

## The European Commission's green paper on policy options for progress towards a European Contract Law for consumers and businesses

**Response by Consumer Focus**  
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Consumer Focus welcomes the opportunity to respond to the European Commission's green paper on European contract law. As an organisation whose role is to represent the consumer interest we will concentrate on the consumer issues raised by the Commission's proposals and business-to-consumer contracts.

### The case for a new instrument of European contract law

It is our view that the emphasis the Commission places on 'the role of diverging rules of consumer contract law' as a limiting factor in the development of cross border shopping is exaggerated. There are many other factors which explain why consumers do not buy in other Member States. These include: limited access to broadband (only half of European households have access)<sup>1</sup>; cultural barriers such as language; preference for known brands and high street shopping; lack of choice of means of payment and payment security; concerns about post-sale customer service; complaints handling and redress and concerns about privacy and security of personal data.

A recent Eurobarometer survey found that citizens rated language problems as the greatest barrier to purchasing financial services cross-border. The figure for language problems was 37 per cent, followed by fraud risk (30 per cent), incomprehensible (29 per cent) or insufficient (26 per cent) information and the extra costs involved (24 per cent).<sup>2</sup> 82 per cent of the websites evaluated by the European Commission in its mystery shopping exercise were only available in one language.<sup>3</sup>

The same survey found that many websites did not provide complete information about the products, prices and their own businesses. The recent Consumer Focus mystery shopping survey conducted with the use of a mobile phone with consumer organisations from 11 countries found gaps in information disclosure about lines of responsibilities of traders in transaction chains, poor complaint handling and redress, and problems with payments.<sup>4</sup>

An Office of Fair Trading study of internet shopping found problems with deliveries as a key obstacle to cross-border trade cited by both traders and consumers.<sup>5</sup> Research by Consumer Focus Scotland found delivery problems to be particularly acute in rural areas.<sup>6</sup>

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<sup>1</sup> European commission's Digital Competitiveness report, August 2009

<sup>2</sup> Special EB 298 (2008), consumer Protection in the Internal Market

<sup>3</sup> Mystery Shopping Evaluation of Cross-border E-commerce, European Commission October 2009

<sup>4</sup> Pocket Shopping – international consumer experiences of buying goods and services on their mobile phones, Consumer Focus December 2009

<sup>5</sup> Internet shopping: an OFT study, 2007

<sup>6</sup> Parcel deliveries: current practice and possible solutions – a briefing from Consumer Focus Scotland, July 2010

The recent European Commission report on cross-border e-commerce found that 71 per cent of consumers believed that it was harder to resolve problems when purchasing from providers located in other EU countries.<sup>7</sup> Research commissioned by Consumer Focus Scotland found a high number of consumers did not know who to contact if they had a complaint about goods bought over the internet.<sup>8</sup>

Finally, a recent Consumer Focus survey on digital content shopping<sup>9</sup> found language and fears over payment security to be significant barriers to cross border shopping for UK consumers.

A new instrument of European contract law for business to consumer contracts will incur significant costs in terms of legislative time and implementation costs for businesses, consumers, enforcement authorities and the legal system.

**We do not believe that the case has been made for a further European initiative on consumer contract law.**

### Options for the legal nature of an European Contract Law instrument

Although the Commission has issued this consultation outlining several possible options it had already announced its preference in the Digital Agenda published in May in which it states that it will 'propose by 2012 an optional contract law instrument complementing the Consumer Rights Directive'. This raises questions about the credibility of the Commission's consultation.

An optional instrument raises serious issues about the level of protection that would be available for consumers. If it is introduced as a second regime, as proposed in the green paper, consumers whose contracts are governed by the second regime would not be able to rely on the protection granted by their national law as is currently the case under Article 6 of the Rome 1 regulation which was adopted as recently as 2008. This is likely to lead to a loss of rights and a decrease in the level of protection.

The Commission proposes that the optional instrument would be chosen by both parties; but how realistic is this for consumers? Generally consumers' choice is limited to acceptance of the terms in the trader's contract or choosing not to purchase the goods or services offered at all. What 'choice' would consumers really be offered? And how many consumers are likely to have sufficient knowledge of the two legal systems to make an informed choice? In reality it is likely to continue to be the choice of the trader. Indeed if this was not the case it is difficult to see why it would encourage more businesses to trade across borders as they would need to be familiar with the 'optional instrument' and national laws.

In the light of these issues we could not support option 4 (regulation setting up an optional instrument of European Contract Law), option 5 (another directive on (consumer) contract law), option 6 (regulation establishing a European Contract Law) or option 7 (regulation establishing a European Civil code). It is our view that it is premature to propose any legislative instrument when the Consumer Rights Directive has not yet completed its passage through the European legislative

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<sup>7</sup> See reference 3

<sup>8</sup> Cause for complaint? How consumers deal with problems with goods and services in Scotland, June 2010

<sup>9</sup> Ups and down(load)s – consumer experiences of buying digital goods and services online, Consumer Focus December 2010

process and so has not been implemented in the Member States so its impact cannot be assessed.

If the Commission wishes to proceed after the expert group has reported and its work has been published it should pursue a soft law approach. The only reasonable option would seem to be Option 2, an official 'toolbox' for legislators, which was the original intention of the Common Frame of Reference project.

### **Scope**

As stated above we do not believe that the Commission has made the case for a further European initiative on consumer contract law. We are concerned that the so-called optional instrument could turn into a large scale full harmonisation instrument which would put existing consumer protections at risk and hamper the further development of UK consumer law. If the Commission proceeds with this work we would suggest a narrow scope only covering business-to-business contracts and cross-border trade.