economic effects		
<b>Effects on business (administrative and compliance costs)</b>	<p>The exemption of emergency services and some craftsmen services would reduce the burden for traders in countries where they are currently included in the scope of the legislation.</p> <p>Applying the right of withdrawal for such services would create difficulties for these professions.</p> <p>Regarding the threshold, some businesses currently applying a threshold might incur adjustment costs with the new rule. Administrative costs might also increase because of the information requirements (burdensome in case of low value goods).</p> <p>However all federations, in their codes of conduct, all provide consumers with rights of withdrawal whatever the amount. Therefore, since sellers already provide this right, suppressing the threshold will not add a new burden. With the simplification of information requirements that is envisaged (alignment with UCPD), there would be not increased burden for sellers.</p>	
<b>Effects on SMEs</b>		
<b>Effects on consumers</b>		
<b>Effects on cross-border trade</b>	Removing the varying thresholds across the EU could facilitate cross-border trade.	

<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	<p>Exemption of some services (craftsmen) could lower the level of consumer protection in countries where they are currently included.</p> <p>The removal of the threshold in 17 Member States would improve the level of consumer protection considering that information requirements are essential in a situation of direct selling, whatever the amount of product sold. Consumers would be protected regardless of the amount spent, which could increase consumer's confidence.</p> <p>Having a threshold also creates potential loopholes for rogue traders (e.g. Possibility of splitting the order forms to remain under a certain threshold, to circumvent the application of the Directive).</p>
<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	
<b>ECCG workshop</b>	Euro coop: The exclusions of emergency services requested by the consumer and for home-delivery schemes as well as foodstuffs and beverages supplied by regular roundsmen are acceptable because of the nature of the services provided.
<b>Consumer focus group</b>	
<b>Businesses</b>	
<b>Business survey</b>	
<b>Business workshop</b>	<p>The German craft association highlighted the importance of excluding craftsmen from the scope of the Directive. In Germany craftsmen providing home repairs or improvements are currently excluded from the Directive because they are solicited by consumers who contact them in order to request their services.</p> <p>A number of businesses are in favour of increasing this threshold to €400 or even €500. In particular FEDSA explained that the right of withdrawal is mostly used in the case of high value goods. But for low value transactions, the paperwork to comply with information requirement is very burdensome. Therefore the issue is not the existence of a right of withdrawal (which is fully accepted by businesses) but the legal requirements that go with it, such as the information on the existence of the right of withdrawal and the modalities to exercise such a right.</p>

	<p>The Spanish Direct Selling Association remarked that although there is a threshold in Spain (around 48 euros) there are no particular complaints or problems linked to the threshold. Amway also expressed the view that there are no problems in relation to small transactions.</p> <p>The FVD, Vorwerk and AVEDISCO expressed a different view. They believe that increasing the threshold would encourage companies to apply no rules and this would open the door to rogue traders for example individuals going in staircases selling low value products. This would be bad publicity for the profession (and bad media coverage as soon as the first “cases” would emerge). The problem is that consumers buying products under a certain amount would not be protected anymore. This would be detrimental to consumer’s confidence. Consumers need the same level of protection, regardless of the amount. There would be a possibility, for example, of splitting the order forms to remain under a certain threshold. The strong consumer protection in direct selling has allowed the industry to grow.</p> <p>The “burden” of the documents containing the information requested is not a problem for companies.</p>
<b>Business interviews</b>	<p>The French Federation (FVD) is opposed to any threshold since the experience of French legislation which applies no threshold, has proved to work effectively. The perception of a certain amount is different from one country to another. Information requirements are also essential in a situation of direct selling, whatever the amount of the product sold.</p> <p>Vorwerk points out the fact that the industry's codes of conduct do not apply any threshold. The perception of a certain amount is different from one country to another. Information requirements are also essential in a situation of direct selling, whatever the amount of product sold.</p> <p>Regarding exemptions, Vorwerk believes that exemptions can be made, e.g. for plumbing and similar services, where the right of withdrawal would not be sensible. Supermarket home delivery schemes should be exempted, and regular rounds men are a disappearing business practice. However a general exemption for all goods intended for daily (current) consumption is not advisable. This would then also include cosmetics and personal care products sold by direct selling / MLM companies.</p> <p>FEDSA believes that the rules should be the same across the EU. They advocate a 400 euro threshold. A de minimis rule for direct selling would allow for legal certainty in transactions with a limited turnover.</p> <p>Regarding exemptions, the right of withdrawal should not be exercised where the products traded are of a nature that makes their return impractical or a total loss for the seller. Referring to the example of Article 3(2) of the Distance Selling Directive, a modernised version could benefit from using the Community law</p>

	<p>definition of ‘food’ (making the reference to ‘beverages’ superfluous)</p> <p>Amway: Maintaining – or even reinforcing – the threshold to applying the legislation makes sense, from an administrative burden point of view, Amway’s commercial decision is to apply the legal requirements protecting consumers in every Member State irrespective of the value of the good sold (if there is a threshold). This should however remain a commercial decision, not a legal obligation. Also, Amway expresses some doubts as whether consumers need that level of protection for low-value goods and whether this burden might not be detrimental to SMEs.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## Clarification of relationships between rules applicable to distance and doorstep selling

### *Problem*

The issue of the so-called ‘repeat transactions’ refers to the situation where the initial order was made away from business premises (i.e. within the scope of the doorstep selling directive) and subsequent orders of the same products (e.g. cosmetics) were made at a distance. The evolution of the sales methods in doorstep selling and the development of "multi-channel" sales in contemporary doorstep selling businesses have led to legal uncertainty for traders and consumers.

A clarification of the rules would improve legal certainty in situations where a consumer has concluded a first contract with a seller in person but subsequently makes new orders at a distance from the seller using phone for instance.

### *Solution proposed*

#### Option 1

Status quo meaning that subsequent orders fall within the scope of the distance selling rules

Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	
<b>Minimising the burden of EU legislation for businesses</b>	<b>0</b>	With the new definitions as put forward under legislative proposals 5 and 6 above, repeat transactions would fall under the Distance sales rules. This may cause minimal additional burden on those direct sellers selling products ordered recurrently.
<b>Enhancing consumer</b>	<b>0</b>	

confidence		
Improving the quality of legislation	0	No change in current legislation.
Economic effects		
Effects on business (administrative and compliance costs)	<p>According to some companies, applying two different regimes is an unnecessary burden. In distance contracts additional information has to be provided at the moment of delivery, and the right of withdrawal for goods also starts with delivery. The current situation presents legal uncertainty and results in confusion and additional administrative burden for doorstep sellers.</p> <p>However the costs will be low for business once the provisions for distance and doorstep sellers are harmonised: traders would not have to use different sets of contractual documents in such a case because the framework directive would harmonise the consumer protection rules as much as possible for distance and off-premises contracts, particularly with respect to the information requirements and length of the cooling-off period. The burden will be lower than it is today.</p> <p>This issue is only relevant for certain direct sellers who combine direct selling for the first order with distance selling for the recurrent orders of the same or similar products.</p> <p>This may cause additional burden for those direct sellers selling products likely to be ordered recurrently. The modalities to provide the information would be different but this results from the use of different means of communication. A written order form is not possible if the repeat transaction is concluded via the Internet. Therefore a confirmation on a durable medium will need to be sent with all the information (instead of a written order form containing the same information).</p>	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade		
Social effects		
Effects on the level of consumer protection	<p>It is not necessarily the consumer who spontaneously makes repeated orders but it may be the result of an initiative from the trader contacting the consumer and urging him to make further orders at a distance.</p> <p>This solution guarantees the protection of consumers in situations where subsequent orders are made online, by ensuring that the provisions of the distance selling directive are applied (e.g. cooling-off period starts at delivery). This prevents abuses stemming from various interpretations of ‘similar’ product.</p>	

<b>Environmental effects</b>	
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	n/a
<b>ECCG workshop</b>	<ul style="list-style-type: none"> <li>- It is really important to clarify what a subsequent order means and what a similar product is.</li> <li>- The two regimes (direct/distance selling) should be harmonized as much as possible. Any differences would otherwise cause confusion and open the door to abuse.</li> </ul>
<b>Consumer focus group</b>	n/a
<b>Businesses</b>	
<b>Business survey</b>	n/a
<b>Business workshop</b>	<p>Repeat transactions may occur especially for low value products and having to use different types of information materials could entail higher costs for sellers as they would need different sets of contractual documents.</p> <p>According to FEDSA, applying two different regimes is an unnecessary burden. In distance contracts additional information has to be provided at the moment of delivery, and the right of withdrawal also starts with delivery. Amway also agreed that having two different order forms for the same client is complicated for companies.</p> <p>On the contrary, FVD, AVEDISCO, Vorwerk and Direct Selling Europe considered that when the same product is ordered through the internet to the company selling the products, this is clearly a distance sale and should be treated as such. It should be clear that when a consumer buys online, it is a distance selling order. There is no real burden for the companies because the rules are very similar.</p>
<b>Business interviews</b>	<p>Mixed views were expressed among doorstep sellers on this issue:</p> <ul style="list-style-type: none"> <li>- According to FVD, the distinction between direct and distance should be preserved. Otherwise it will be easy to sidestep obligations related to distance selling (seller at the home of the consumer, making an online order when they are together). There is already enough confusion in the mind of consumers who think they have a withdrawal right when buying in a shop etc. The specificities of direct and distance selling still exist.</li> </ul>

	<p>When similar products are ordered from the same seller, if the order is made through the internet and if the product has not been seen before, it is clearly distance selling and the cooling off period must apply. In any case the situation must be absolutely clear, with regard to what belongs to direct and distance selling. The key criterion in direct selling remains the physical, simultaneous presence of the seller and consumer.</p> <p>- On the contrary, Amway and FEDSA oppose a possible application of regulations on distance selling. They strongly endorse the application of one single regime. One contract (i.e. direct selling) should apply, no matter what specific means of communication the consumer may use after concluding the first contract. The number of repeat orders using exclusively means of distance communication constitutes a very significant part of sales. These should not be seen as distance contracts: this would create legal uncertainty (the distributors could not be sure in advance, which directive would apply in their relationship with certain consumers).</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<p>The condition for this proposal to minimise the burden for businesses is the harmonisation of the provisions of the distance and doorstep directives (particularly with respect to the contents of the information to be provided). Aligning these provisions across contracts will increase legal certainty by closing gaps such as ‘repeat transactions’. Linked to proposals 8, 9, 10, 11 and 12.</p> <p>The definition proposed for off-premises contracts will also put an end to uncertainties as to whether distance selling regulations or doorstep selling regulations apply in certain cases: indeed, in combination with the definition of “distance contract”, the definition of off premises contracts should clarify the situation of “repeat transactions”.</p>

## Option 2

Subsequent orders made at a distance (e.g. on the Internet) will be covered by the Doorstep selling rules (i.e. same rules for the initial order at consumer's home and subsequent orders at a distance).

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	Harmonised rules at EU level would facilitate cross-border trade.



Minimising the burden of EU legislation for businesses	+	Burden could be slightly reduced for businesses.
Enhancing consumer confidence	–	Confidence could decrease as consumer protection would decrease in situations where the distance sales rules today are applied.
Improving the quality of legislation	0	The issue of repeat transactions would be clearly covered by the law. However a new rule could create legal uncertainty, considering that the key criterion in direct selling is the physical, simultaneous presence of the seller and consumer.
Economic effects		
Effects on business (administrative and compliance costs)	Possible reduction of costs if the definition clarifies the situation of ‘repeat transactions’ regarding which rules that apply. Such repeat orders constitute a very significant part of sales for multi-level marketing companies like Amway but not for 'traditional' doorstep sellers.  According to some companies, applying two different regimes is an unnecessary burden. In distance contracts additional information has to be provided at the moment of delivery, and the right of withdrawal also starts with delivery.	
Effects on SMEs		
Effects on consumers		
Effects on cross-border trade		
Social effects		
Effects on the level of consumer protection	Level of protection could decrease: subsequent orders made at a distance will <i>not</i> be covered by distance selling provisions and could under certain conditions fall under the scope of exemptions specific to doorstep selling. It would confuse consumers buying at a distance. The notions of ‘subsequent order’ and ‘similar product’ should be absolutely clear. Otherwise this could open the door for abuses (subsequent order of different products online not treated as distance sales).  Effectively closing loopholes for rogue traders that used the ‘gap’ and the different exemptions in the two directives as ways to circumvent the application of any of the directives.	
Environmental effects		
Public sector administration/enforcement costs		

<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	n/a
<b>ECCG workshop</b>	<ul style="list-style-type: none"> <li>- It is really important to clarify what a subsequent order means and what a similar product is.</li> <li>- The two regimes (direct/distance selling) should be harmonized as much as possible. Any differences would otherwise cause confusion and open the door for abuse.</li> </ul>
<b>Consumer focus group</b>	n/a
<b>Businesses</b>	
<b>Business survey</b>	n/a
<b>Business workshop</b>	<p>According to FEDSA, repeat transactions may occur especially for low value products and having to use a different type of information materials could entail higher costs for sellers as they would need different sets of contractual documents. Applying two different regimes is an unnecessary burden. In distance contracts additional information has to be provided at the moment of delivery, and the right of withdrawal also starts with delivery.</p> <p>Amway also agreed that having two different order forms for the same client is complicated for companies.</p> <p>On the contrary, FVD, AVEDISCO, Vorwerk and Direct Selling Europe considered that when the same product is ordered through the internet, this is clearly a distance sale and should be treated as such. It should be clear that when a consumer buys online, it is a distance selling order. There is no real burden for the companies because the rules are very similar.</p>
<b>Business interviews</b>	<p>Mixed views were expressed among doorstep sellers on this issue:</p> <ul style="list-style-type: none"> <li>- According to FVD, the distinction between direct and distance should be preserved. Otherwise it will be easy to sidestep obligations related to distance selling (seller at the home of the consumer, making an online order when they are together). When similar products are ordered from the same seller, if the order is made through the internet and if the product has not been seen before, it is clearly distance selling and the cooling off period must apply. In any case the situation must be absolutely clear, with regard to what is considered to be direct and distance selling respectively.</li> </ul> <p>FEDSA advocates direct selling contracts applying to all the activities undertaken by direct sellers (one contract applying for all transactions). The solution proposed is to apply the direct selling contract to all transactions concluded afterwards. Applying Distance selling to these transactions would not be beneficial for the consumer, and it is more complicated to comply with due to</p>

	<p>the double layer of information.</p> <p>Similarly ongoing and repeat transactions between the same seller and consumer should be exempted from the most intensive information provisions, particularly if the information is available on a company's or seller's Internet web site or other readily accessible source of information.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	
	<ul style="list-style-type: none"> <li>- Provisions of the distance and doorstep Directives (information requirements, length of withdrawal period etc) should be harmonised as far as possible to avoid causing confusion and reducing the level of consumer protection.</li> <li>- The notions of 'subsequent order' and 'similar product' should be very clearly defined to avoid abuses.</li> </ul>

## **POLICY OPTION 5**

### **Introducing rules with regard to the extension of the guarantee in the event of recurring defects or clarifying the existing rules**

#### ***Problem***

Article 5(1) of the Consumer Sales Directive provides consumers with a legal guarantee for generally two years (lack of conformity guarantee). This period is unlimited in Finland, while it is six years in Ireland and the United Kingdom.

Recital 18 of the Directive already allows the suspension or interruption of the legal guarantee period in the event of repair, replacement or negotiations between seller and consumer on how to settle lack of conformity. Some Member States (CZ, ES, HU, MT) have transposed this option explicitly in their own national legislation, others not. Nor does the Directive provide for the extension of the guarantee in case of recurring defects. The latter issue has also been regulated at Member State level.

#### ***Solution proposed***

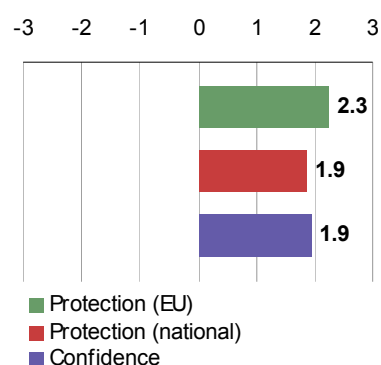
##### Option 1

Possible new rules:

- 1. If any defect or failure in the goods is remedied under the (legal and/or commercial) guarantee then the guarantee is prolonged for a period equal to the period during which the guarantee holder could not use the goods due to the defect or failure.*
- 2. If the seller has unsuccessfully attempted to remedy the lack of conformity and the same defect reappears within reasonable time, the consumer may resort to any other available remedy (i.e. price reduction and termination).*

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	+	Harmonisation leads to some degree of improved legal certainty in cross-border transactions, though no conceivable effect on cross-border trading is expected.
<b>Minimising the burden of EU legislation for businesses</b>	+	The costs for businesses will increase slightly due to more defects during an extended liability period, due to increased occurrence of rescission of contracts in case of recurrent defects, and due to the overall increased costs of repair.
<b>Enhancing consumer confidence</b>	++	Consumer confidence will increase as rules will be more favourable and uniform across the EU.
<b>Improving the quality of legislation</b>	++	<p>The legislative change would improve the quality of consumer protection legislation through harmonising national rules on the extension of the liability period.</p> <p>The rules on recurrent defect are too vague, and may be controversial in practice, leading to judicial disputes.</p>
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>The prolongation of the guarantee period increases the occurrence of other defects within the liability period, although the time used for repairs or replacement is usually short (less than 2 weeks) in comparison with the total length of the liability period. The costs to businesses to remedy lack of conformity will increase incrementally.</p> <p>The additional administrative work in relation to calculating the new date of the extinction of the liability and marking it on the guarantee form is only incremental.</p> <p>If consumers will be able to resort to another remedy in case of recurrent defects (i.e. not applying the proportionality clause), the occurrence of replacement and refund will increase, imposing an additional burden on the trader.</p> <p>It also may have an impact on the overall cost and time for repair: traders will be more cautious, will analyse potential causes of defects and test repaired goods more thoroughly.</p> <p>The harmonisation will reduce the legal and human costs of monitoring national legislation slightly.</p>	
<b>Effects on SMEs</b>	The burden will be relatively high for SMEs (both traders and producers) which tend to repair goods rather than replacing them or giving the consumer a refund.	

	While the liability period will increase for the retail trader, the period for the producer's liability (right of redress) might often not be prolonged due to the trader's lower negotiating power. The costs of remedies will therefore be borne by the trader solely.
<b>Effects on consumers</b>	The effective protection of consumers will increase by the prolongation of the liability period. However, traders might compensate the higher costs for such prolongation and for the new rules on recurrent defects by raising their prices.
<b>Effects on cross-border trade</b>	No effects perceived.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	The option to resort to another remedy after a recurrent defect helps consumers to cancel their contractual relationship with traders they do not trust.
<b>Environmental effects</b>	
	The effect on the environment may be somewhat negative, as the number of goods replaced or refunded (and ultimately discarded) will slightly increase. Goods being simply repaired, is considered as a generally lower environmental burden.
<b>Public sector administration/enforcement costs</b>	
	No specific effects expected.
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	No question raised.
<b>ECCG workshop</b>	<p>Consumer groups deem this rule as having a very positive impact on both consumer protection and consumer confidence (scores of 1.9 to 2.3 out of a possible 3). This is also considered a very significant issue (4.29 on a scale of 1 to 5).</p> <p>Option 1 would be beneficial for consumers through the extension of the guarantee, although it can lead to some confusion as establishing the period by which the guarantee is to be prolonged in a transparent way is difficult.</p>



<b>Consumer focus group</b>	<p>Only a minority of participants were aware that the suspension or interruption of the period within which the seller is liable for any lack of conformity, in case of repair, replacement etc., and the extension of guarantee in case of recurring defects, were regulated differently between the Member States. The majority of participants favoured Option 1.</p> <p>A small number of consumers considered that the differences influenced them in making purchases in other Member States. Participants agreed that common rules would increase their confidence in cross-border shopping.</p> <p>Four participants had actually experienced problems as a consequence of the differences in relation to the suspension or interruption of the liability period and the legal guarantee. Problems mentioned related to unreasonable long periods for repair or replacement without an extension of the guarantee. Participants also highlighted the importance of introducing an obligation, for the seller, to inform the consumer of the estimated length of the “period” during which the goods would not be available for use.</p> <p>The seller should also be obliged to clearly describe after repair what had been wrong with the good as this would allow for determining whether a defect is recurrent or not.</p> <p>The notion of ‘reasonable time’ and ‘unreasonable inconvenience’ seemed very vague to the participants, who argued that this opens the door to abuses on the side of professionals.</p>										
<b>Businesses</b>											
<b>Business survey</b>	No specific question raised.										
<b>Business workshop</b>	<p>Option 1 was considered to increase business costs, though the scale of this was seen to be rather limited (-0.5 to -1.6). Doorstep sellers voted almost in unison, some variance of views was detected in retail.</p> <p>This topic was not considered significant for distance sellers, and only somewhat significant for others.</p> <p>Representatives from Apple voiced their concerns with regard to the meaning of the first option for companies selling products with spare parts: in the event that one component only was replaced because it was</p> <div data-bbox="954 1211 1337 1563"> <table border="1"> <thead> <tr> <th>Seller Type</th> <th>Impact (Estimated)</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>-1.1</td> </tr> <tr> <td>Retail</td> <td>-1.4</td> </tr> <tr> <td>Distance</td> <td>-0.5</td> </tr> <tr> <td>Doorstep</td> <td>-1.6</td> </tr> </tbody> </table> </div>	Seller Type	Impact (Estimated)	Total	-1.1	Retail	-1.4	Distance	-0.5	Doorstep	-1.6
Seller Type	Impact (Estimated)										
Total	-1.1										
Retail	-1.4										
Distance	-0.5										
Doorstep	-1.6										

	defective, would this incur the extension of the guarantee for the whole good or just for the part that has been replaced?
<b>Business interviews</b>	<p>Vorwerk: As regards the extension of the guarantee, a prolongation of its duration corresponding to the time of the repair/replacement, when the consumer was not in possession of the goods is adequate. However, a prolongation for the period he could not use the product due to the defect or failure may lead to uncertainty. How does he prove from which time he was unable to use the product in its full functionality? The time when he notified the trader about the defect can also be contested.</p> <p>As regards point 2, Vorwerk suggests to allow the consumer to resort to other remedies not after the first unsuccessful attempt to repair, but the second. For technical equipment, it often occurs that the root of the problem can not be assessed with certainty at the first attempt. At the first attempt, the technicians would fix the potential problems that are the most likely and/or easiest. If this does not solve the problem, they would do a more thorough examination.</p> <p>The notion of ‘same’ defect may also be ambiguous. Does this refer to restrictions in the same functionality of the product even if it is a slightly different restriction the second time? This could be the view of the consumer, and courts would probably also take this view.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

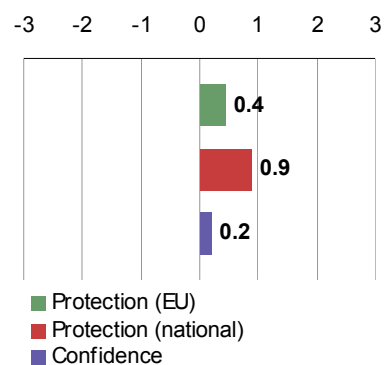
### Option 2

Clarification of existing rule: If the seller refuses or has failed to remedy the lack of conformity within reasonable time or without unreasonable inconvenience to the consumer, the consumer may resort to any other available remedy (i.e. price reduction or termination at his own choice).

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	No effects expected
<b>Minimising the burden of EU legislation for businesses</b>	<b>0</b>	No effects expected

Enhancing consumer confidence	0	No effects expected
Improving the quality of legislation	+	A minor improvement in the quality of legislation through a better explanation of the rule stipulated in Article 5(3).
Economic effects		
Effects on business (administrative and compliance costs)	This option is understood as a clarification of the current provisions of Article 5(3) only. The rule has already been implemented in national legislation, no effects are therefore expected.	
Effects on SMEs	No effects expected.	
Effects on consumers	No effects expected.	
Effects on cross-border trade	No effects expected.	
Social effects		
Effects on the level of consumer protection	No effects expected.	
Environmental effects		
	No effects expected.	
Public sector administration/enforcement costs		
	No effects expected.	
Stakeholder views		
Consumers		
Consumer organisations survey	No questions raised.	
ECCG workshop	<p>The topic in general was considered very significant by the participants (4.29).</p> <p>Option 2 was considered simple and clear, but was seen as the status quo that does not bring any advantages to consumers. Participants advocated the extension of the legal guarantee as in Option 1 (without interfering with commercial guarantees), which shall increase consumer protection at EU and national level (0.4 and</p>	

Category	Score
Protection (EU)	0.4
Protection (national)	0.9
Confidence	0.2





	<p>0,9 points respectively).</p> <p>The notion “reasonable inconvenience” was seen by the Italian participant as a possibility to ask for refund if the first attempt to repair (or replace) the good was not successful to remedy the lack of conformity. Therefore it can give considerable protection to the consumer.</p> <p>The ratings given under consumer protection and consumer confidence did not reflect significant impacts expected.</p>
<b>Consumer focus group</b>	<p>Only a minority of participants were aware that the suspension or interruption of the period within which the seller is liable for any lack of conformity, in case of repair, replacement etc., and the extension of guarantee in case of recurring defects, were regulated differently between the Member States. Only a minority of participants favoured Option 2.</p> <p>A small number of consumers considered that the differences influenced them in making purchases in other Member States. Participants agreed that common rules would increase their confidence in cross-border shopping.</p> <p>Four participants had actually experienced problems as a consequence of the differences in relation to the suspension or interruption of the liability period and the legal guarantee. Problems mentioned related to unreasonable long periods for repair or replacement without an extension of the guarantee. Participants also highlighted the importance of introducing an obligation, for the seller, to inform the consumer of the estimated length of the “period” during which the goods would not be available for use.</p> <p>The seller should also be obliged after repair to clearly describe what had been wrong with the good as this would allow determining whether a defect was recurrent or not the second time.</p> <p>The notion of ‘reasonable time’ and ‘unreasonable inconvenience’ seemed very vague to the participants, who argued that this opens the door to abuses on the side of professionals.</p>
<b>Businesses</b>	
<b>Business survey</b>	No specific questions raised.

<b>Business workshop</b>	<p>Option 2 was seen as more or less the status quo, therefore no significant change was attributed to it by the participants, distance sellers however saw a slight negative effect (-0.8).</p> <p>The significance of the topic was relatively low for distance sellers, while somewhat considerable for the other two groups.</p> <p>The British Retail Consortium added that full harmonisation of the provisions currently in place in the Directive would be beneficial.</p>	<table><tr><th>Seller Type</th><th>Impact</th></tr><tr><td>Total</td><td>-0.4</td></tr><tr><td>Retail</td><td>-0.3</td></tr><tr><td>Distance</td><td>-0.8</td></tr><tr><td>Doorstep</td><td>0.1</td></tr></table>	Seller Type	Impact	Total	-0.4	Retail	-0.3	Distance	-0.8	Doorstep	0.1
Seller Type	Impact											
Total	-0.4											
Retail	-0.3											
Distance	-0.8											
Doorstep	0.1											
<b>Business interviews</b>	Option 2 was preferred by most businesses interviewed.											
<b>Preconditions necessary to ensure positive impacts accrue</b>												

## Introducing new rules with regard to the obligation of the seller to inform the consumer on spare parts or clarifying the existing rules

### *Problem*

At presents, the notion of spare parts and after-sales services is only briefly referred to in the Distance Selling directive. There are few provisions in the Consumer Acquis regulating the availability or the consequences of the non-availability of spare parts (Article 6(e) of UCPD on misleading actions on the need for a service, part, replacement or repair).

### *Solution proposed*

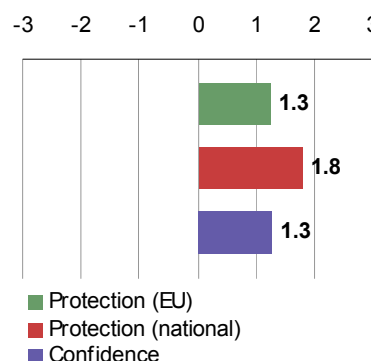
#### Option 1

A possible new provision could state that the seller, prior to the conclusion of a contract, should inform the consumer of the means of repairing the goods and buying spare parts and the time period during which spare parts will be available.

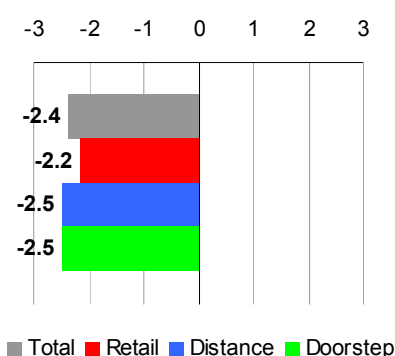
Expected impacts		
Main Policy Objectives		
	Rating	Explanation
<b>Contribution to the better functioning of the Internal Market</b>	--	Price levels are likely to increase to cover additional costs of both retailers (checking) and producers (loss in revenue due to need for a larger stock of spare parts).
<b>Minimising the</b>	--	Option 1 will impose a significant burden on

<b>burden of EU legislation for businesses</b>		<p>retailers, who will need to check their inventory and request information from the producers.</p> <p>Retailers may be exposed to additional risk.</p> <p>If businesses will change their spare parts and repair policy, this will be detrimental for their sales volumes.</p>
<b>Enhancing consumer confidence</b>	+++	A large positive effect on consumer confidence is anticipated: consumers will be better informed and can possibly rely on an adequate remedy in case the spare parts or repair is not available.
<b>Improving the quality of legislation</b>	+	Harmonisation will create a uniform general rule throughout the EU.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>		<p>Traders will have to review the product information notes for all products in their inventory (can be several thousands), which will impose a very significant one-off cost on them. The recurring cost of checking, and if needed, requesting this information from the supplier (producer or wholesaler), or even negotiating it with them is also substantial.</p> <p>In addition, producers might not want to or be able to give an indication on the availability of spare part. In that case, the trader has to take the risk of indicating a period (he could then set a very short or zero deadline, which would however probably be detrimental to sales).</p> <p>It is not clear what the consequences of not having spare parts for the whole duration of the period promised would be. Also, what would be the consequences of not complying with the previously indicated means of repair?</p> <p>Indirectly, an increased supply of spare parts and improved repair services might decrease the sales volume of producers.</p>
<b>Effects on SMEs</b>		<p>SMEs with a more restricted negotiating power may more likely get squeezed between consumers and suppliers (receiving no information).</p> <p>Spare part producers and repair services may benefit.</p>
<b>Effects on consumers</b>		<p>Consumers can benefit from information on the availability spare parts and on the means of repairing the good, which allows them to make more informed decisions.</p> <p>The reliability and legal consequences of the information provided is however not known. Prices may increase when traders compensate for increased costs.</p>
<b>Effects on cross-border trade</b>		No conceivable effects are anticipated.
<b>Social effects</b>		
<b>Effects on the level</b>		Reliable (and enforceable) information on the availability of spare

<b>of consumer protection</b>	parts would be a considerable improvement in the way consumers are informed. The reliability and legal consequences of such information is however questionable.
<b>Environmental effects</b>	
	No direct effects are anticipated. An induced change in spare parts and repairs policy (spare parts available) may be beneficial from a sustainable development perspective.
<b>Public sector administration/enforcement costs</b>	
	It is not yet clear what the legal consequences of the obligation to inform consumers would be and how these would be controlled and enforced.
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	No questions asked.
<b>ECCG workshop</b>	<p>This issue was not seen as significant by the participants. Altogether, they thought it would increase the level of consumer protection and confidence considerably (scored of 1.3 to 1.8).</p> <p>One participant was concerned that this issue should be dealt with in a horizontal instrument, as Option 1 was less practical.</p> <p>The participants agreed that the issue of spare parts was very complicated. Market offer changes very quickly, boosted by the businesses. More focus should be put on environmental aspects. Option 1 would make businesses reconsider changing their products too quickly.</p>
<b>Consumer focus group</b>	<p>Only a minority was aware of the fact that issues in relation to spare parts and after-sales services were regulated differently in the EU countries. Eight mentioned that such differences influenced the extent to which they bought products from other countries, 3 indicated that this had no influence on their behaviour.</p> <p>A relatively high number of consumers had experienced problems in relation to spare parts and after-sales services, which were mainly caused by the poor quality of the services and a lack of</p>



	<p>availability of spare parts, despite earlier indications that these would be available.</p> <p>A few participants considered that the two options should be combined, but less than half of them favoured option 1. Some participants suggested that in the user's manual, there should be a mention saying "spare parts will be available for xx years".</p> <p>One participant noted that sometimes the lack of spare parts actually benefits the consumer, especially with electronic goods which are replaced with newer versions rather than repaired.</p> <p>Eighteen participants agreed that common rules would increase their confidence in cross-border shopping in general.</p>
<b>Businesses</b>	
<b>Business survey</b>	No questions asked.
<b>Business workshop</b>	<p>Participants almost univocally viewed this option as very burdensome (ratings from -2.2 to -2.5), which would be apparent in the prices charged to consumers. Manufacturers would also increase their prices as they would have to produce or procure spare parts and stock them.</p> <p>This issue was considered the most significant by retailers (4.10), but was not deemed significant by distance sellers, and only somewhat significant for doorstep sellers.</p> <p>Retailers argued that this would add little to the consumer's decision to buy a product or not, as they are in most cases just as happy with a replacement.</p> <p>For every product they sell, retailers would have to track whether the manufacturer has spare parts available, for how long these are expected to be on stock, etc., which is close to impossible for goods with a short lifecycle.</p> <p>The representative of the German Chamber of</p>



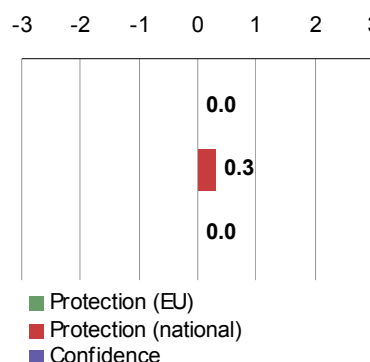
	Commerce and Industry pointed out that in his view none of the options presented were favourable, nonetheless there is no 'status quo' option.
<b>Business interviews</b>	<p>IMRG: For retailers such a rule would create an additional burden: they would have to first identify who could supply these spare parts – which can be a complicated task in the case of electronic goods for instance, with electronic parts coming from different manufacturers.</p> <p>Vorwerk: The obligation to provide prior information on the “means” of repairing the goods is not acceptable. Indicating the period during which spare parts will be available is acceptable to Vorwerk, they are doing this anyway (guarantee for 15 years, also a lifetime guarantee).</p> <p>Amway: The rule may apply to water filters and cookware. The time of keeping spare parts is in around 10 years at Amway for these products.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

## Option 2

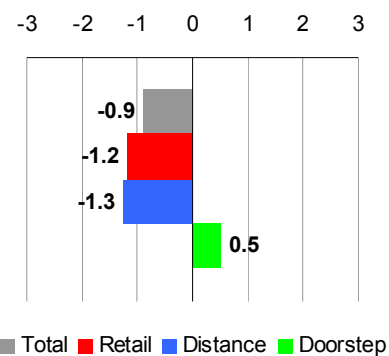
A recital could be added to clarify the rules in relation to the legal guarantee, stating that “The lack of spare parts should not be a valid ground to justify the trader's failure to remedy the lack of conformity within a reasonable time or without reasonable inconvenience to the consumer.”

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	Neutral, as the option is considered as a clarification to the legal text without implying any change to actual practices.
<b>Minimising the burden of EU legislation for businesses</b>	<b>0</b>	Neutral, as the option is considered as a clarification to the legal text without implying any change to actual practices.
<b>Enhancing consumer confidence</b>	<b>+</b>	A slight increase in consumer confidence through harmonisation and improved transparency of the legal provisions.
<b>Improving the quality of legislation</b>	<b>+</b>	Some positive effect is considered through the harmonisation and clarification of the existing legal text.
<b>Economic effects</b>		

<b>Effects on business (administrative and compliance costs)</b>	<p>This is to clarify cases where a lack of spare parts would render repair of goods impossible (Article 3 paragraph 3 in Directive 1999/44/EC), thus another remedy would have to be chosen (in Member States where a hierarchy does not exist between remedies), but all alternatives would be considered as disproportionate. In such cases, the seller would in any case have to offer alternatives (replacement, price reduction or rescission) - which are possible and available without reasonable inconvenience to the consumer.</p> <p>No effects to be expected, as in practice, traders in the Member States affected already have to offer another form of remedy in such cases, and this is sufficiently clear for businesses (also underpinned by case law).</p>
<b>Effects on SMEs</b>	No perceivable effects.
<b>Effects on consumers</b>	No perceivable effects.
<b>Effects on cross-border trade</b>	No perceivable effects.
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	No significant effects, though it can contribute to increasing consumer confidence in general through harmonising and clarifying existing legislation.
<b>Environmental effects</b>	
	No effects.
<b>Public sector administration/enforcement costs</b>	
	No perceivable effects.
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	Question not raised.
<b>ECCG workshop</b>	<p>The topic has not been seen as particularly significant.</p> <p>The option was seen as reasonable. It is clear that within the legal (or commercial) guarantee period, the right of the consumer for a remedy must not be reduced by not having spare parts available.</p> <p>The real relevance of Option 2 was said to come to light when combining it on 15.1 (free order of remedies)</p>



	and/or 14.1 (prolongation of guarantee, and free order of remedies in case of recurrent defects).
<b>Consumer focus group</b>	<p>Only a minority was aware of the fact that issues in relation to spare parts and after-sales services were regulated differently in the EU countries. Eight mentioned that such differences influenced the extent to which they bought products from other countries, 3 indicated that this had no influence on their behaviour.</p> <p>A relatively high number of consumers had experienced problems in relation to spare parts and after-sales services, which were mainly caused by the poor quality of the services and a lack of availability of spare parts, despite earlier indications that these would be available.</p> <p>The majority of the participants felt that option 2 would have a positive effect and were favourable of this option. Some participants suggested that in the user's manual, there should be a mention saying "spare parts will be available for xx years".</p> <p>One participant noted that sometimes the lack of spare parts actually benefits the consumer, especially with electronic goods which are replaced with newer versions rather than repaired.</p> <p>Eighteen participants agreed that common rules would increase their confidence in cross-border shopping in general.</p>
<b>Businesses</b>	
<b>Business survey</b>	Question not raised.
<b>Business workshop</b>	<p>Participants reckoned that Option 2 will rather increase their burden (ratings from -0.9 to -1.3), except doorstep sellers, who saw a slightly positive impact of the option (0.5).</p> <p>The topic on was considered to be the most significant by retailers (4.10). Distance sellers did not deem it significant, and doorstep sellers saw it as only somewhat important.</p>
<b>Business interviews</b>	
<b>Preconditions necessary to ensure positive impacts accrue</b>	





## **Introducing a set of rules to ensure that consumers can obtain refunds in certain instances**

### ***Problem***

The right of consumers to obtain refund (in case of withdrawing or rescinding from a consumer contract) in due time is currently not regulated within the Consumer Sales Directive, and only partially in the Distance Selling Directive, as well as in the Directive on Payment Services.

Article 6(2) of the Distance Selling Directive stipulates that where the right of withdrawal has been exercised by the consumer pursuant to this Article, the supplier shall be obliged to reimburse the sums paid by the consumer free of charge. Such reimbursement must be carried out as soon as possible and in any case within 30 days. Additionally, Article 7(2) says that where a supplier fails to perform his obligation under the contract on the grounds that the goods or services ordered are unavailable, the consumer must be informed of this situation and must be able to obtain a refund of any sums he has paid as soon as possible and in any case within 30 days.

The Doorstep Selling Directive leaves the regulation of reimbursement of payments to national laws.

Article 66 of the Directive on Payment Services (PSD) on the irrevocability of a payment order stipulates that generally, payments may not be revoked once performed. Paragraph 5 allows revocation only if agreed between the payment services user and his payment service provider. If agreed in the framework contract, the payment service provider may charge for revocation. While the major international payment schemes (“four-party” scheme like Visa, MasterCard, or “three-party” schemes like Amex or Diners Club, etc.) already employ charge-back options (as a courtesy to bank customers), domestic payment systems (e.g. Bancontact in Belgium, PIN in the Netherlands, Dankort in Denmark) may not grant such chargeback rights (with the exception of some Member States, such as UK, Sweden and Finland where domestic debit systems are already obliged to provide charge-back arrangements).

Card issuers can however be concerned by European law in the settlement of refunds in certain cases, where the contract also covers credit. In such cases, the card issuer may be jointly liable for refunding the consumer Credit Directive.

### ***Solution proposed***

On top of the status quo (i.e. articles 6(2) and 7 of the Distance Selling Directive) the following would be introduced:

*Member States cooperate with the Commission for the promotion of self-regulation by the industry (mainly banks, credit card companies and intermediaries such as Paypal systems or other third party systems) on refund rights such as charge-back rights for credit cards.*

The consumer is entitled to obtaining a refund of the money paid to the seller for example in case of non-performance of the seller, such as the non-delivery of the goods or the seller's failure to reimburse the amount paid following the exercise of the withdrawal right by the consumer. If this proves to be unsatisfactory, the Commission will encourage introduction of

a system of charge-back rights at national level as it is already the case in the UK, Sweden and Finland.

<b>Expected impacts</b>		
<b>Main Policy Objectives</b>		
	<b>Rating</b>	<b>Explanation</b>
<b>Contribution to the better functioning of the Internal Market</b>	<b>0</b>	No particular contribution
<b>Minimising the burden of EU legislation for businesses</b>	<b>++</b>	If obligatory rules will be introduced, an additional burden of compliance will be imposed on card issuers (and acquirers), in the case of major payment schemes, not subject to any obligation to provide charge-back rights (except for 3 Member States), and in the case of domestic debit schemes currently not subject to obligatory charge-back arrangements.
<b>Enhancing consumer confidence</b>	<b>++</b>	Consumer confidence will increase due to better protection (full charge-back rights coverage of payments card transactions). However, prices may increase due to higher costs for the use of debit and credit cards.
<b>Improving the quality of consumer protection legislation</b>	<b>0</b>	No positive contribution to the quality of legislation perceived.
<b>Economic effects</b>		
<b>Effects on business (administrative and compliance costs)</b>	<p>The promotion of self-regulation would not bring any obligation to financial institutions, and will therefore not result in direct administrative and compliance costs.</p> <p>Charge-back rights are already implemented as a courtesy in major payment schemes (such as Visa, MasterCard, AmEx, Diners Club) and subject to the rules of these companies.</p> <p>A compulsory introduction of a system of charge-back rights at national level would impose additional charge-back handling costs of an estimated €4.6 million per annum, but also substantial one-off investment costs on scheme operators, card issuers and acquirers (developing new rules and mechanisms, updating IT systems, developing forms, training staff, etc.).</p>	
<b>Effects on SMEs</b>	A few card issuers may be SMEs. For them, the investment costs relative to their sales volume will be higher.	
<b>Effects on consumers</b>	If a system of charge-back rights at national level would be introduced, consumers would have access to such charge-back arrangements under approximately 5% of transactions via domestic debit systems that were not yet covered. The refunds procedure would be faster and more convenient for them.	

<b>Effects on cross-border trade</b>	No particular effects. The proposed change concerns domestic transactions
<b>Social effects</b>	
<b>Effects on the level of consumer protection</b>	Faster and more convenient refunds procedure for domestic transactions not yet covered by charge-back arrangements.
<b>Environmental effects</b>	
	No effects.
<b>Public sector administration/enforcement costs</b>	
<b>Stakeholder views</b>	
<b>Consumers</b>	
<b>Consumer organisations survey</b>	Question not raised.
<b>ECCG workshop</b>	Question not raised.
<b>Consumer focus group</b>	Question not raised.
<b>Businesses</b>	
<b>Business survey</b>	Question not raised.
<b>Business workshop</b>	Question not raised.
<b>Business interviews</b>	<p>Visa reported that while charge-back rights exist and are adequate in transactions that involve the international payments schemes (such as Visa, MasterCard, AmEx, Diners Club), similar arrangements are not always in place in transaction via domestic debit systems.</p> <p>The handling costs for the financial institutions involved are, with about \$50-55 per case, relatively low. The volume of charge-back right exercised, as compared to the total transaction volume, is less than 0.01%</p> <p>IMRG: when retailers receive payment for goods that they do not have in stock (asking for payment at the time of order, knowing they cannot supply the good) they give the industry a bad reputation. This is mostly the case for smaller retailers. This also leads to consumers having low confidence in buying on the internet. IMRG has expelled members for such behaviour in the past.</p> <p>A consumer cancelling a contract because the product is not available should obtain refund immediately, not within 30 days. This should be regulated by giving a guarantee to consumers and thereby increasing their confidence.</p>
<b>Preconditions necessary to ensure positive impacts accrue</b>	

### ***Basis and methodology for calculations***

The number of transactions with payment cards (excluding e-money cards and ATM transactions) in the EU-25 according to the European Central Bank's Blue Book on payment and securities settlement systems<sup>51</sup> was around 23,127 million in 2005, of a total value of €1,371 billion. An overwhelming majority of these transactions are already covered by existing charge-back schemes of the large international payments schemes (Visa, MasterCard, AmEx, Diner's Club, etc.) which control 85-90% of the card payment market. From the remainder, a considerable share of domestic debit cards are co-branded with international network brands (e.g. Maestro) and thus equally covered by the charge-back rules of these international schemes, or have their own charge-back systems in place. The share of payment card transactions currently not covered by charge-back provisions is unlikely to exceed 5%, equalling 1,156 million transactions in a value of €68,5 billion.

We calculate the number of additional cases when customers could rely on their charge-back rights in domestic debit schemes to be around 115 thousands per year, based on the estimation made by industry representatives that such cases do not exceed 0,01% of all transactions.

It should be also noted that a high proportion of charge-backs concern fraudulent use of credit cards, which is a matter that is not subject to the consumer acquis. According to a working paper from DG MARKT, 50% of charge-backs initiated concerned Internet-related transactions back in 1999, a proportion that is likely to have increased since. Around 47% of the problems concerned the fraudulent use of cards (the card holder did not authorise the purchase), and only about 10% of all cases related to classical problems of refund also covered by the consumer acquis (goods not received, goods not as described, goods being defective).

However, the figures provided by industry representatives do not seem to include refunds to card holders by card issuers, which are done (because of their low value) without initiating a chargeback procedure, and which would involve the acquirer bank.

The current costs involved to manage such reclaims (reviewing e.g. a print out of the online purchase, the proof of having the good sent back, the bank account of the customers, etc. in accordance with the payment scheme's rules) were estimated by the industry to around \$50-55 per case (a total for card issuer and the acquiring bank), which corresponds to around €40 (calculating with a historical average exchange rate of 1.3 EUR/USD). A working paper from DG MARKT on "payment card chargeback when paying over internet"<sup>52</sup> from 2000 contains similar estimates, provided by Europay (€38-76 in France, €41 in Germany, €37.7 in Italy, €7-20 in the Netherlands, 500-800 SEK in Sweden, 11GBP in the UK).

This would sum up to an approximate €4.6 million handling costs per annum. However, this would also be accompanied by a substantial one-off investment cost for debit scheme operators (setting up new rules and mechanisms, updating IT systems, etc.), card issuers and acquirers (updating IT systems, preparing new forms, developing new procedures, staff training, etc.). This will be less significant for those banks already participating in international schemes providing charge-back rights and more significant for banks not yet participating in such schemes. The scale of investment costs is not known, but can easily

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<sup>51</sup> <http://www.ecb.int/pub/pdf/other/bluebook200612addenden.pdf>

<sup>52</sup> [http://ec.europa.eu/internal\\_market/finservices-retail/docs/onlineservices/chargeback\\_en.pdf](http://ec.europa.eu/internal_market/finservices-retail/docs/onlineservices/chargeback_en.pdf)

reach several hundred thousand euros per company, and some thousands of European card issuers (and acquirers) may be affected by increased costs.

## **ANNEX 6**

### **LIST OF STAKEHOLDERS AND SUMMARY OF THEIR VIEWS ON POLICY OPTIONS**

#### **STAKEHOLDERS WHICH PARTICIPATED IN THE DIFFERENT CONSULTATION EXERCISES DURING THE IMPACT ASSESSMENT PROCESS BETWEEN DECEMBER 2007 AND MARCH 2008**

3 Suisses Belgium

3 Suisses France

ACEA, Belgium

ACSEL (Association pour le commerce et les services en ligne), France

ADAC, Germany

Adjura

Amazon

Amway

ANWB

Apple

Asociácia užívateľov služieb (Association of service consumers, Slovakia)

Association of Consumer Organisations in Slovakia

Association of German Chambers of Industry and Commerce Berlin - DIHK

Association of Slovak Consumers

Automobilclub von Deutschland e.V. (AvD)

Automovel Club Portugal

AVEDISCO - Direct Selling Association of Italy

BDI - Federation of German Industries

BDSA, France

BITKOM - German Association for Information Technology, Telecommunications and New Media

Boots

British Retail Consortium

British Telecom Plc

Bundesverband der Dienstleistungswirtschaft (BDWi)

Bundesverband des Deutschen Versandhandels e.V.

Bundesverband Direktvertrieb Deutschland e.V.

Bureau Européen des Unions de Consommateurs (BEUC)  
BUSINESSEUROPE (The Confederation of European Business)  
Captain Tortue  
CECED  
Chamber of Industry and Commerce of Stuttgart, Germany  
Citizens Advice, United Kingdom  
Club for Protection of Consumer Interest, Latvia  
CNCU - National Council for Consumers & Users, Italy  
CODACONS, Italy  
Comfconsumatori, Italy  
Confartigianato Montebelluna, Italy  
Confcommercio regionale dell'Umbria, Italy  
Confcommercio, Italy  
Confederation of Netherlands Industry and Employers VNO-NCW  
Conseil des ventes, France  
Consommation Logement Cadre de Vie ( CLCV), France  
Consumentenbond, The Netherlands  
Consumer Credit Association, United Kingdom  
Cyprus Employers & Industrialists Federation (OEB)  
DIHK - Deutscher Industrie und Handelskammertag  
Direct Selling Association, Czech Republic  
Direct Selling Europe  
Direct Selling Europe, Germany  
DMA (Direct Marketing Association), United Kingdom  
Dublin City Business Association, Ireland  
eBay  
eBay France  
eBay Germany  
eBay UK  
Electronic Retail Association Europe  
EMOTA (European E-commerce and Mail Order Trade Association)  
EuroCommerce  
EUROCOOP, Portugal

European Banking Federation  
European Consumer Centre, Ireland  
European Consumer Centre, Germany and France  
European Federation of Building Societies  
European Mortgage Federation (EMF)  
FAEP  
Fédération de la Vente Directe, France  
Fédération des entreprises de Belgique, Belgium  
Federation of eBusinesses (FOEB), United Kingdom  
Federation of European Direct Selling Association (FEDSA)  
Federation of Finnish Commerce, Finland  
FEDMA - Federation of European Direct & Interactive Marketing  
FEDSA - Federation of European Direct Selling Associations  
FENACOOOP - National Federation of Consumers Co-operatives (FCRL), Portugal  
Fenapro – Federazione Nazionale Profumieri, Italy  
FEVAD (Fédération des Entreprises de Vente à Distance), France  
Financial Services Consumer Panel, United Kingdom  
France Telecom Orange  
German Confederation of Skilled Crafts, Germany  
German Retail Federation Hauptverband des Deutschen Einzelhandels e.V, Germany  
Gesamtverband textil+mode - Confederation of the German textile and fashion industry, Germany  
Gruppo Galimberti  
HDE (Hauptverband des Deutschen Einzelhandels), Germany  
Holiday TravelWatch, United Kingdom  
IMRG (Interactive Media in Retail Group), United Kingdom  
Institut National de la Consommation, France  
International E.Commerce Association, United States  
KEPKA - Consumers' Protection Center, Greece  
Kleeneze  
Kodak Holding GmbH  
Laboratoire JSL  
Leaseurope  
Mastercard Europe



MEDEF (Mouvement Des Entreprises de France), France  
National Association for Consumer Protection and Promotion of Programs and Strategies, Romania  
National Consumer Federation, United Kingdom  
Nederlandse Thuiswinkel Organisatie (Dutch Distance Selling Organisation), The Netherlands  
NEPIM-VSZ, Belgium  
Noao Akéo  
Norwegian Media Businesses' Association (MBL)  
ÖAMTC, Austria  
OR.GE.CO  
Oriflame  
Oxylane Group  
Pixmania  
Platform Detailhandel Nederland  
Portuguese Industrial Association  
Reader Digest  
Redcats Group  
RFS Holland Holding/Wehkamp  
Romanian Association for Consumers' Protection  
Saga Isolation  
Siemens AG  
Sotheby's  
Spanish Direct Selling Association  
Stanhomes  
Swedish Consumer Agency/Consumer Ombudsman  
Tesco  
The British Antique Dealers' Association  
The Danish Federation of Small and Medium Sized Enterprises  
The Finnish Consumers' Association  
The Swedish Consumers' Association  
UEAPME - Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises  
UGAL - Union of Groups of Independent Retailers of Europe  
Uniao Geral de Consumidores, Portugal  
Union Fédérale des Consommateurs-Que Choisir, France

Union Luxembourgeoise des Consommateurs, Luxembourg

UPIM, Italy

Verbraucherzentrale Bundesverband (vzbv) - Federation of German Consumer Organisations

Visa Europe

Vorwerk & Co KG

Wine and Spirit Trade Association, United Kingdom

Wirtschaftskammer Österreich, Austria

Zentralverband des Deutschen Handwerks

ZGV Zentralverband gewerblicher Verbundgruppen, Germany

ZVEI e.V.

## SUMMARY OF STAKEHOLDERS' VIEWS ON POLICY OPTIONS

### Policy Option 1 Status Quo

Consumers and consumer organisations perceive the benefits of Rome I for consumers but point out that the latter would not resolve all problems identified in relation to cross-border shopping. Most consumer organisations would prefer an increased level of harmonisation.

Business stakeholders strongly oppose the Status Quo, which would in a sense be the ‘worst of both worlds’, combining the current problems of minimum harmonisation with the even greater legal uncertainty caused by Rome I. This will strongly increase their administrative and compliance costs.

### Policy Option 2 Non legislative approaches

Businesses have quoted examples of self-regulation which are successful. They support the concept but are strongly in favour of additional legislative measures to tackle the effects of Rome I and the minimum harmonisation problems.

### Policy Option 3 Minimum legislative changes

#### Consumer stakeholders

Consumer stakeholders welcomed the increased transparency and clarity of the proposals. With regard to intermediaries, they were also in favour of extending this obligation to online platforms. The definition of durable medium was also broadly supported, even though it was stressed that consumers should always be allowed to use different means of communication and to have the possibility to receive important information in a ‘harder’ format.

#### Business stakeholders

Business stakeholders supported the increased harmonisation that would result from the proposals. With regard to the definitions, they however stressed the need to also ensure coherence with other legislative instruments, such as the distance marketing of consumer financial services. The business stakeholders also strongly supported the increased

transparency that would result from the obligation for intermediaries, but were concerned about the consequences as these could be disproportionate for on-line platforms.

#### **Policy Option 4 Medium legislative changes**

##### **Consumer stakeholders**

The passing of risk at the moment of physical reception was considered a key issue for consumer stakeholders. The new definitions for distance and off premises contracts are considered to increase clarity and consistency as well as consumer protection for contracts which were previously excluded from the scope of the distance or doorstep selling regulations.

Consumer stakeholders considered that harmonised lists of unfair terms would overall increase consumer protection levels. Some concerns were expressed as to the Comitology procedure and interpretation of the lists by different national courts.

They were strongly in favour of the common withdrawal period of 14 days, as it would increase consumer confidence. They were also in favour of harmonising the start of the withdrawal period for all directives, even though they were concerned about setting a common rule for all types of services. Setting common rules for exercising withdrawal would not have significant effects. Setting rules on the effects of withdrawal was considered to reduce returns, but also to reduce domestic consumer protection levels.

Consumer stakeholders welcomed the harmonised information requirements and considered that it would increase consumer protection at EU level.

Consumer stakeholders considered that harmonised rules on the order of remedies would decrease consumer protection in a few countries and decrease consumer confidence.

Consumer stakeholders considered that the introduction of obligation to notify would reduce the number of consumers relying on the lack of conformity. They also believed that traders would indeed invoke the expired deadline for notification as a reason for not providing remedies. The proposal would thus be an obstacle for consumers to exercise their rights and reduction of protection levels.

Consumer stakeholders argued for a partial inclusion of e-auctions in the distance selling directive. As to M and T-commerce, consumer stakeholders stated that it would still be essential to provide the most important information directly to the consumer, as the latter run the risk of not being informed sufficiently before concluding a contract.

##### **Business stakeholders**

Mixed views on delivery and passing of risk, overall considered to place an additional burden on traders. The new definitions for distance and off premises contracts are expected to have positive impacts. Business stakeholders would on the longer term reduce compliance costs, but initial administrative costs in some countries.

Businesses consider that 14 calendar days for withdrawal would increase their costs for handling returns and increase the risk of deterioration of goods. Direct sellers considered that setting a common start for the withdrawal period would substantially increase their current burden and strongly advocated in favour of setting the start of the withdrawal at the time when the order form is signed.

Businesses welcomed the common rules for exercising withdrawal and considered that it

would reduce the costs for information provision and processing of withdrawals. It would also increase legal certainty. The differences in the treatment of withdrawal and return were considered an important obstacle to the internal market. Businesses welcomed common rules on the effects of withdrawal as it would substantially reduce their costs and also reduce abuse of withdrawal rights.

Businesses strongly agreed with the harmonised information requirements, as long as these are rationalised and simplified. The UCPD provisions provided a good model in their view.

Harmonised rules on the order in which remedies can be requested were considered important by business stakeholders. Cancellation of a contract should always be the ultimate remedy – the existing order seemed to be effective and most companies offer more generous commercial guarantees already.

Businesses considered that the introduction of the obligation to notify would make consumers overall more cautious and would mean a reduction of costs, albeit minor. They felt that it would be hard to prove whether a consumer had discovered a lack of conformity within a certain timeframe or not.

Business stakeholders had mixed views on the notion of auctions. There was overall agreement that genuine auctions should not be included but that other kinds should be regulated to some extent. Business stakeholders considered referring M and T-commerce buyers to a separate website a viable option. Making repeat transactions fall under the distance selling directive would place an additional burden on direct sellers according to one part of the direct selling industry, the traditional direct sellers being in favour of keeping the distinction between direct selling and distance selling regulations. However, this burden would be reduced if information requirements in distance and direct selling are harmonised.

The business stakeholders were in favour of certain exemptions of the scope of the distance selling directive.

#### **Policy Option 5 Maximum legislative changes**

##### **Consumer stakeholders**

The new rules on the extension of the legal guarantee and recurrent defects are considered to have a very positive impact on consumer protection and confidence, although it can lead to some confusion as to establishing the duration of the extension period. The new rules on spare parts would increase consumer protection and confidence.

##### **Business stakeholders**

Business stakeholders considered that the extension of the legal guarantee and recurrent defects would increase costs. Also, the notion of the ‘same’ defect could be ambiguous. Business stakeholders viewed the new rules on spare parts as very burdensome. With regard to payment security, one major credit card company reported that, while charge-back rights exist in international payment transactions (as a courtesy in most Member States and as legal right in other Member States), these are not always in place in domestic debit systems.

<b>Policy Option 6 Minimum legislative changes combined with an internal market clause</b>
<b>Consumer stakeholders</b>
Consumer stakeholders are opposed.
<b>Business stakeholders</b>
Business stakeholders support it.

## ANNEX 7

### MONETISATION OF IMPACTS OF THE PREFERRED OPTION

#### 1. Introduction

In accordance with the European Commission Impact Assessment Guidelines (in particular Annex 10 on administrative burden), the impact assessment closely examined the administrative costs imposed by the existing regulation and by the preferred policy option.

Data sources included qualitative and quantitative data gathered through a series of interviews with business stakeholders and through a workshop with business representatives.

The analysis of this annex is strictly confined to the costs to be incurred to comply with the new information obligations (as required by the IA Guidelines) and. Other compliance costs (e.g. management of returns) are beyond the scope of this analysis.

#### 2. Methodology and summary results

##### Existing burden

The directives under review impose administrative costs on businesses in the form of pre-contractual and contractual information obligations. They affect distance sellers, doorstep sellers and face-to-face retailers. The information obligations stem from the Distance Selling Directive, from the Doorstep Selling Directive and from the Sales and Guarantees Directive, in conjunction with the information obligations contained in the Unfair Commercial Practices Directive.<sup>53</sup> The existing burden is generated at EU level and at national level.

##### Distance Selling Directive

The Directive 97/7/EC requires the provision of specific items of information, both before and after a contract is concluded. Article 4 specifies a list of items which must be given before a contract is concluded that must be provided in a ‘clear and comprehensible manner in any way appropriate to the means of distance communication used’. These items are:

- a. The identity of the supplier and, in the case of contracts requiring payment in advance, his address;

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<sup>53</sup> Directive 97/7/EC on the protection of consumers in respect of distance contracts

Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises

Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

- b. The main characteristics of the goods or services;
- c. The price of the goods or services including all taxes;
- d. Delivery costs, where appropriate;
- e. The arrangements for payment, delivery or performance;
- f. The existence of a right of withdrawal, except in the cases referred to in Article 6(3);
- g. The cost of using the means of distance communication, where it is calculated other than at the basic rate;
- h. The period for which the offer or the price remains valid;
- i. Where appropriate, the minimum duration of the contract in the case of contracts for the supply of products or services to be performed permanently or recurrently.

### **Doorstep Selling Directive**

Under Article 4(1), the Directive provides that a consumer must be given information about his right to withdraw from a contract concluded in the circumstances to which the Directive applies within a period of no less than 7 days from concluding the contract, as well as the name and address of the person against who this right may be exercised.

It must be borne in mind that the Unfair Commercial Practices Directive which applies, amongst others, before the conclusion of a doorstep selling contract, provides for further information requirements (Article 7(4)) which are the following:

- a. the main characteristics of the product, to an extent appropriate to the medium and the product;
- b. the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting;
- c. the price inclusive of taxes, or where the nature of the product means that the price cannot reasonably be calculated in advance, the manner in which the price is calculated, as well as, where appropriate, all additional freight, delivery or postal charges or, where these charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable;
- d. the arrangements for payment, delivery, performance and the complaint handling policy, if they depart from the requirements of professional diligence;

### **Consumer Sales Directive**

This Directive contains specific information requirements in respect to ‘voluntary, commercial guarantees’. This provision requires that a commercial guarantee must contain information about:

- a. the consumer's legal rights under the national legislation on the sale of goods, and make clear that these rights are unaffected by the guarantee;
- b. the contents of the guarantee, including duration and territorial scope of the guarantee
- c. the essential particulars for making a claim, including the name and address of the guarantor.

### **Regulatory origin**

Due to the minimum harmonisation approach, businesses must also comply with the provisions laid down in national law and with how the Member States have added to these requirements. Therefore, the administrative burden stemming from the national level must also be taken into account when assessing the existing burden.

### **Burden under the baseline scenario (including Rome I)**

As a result, the baseline scenario presented here encompasses the consequences of the Commission proposal for a Regulation on the law applicable to contractual obligations (Rome I). As a result of Rome I, businesses wishing to trade in more than one Member State will have to adapt the way that they provide information as well as its contents to the national legislation of the Member States where their prospective consumers reside.

The administrative burden in the "Target Group" columns of the tables at the end of this Annex involves exclusively one-off costs. For example, as a result of the new rules, an existing distance seller will have to bear (i) a one-off legal cost to have his standard contract terms validated by a lawyer, (ii) a one-off marketing cost for adapting his information material to the new rules, (iii) a one-off cost for copying the information, (iv) a one-off cost for sending it again to his customers. The costs under (iii) and (iv) will have to be borne more than once but not because of the new proposed rules but because these are by nature recurrent costs (e.g. the seller will have to print more brochures if he wants to reach more potential customers or when he updates his catalogue).

### **New burden resulting from the information obligations generated by the preferred policy option (policy option 4)**

For both distance and doorstep sellers, there will be an adjustment cost (one-off cost) at EU level as they will need to adapt to the new framework directive, familiarise themselves with the obligations and draw up new standard contract terms and, in particular for doorstep 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.

However, this is without prejudice of the net effects that will accrue through the simplification of the existing regulatory framework (see summary of findings below). The additional recurring costs stemming from the proposal are low compared to the existing burden. Furthermore, when the simplification effect of the proposal is taken into



account, the proposed policy option produces significant benefits in terms of administrative burden.

## Methodology

As a first step, the administrative burden generated by the existing regulatory framework was estimated using the standard cost model, as given in Annex 10 of the Impact Assessment Guidelines. As explained above, an estimation of the national regulatory burden is particularly relevant within the context of the Acquis Review. This burden increases for businesses in proportion to the number of countries in which they operate because, under Rome I, businesses must adapt to each and every national transposition, in addition to the burden generated by the directives at EU level. In order to take into account the varying degrees of the administrative burden stemming from the national level, five baseline scenarios were elaborated:

- *Baseline for the EU level*: this scenario looks at the existing burden stemming strictly from the EU directives. The regulatory origin of the burden is 100% attributable to the EU level.
- *Baseline for the home Member State*: this scenario examines the case of a trader established in a Member State and trading exclusively in that country. As a result, the trader must comply with the national transposition of the directives as well as with the burden stemming from the directives themselves. 90% of the regulatory origin is attributed to the EU level, while 10% is attributed to the national level.
- *Baseline for a trader selling in 1 to 2 Member States outside his home country*: this scenario applies to the case of a trader established in a Member State and trading to 1 or 2 other Member States. As a result, the trader must comply with the national transposition of 3 countries (including his own) in addition to the burden stemming from the EU level. 75% of the regulatory origin is attributed to the EU level, while 25% is attributed to the national level.
- *Baseline for a trader selling in 3 to 5 Member States outside his home country*: this scenario applies to the case of a trader established in a Member State and trading to 3 to 5 other Member States. 60% of the regulatory origin is attributed to the EU level, while 40% is attributed to the national level.
- *Baseline for a trader selling in all 27 Member States*: this scenario applies to traders conducting pan-European operations. For these traders, the effect of the fragmentation of the regulatory framework is the most pronounced. As a result, 10% of the regulatory origin is attributed to the EU level, while 90% is attributed to the national level.

The information obligations give rise to a series of actions to comply with the obligations:

- *Familiarising with the information obligation*: the cost imposed by this action reflects the legal fees that an EU lawyer would charge for drafting and validating standard contract terms which comply with the domestic law of the trader transposing the Consumer Acquis as well as how much a lawyer would charge to

review the same standard contract terms in order to make them compliant with a foreign EU law transposing the Consumer Acquis.

- *Designing information material (leaflet conception...)*: reflects the cost of upgrading marketing material to comply with the information obligations.
- *Copying (reproducing reports, producing labels or leaflets)*: reflects the cost of reproducing the information on a yearly basis.
- *Submitting the information (sending it to the designated recipient)*
- *Training members and employees about the information obligations*: concerns the training of the sales force to comply with the information requirements, which is particularly relevant for doorstep traders.
- *Retrieving relevant information from existing data*

The cost of performing these obligations is assessed by using average EU rates. The rates are based on estimates produced by British Retail Consortium (BRC) member companies, the Federation of Small Businesses (FSB), interviews with business stakeholders and federations, EUROSTAT data, the results of Eurobarometer polls and the Commission's expert judgement. The amount of time spent performing the actions is adjusted to take into account the number of Member States for which the obligation is being performed as well as the number of traders concerned, depending on the scenario. The figure of 250 Euros per hour was used for the cost of legal validation, with each additional Member State on top of the home country representing 10 hours of work. It was estimated that they represent the EU average, but they might be significantly higher: according to a member of the British Retail Consortium (BRC), these costs would represent £30,000 using a regional lawyer spending about 70 hours for this business and its affiliates. For adapting the standard terms to Poland, for example, the cost would be approximately £15,000 and for France, £20,000. For the whole of the EU where this member company has businesses, the cost would amount to approximately £110,000. The effects are presented by category of stakeholder: distance sellers, doorstep sellers, face-to-face retailers (store retailers).

In a second step, the same exercise was replicated to produce estimates of the additional burden generated by the preferred policy option. The exercise is simplified by the nature of the policy option, which entails full harmonisation. As a result, the calculations concern the additional burden generated at the level of 27 Member States.

### **Summary of findings**

The comparison of the costs stemming from the existing burden with the costs deriving from the preferred policy option shows significant savings at EU level.

No 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.

### **Distance sellers**

For distance sellers trading only domestically, the total burden under the baseline scenario is 8 bn Euros (5526 per company \* 1,5m distance sellers<sup>54</sup>).

Due to the fragmentation, the larger the number countries they trade in the heavier the burden business will have to bear. For distance sellers selling in 1 to 2 Member States, in addition to their home country, the total burden is 1,1 bn Euros (9276 per company \* 120.000, according to the 2008 Eurobarometer 8% of traders sell in one to two other Member States). For distance sellers trading in 3 to 5 other Member States, the total burden is 1,4 bn Euros (15.526 per company times 90.000 companies; according to the 2008 Eurobarometer, 6% of distance sellers sell in three to five other Member States).

Under the baseline scenario, assuming that all distance sellers would engage in cross-border sales in the 27 Member States, the total cost would be 105 bn Euros (70526 Euros per company).

The burden generated by the preferred policy option is only 3 bn Euros in total, which is equivalent to 2153 Euros per distance seller. This will result in net saving of 68 736 Euros per company (70256-2153).

### **Doorstep sellers**

For doorstep sellers trading only domestically, the current total burden e is 8.811.250 Euros (equivalent to 6625 per company \* 1330 companies)<sup>55</sup>.

Under the current regulatory regime, assuming that all doorstep sellers would engage in cross-border sales in the 27 Member States, the total cost would be 95.261.250 Euros and individual doorstep selling companies would have to incur 71.625 Euros each. The burden generated by the preferred policy option is 4.857.945 Euros in total, which is equivalent to 3653 Euros per doorstep seller. This will result in net saving of 67 972 Euros per company (71625-3653).

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<sup>54</sup> 1,5m is a conservative estimate of the total number of distance sellers in EU. The Total number of enterprises in retail trade of personal and household goods amounted to 3.090.525 in 2004 (Eurostat SBS 2004). According to the 2008 Eurobarometer 57% of retailers are engaged in distance selling either domestic or cross border; for the sake of caution, we have lowered this figure down to 50% and used 1,5m to estimate the total burden.

<sup>55</sup> We have taken into account only the companies and not the individuals engaged in direct selling (Ipsos MORI 2008, an independent study commissioned by FEDSA )

**Face-to-face retailers**

For in-store retailers, the existing burden for the baseline at EU level is 2.521.548.750 Euros, equivalent to 750 Euros per retailer.

For face-to-face retailers, no additional burden is generated by the preferred policy option. These traders generally have no standard contract terms, but trade on the basis of goodwill. This is why they will be unaffected by the legislative changes.

### 3. Calculations

**TABLE 1: BASELINE ADMINISTRATIVE BURDEN (EU LEVEL)**

Directive 97/7/EC on the protection of consumers in respect of distance contracts Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees					Tariff (€ per hour)	Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Regulatory origin (%)		
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	e	i	e				Int	EU	Nat
<b>DISTANCE SELLERS</b>														
1	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Familiarising with the information obligation	Distance sellers (costs of legal validation) ONE-OFF	250		12.00	3000	1.00	1,500,000	1,500,000	100%	
2	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Designing information material (leaflet conception...)	Distance sellers (one-off design costs) ONE-OFF		5.00		250	1.00	1,500,000	1,500,000	100%	
3	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Distant sellers ONE-OFF		1.00		500	1.00	1,500,000	1,500,000	100%	
4	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Submitting the information (sending it to the designated recipient)	Distance sellers (all) ONE-OFF				0.1	2,759	1,500,000	4,138,500,000	100%	
<b>DIRECT SELLERS</b>														
5	2005/29/EC Directive on Unfair Commercial Practices		Non-labelling information for third parties	Familiarising with the information obligation	Direct sellers (costs of legal validation) ONE-OFF	250		12.00	3000	1.00	1,330	1,330	100%	
6			Non-labelling information for third parties	Training members and employees about the information obligations	Direct sellers ONE-OFF		1.00		25.00	1.00	1,330	1,330	100%	
7			Non-labelling information for third parties	Retrieving relevant information from existing data	Direct sellers ONE-OFF		2.00		50.00	1.00	1,330	1,330	100%	
8			Non-labelling information for third parties	Designing information material (leaflet conception...)	Direct sellers ONE-OFF	25		2.00	50.00	1.00	1,330	1,330	100%	
9			Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Direct sellers ONE-OFF	2,000		1.00	2000	1.00	1,330	1,330	100%	
<b>STORE RETAILERS (FACE-TO-FACE)</b>														
10	2005/29/EC Directive on Unfair Commercial Practices		Non-labelling information for third parties	Familiarising with the information obligation	Store retailers (costs of legal validation) ONE-OFF	250		3.00	750	1.00	3,362,065	3,362,065	100%	
												Total administrative costs (€)		
												Administrative costs by origin (€)		
												0	8,567,215,000	0

<b>TOTAL Distance Sellers</b>	<b>Per DS company</b>
<b>6,038,850,000</b>	<b>4,026</b>

<b>TOTAL Doorstep Sellers</b>	<b>Per D2D company</b>
<b>6,816,250</b>	<b>5125</b>

<b>TOTAL Store Retailers</b>	<b>Per retailer</b>
<b>2,521,548,750</b>	<b>750</b>

**TABLE 2: BASELINE ADMINISTRATIVE BURDEN 1 MS (HOME MS)**

Directive 97/7/EC on the protection of consumers in respect of distance contracts					Tariff		Time		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)		
Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises					(€ per hour)		(hour)									
Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees																
No	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat
<b>DISTANCE SELLERS</b>																
1		Non-labelling information for third parties	Familiarising with the information obligation	Distance sellers (costs of legal validation) ONE-OFF		250		18	4500	1.00	1,500,000	1,500,000	6,750,000,000		90%	10%
2		Non-labelling information for third parties	Designing information material (leaflet conception...)	Distance sellers (design costs) ONE-OFF	50		5.00		250	1.00	1,500,000	1,500,000	375,000,000		90%	10%
3		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Distance sellers ONE-OFF	500		1.00		500	1.00	1,500,000	1,500,000	750,000,000		90%	10%
4		Non-labelling information for third parties	Submitting the information (sending it to the designated recipient)	Distance sellers ONE-OFF					0.1	2,759	1,500,000	4,138,500,000	413,850,000		90%	10%
<b>DIRECT SELLERS</b>																
5		Non-labelling information for third parties	Familiarising with the information obligation	Direct sellers (costs of legal validation) ONE-OFF		250		18	4,500	1.00	1,330	1,330	5,985,000		90%	10%
6		Non-labelling information for third parties	Training members and employees about the information obligations	Direct sellers ONE-OFF	25		1.00		25	1.00	1,330	1,330	33,250		90%	10%
7		Non-labelling information for third parties	Retrieving relevant information from existing data	Direct sellers ONE-OFF	25		2.00		50	1.00	1,330	1,330	66,500		90%	10%
8		Non-labelling information for third parties	Designing information material (leaflet conception...)	Direct sellers ONE-OFF		25		2.00	50	1.00	1,330	1,330	66,500		90%	10%
9		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Direct sellers ONE-OFF		2000		1.00	2000	1.00	1,330	1,330	2,660,000		90%	10%
<b>STORE RETAILERS</b>																
10		Non-labelling information for third parties	Familiarising with the information obligation	Store retailers (costs of legal validation) ONE-OFF		250		3.00	750	1	3,362,065	3,362,065	2,521,548,750		90%	10%
													Total administrative costs (€)			
													10,819,210,000			
													Administrative costs by origin (€)			
													0			
													9,737,289,000			
													1,081,921,000			

TOTAL Distance Sellers	Per DS company
8,288,850,000	5,526

TOTAL Doorstep Sellers	Per D2D company
8,811,250	6625

TOTAL Store Retailers	Per retailer
2,521,548,750	750

**TABLE 3: BASELINE ADMINISTRATIVE BURDEN (1-2 MS)**

Directive 97/7/EC on the protection of consumers in respect of distance contracts						Tariff		Time		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)		
Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees						(€ per hour)		(hour)									
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat
<b>DISTANCE SELLERS</b>																	
1	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Familiarising with the information obligation	<b>Distance sellers (legal validation) ONE-OFF</b>		250		33	8,250	1.00	120,000	120,000	990,000,000		75%	25%
2	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Designing information material (leaflet conception...)	<b>Distance sellers (design costs) ONE-OFF</b>	50		5.00		250	1.00	120,000	120,000	30,000,000		75%	25%
3	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	<b>Distance sellers ONE- OFF</b>	500		1.00		500	1.00	120,000	120,000	60,000,000		75%	25%
4	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Submitting the information (sending it to the designated recipient)	<b>Distance sellers (all) ONE-OFF</b>					0.1	2,759	120,000	331,080,000	33,108,000		75%	25%
<b>Total administrative costs (€)</b>														<b>1,113,108,000.00</b>			
<b>Administrative costs by origin (€)</b>															0	834,831,000	278,277,000

TOTAL Distance Sellers	Per DS company
1,113,108,000	9276

**TABLE 4: BASELINE ADMINISTRATIVE BURDEN (3-5 MS)**

Directive 97/7/EC on the protection of consumers in respect of distance contracts						Tariff  (€ per hour)		Time  (hour)		Price (per action or equip)	Freq (per year)	Nbr  of  entities	Total nbr  of  actions	Total  cost	Regulatory  origin  (%)		
Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees																	
No	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat
DISTANCE SELLERS																	
1	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Familiarising with the information obligation	Distance sellers (costs of legal validation) ONE-OFF		250		58	14,500	1.00	90,000	90,000	1,305,000,000		60%	40%
2	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Designing information material (leaflet conception...)	Distance sellers (design costs) ONE-OFF	50		5.00		250	1.00	90,000	90,000	22,500,000		60%	40%
3	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Distance sellers ONE-OFF	500		1.00		500	1.00	90,000	90,000	45,000,000		60%	40%
4	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Submitting the information (sending it to the designated recipient)	Distance sellers (all) ONE-OFF					0.1	2,759	90,000	248,310,000	24,831,000		60%	40%
													Total administrative costs (€)		1,397,331,000		
													Administrative costs by origin (€)		0	838,398,600	558,932,400
TOTAL Distance Sellers		Per DS company															
1,397,331,000		15526															



**TABLE 5: BASELINE ADMINISTRATIVE BURDEN (EU 27)**

Directive 97/7/EC on the protection of consumers in respect of distance contracts Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees						Tariff (€ per hour)		Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Total cost	Regulatory origin (%)			
No.	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	i	e	i	e						Int	EU	Nat	Reg
<b>DISTANT SELLERS</b>																		
1	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Familiarising with the information obligation	Distance sellers (costs of legal validation)		250		278	69,500	1.00	1,500,000	1,500,000	104,250,000,000		10%	90%	
2	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Designing information material (leaflet conception...)	Distance sellers (design costs) ONE-OFF	50		5.00		250	1.00	1,500,000	1,500,000	375,000,000		10%	90%	
3	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Distance sellers ONE-OFF	500		1.00		500	1.00	1,500,000	1,500,000	750,000,000		10%	90%	
4	97/7/EC Art 4 (1) (a) to (i)		Non-labelling information for third parties	Submitting the information (sending it to the designated recipient)	Distance sellers (all) ONE-OFF					0.1	2759	1,500,000	4,138,500,000	413,850,000		10%	90%	
<b>DIRECT SELLERS</b>																		
5	97/7/EC Art 4(1) + 2005/29/EC Directive on Unfair Commercial		Non-labelling information for third parties	Familiarising with the information obligation	Direct sellers (costs of legal validation) ONE-OFF		250		278,00	69,500.0	1.00	1,330	1,330	92,435,000		10%	90%	
6			Non-labelling information for third parties	Training members and employees about the information obligations	Direct sellers ONE-OFF	25		1.00		25	1.00	1,330	1,330	33,250		10%	90%	
7			Non-labelling information for third parties	Retrieving relevant information from existing data	Direct sellers ONE-OFF	25		2.00		50	1.00	1,330	1,330	66,500		10%	90%	
8			Non-labelling information for third parties	Designing information material (leaflet conception...)	Direct sellers ONE-OFF		25		2.00	50	1.00	1,330	1,330	66,500		10%	90%	
9			Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Direct sellers ONE-OFF		2		1.00	2000	1.00	1,330	1,330	2,660,000		10%	90%	
Total administrative costs (€)														105,884,078,000				
Administrative costs by origin (€)															0	10,588,407,800	95,295,670,200	0

TOTAL Distance Sellers	Per DS company
105,788,850,000	70,526

TOTAL Doorstep Sellers	Per D2D company
95,261,250	71,625

**TABLE 6: ADDITIONAL ADMINISTRATIVE BURDEN CONTAINED IN THE PREFERRED POLICY OPTION**

Proposal for a directive on consumer contractual rights						Tariff (€ per hour)	Time (hour)		Price (per action or equip)	Freq (per year)	Nbr of entities	Total nbr of actions	Regulatory origin (%)		
No	Ass. Art.	Orig. Art.	Type of obligation	Description of required action(s)	Target group	e	i	e					Int	EU	Nat
New one-off costs															
10	Disclosure of information		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Intermediaries ONE-OFF				0.3	2759	132,186	364,701,174		100%	
11	Basic pre-contractual information (UCPD)		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Distance sellers ONE-OFF	500		1.00	500	1.00	1,500,000	1,500,000		100%	
11	Basic pre-contractual information (UCPD)		Non-labelling information for third parties	Copying (reproducing reports, producing labels or leaflets)	Direct sellers ONE-OFF	2,000		1.00	2,000	1.00	1,330	1,330		100%	
12			Non-labelling information for third parties	Submitting the information (sending it to the designated recipient)	Distance sellers ONE-OFF				0.01	2,759	1,500,000	4,138,500,000		100%	
12			Non-labelling information for third parties	Submitting the information (sending it to the designated recipient)	Direct sellers ONE-OFF				0.01	2,759	1,330	3,669,470		100%	
New one-off costs															
13	Disclosure of information		Non-labelling information for third parties	Familiarising with the information obligation	Intermediaries (costs of legal validation)	250		6.00	1500	1.00	132,186	132,186		100%	
14			Non-labelling information for third parties	Designing information material (leaflet conception...)	Intermediaries	50		5.00	250	1.00	132,186	132,186		100%	
15	Basic pre-contractual information (UCPD)		Non-labelling information for third parties	Familiarising with the information obligation	Distant sellers (costs of legal validation)	250		6.00	1500	1.00	1,500,000	1,500,000.00		100%	
15	Basic pre-contractual information (UCPD)		Non-labelling information for third parties	Familiarising with the information obligation	Direct sellers (costs of legal validation)	250		6.00	1500	1.00	1,330	1,330		100%	
16			Non-labelling information for third parties	Designing information material (leaflet conception...)	Distance sellers	50		2.00	100	1.00	1,500,000	1,500,000		100%	
16			Non-labelling information for third parties	Designing information material (leaflet conception...)	Direct sellers	50		2.00	100	1.00	1,330	1,330		100%	
17	Standard form of withdrawal		Non-labelling information for third parties	Familiarising with the information obligation	Distance sellers		1.00		25	1.00	1,500,000	1,500,000		100%	
17	Standard form of withdrawal		Non-labelling information for third parties	Familiarising with the information obligation	Direct sellers		1.00		25	1.00	1,330	1,330		100%	
										Total administrative costs (€)					
										Administrative costs by origin (€)			0	3,541,465,343	

<b>TOTAL Distance Sellers</b>	<b>Per DS company</b>
<b>3,228,885,000</b>	<b>2153</b>

<b>TOTAL Direct Sellers</b>	<b>Per D2D company</b>
<b>4,857,945</b>	<b>3,653</b>

#### 4. Conclusions

Given the full harmonisation of the proposal, for existing distance sellers the additional burden generated by the preferred policy option 4 (the cost of change) is 2.153 Euros per company. For existing doorstep sellers, the cost of change is 3.653 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 one-off cost of 2.153 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 of setting up a new business that complies with the regulations of 27 Member States will diminish. For a newly established distance selling business, the burden will be 5.526 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.

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.