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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2015) 275 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposals for Directives of the European Parliament and of the Council on (1) certain aspects concerning contracts for the supply of digital content and (2) on certain aspects concerning contracts for the online and other distance sales of goods

Delegations will find attached document SWD(2015) 275 final.

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposals for Directives of the European Parliament and of the Council on

(1) certain aspects concerning contracts for the supply of digital content

and

(2) on certain aspects concerning contracts for the online and other distance sales of goods

{COM(2015) 634 final}
{COM(2015) 635 final}
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C. Impacts of the preferred option

Executive Summary Sheet

Impact assessment on Proposals for Directives on the Supply of Digital Content and the Online and other Distance Sales of Goods

A. Need for action

Why? What is the problem being addressed?

The Digital Single Market (DSM) Strategy deals with the supply of digital content and the online sale of goods because the share of e-commerce within the EU retail sector is growing faster than offline trade and the significant untapped growth potential of e-commerce should not be missed.

39 % of businesses selling online but not cross-border quote different national contract laws as one of the main obstacles. This applies particularly to remedies in case of a faulty product (49 % of EU retailers selling online and 67% who are currently trying to sell or considering selling online cross-border). Different national contract law rules have created one-off costs for B2C retailers of around €4 billion; these costs mostly affect micro and small enterprises.

Consumers are not confident when buying online across borders. One of the main reasons is their uncertainty about their key contractual rights. They miss opportunities and face a narrower range of goods at less competitive prices. They also suffer detriment due to lack of clear contract law rights for faulty digital content. The combined value of the financial detriment resulting from the most recent problem with only four types of digital content and the time spent trying to resolve problems during the last 12 months is estimated at between €9 and 11 billion.

What is this initiative expected to achieve?

The general objective is to contribute to faster growth of the DSM, to the benefit of both consumers and businesses. The EU's annual GDP is expected to have a permanent increase of about €4 billion. By eliminating contract law related barriers hindering online cross-border trade, it will reduce business costs resulting from differences in contract law and the uncertainty faced by businesses due to the complexity of the legal framework. The initiative will increase consumer trust by providing uniform rules with clear consumer rights.

What is the value added of action at the EU level?

Member States on their own initiative would not be able to remove the barriers caused by differences between national laws. Each Member State individually would not be able to ensure the overall coherence of its legislation with that of other Member States. For goods, this initiative will provide consumers with targeted, fully harmonised contract law rights when buying online and otherwise at distance. It will reduce costs for businesses and therefore consumers will benefit from a larger offer at more competitive prices. For digital content, it will create legal certainty for businesses which want to sell in other Member States. It will at the same time secure coherent consumer rights with a high level of consumer protection. As a result, consumers will be able to acquire and business will be able to supply more easily digital content and goods online within the entire DSM. It will prevent fragmentation of digitial content rules as Member States are starting to legislate individually in this area.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

The preferred option (Option 1: targeted fully harmonised rules for digital content and goods) will reduce contract law related costs for traders' cross-border transactions. Increased competition will lead to an overall increase of trade. Consumers will benefit from an increased choice at more competitive prices. Consumers will have a clear set of rights throughout the EU and therefore will be more confident in the DSM. Other envisaged options were:

- Option 2: Targeted fully harmonised rules for digital content - Application of the trader's law combined with the existing harmonised rules on goods.
- Option 3 Targeted fully harmonised rules for digital content and no policy change for goods.
- Option 4: Minimum harmonisation rules for digital content and no policy change for goods.
- Option 5: A voluntary European model contract combined with an EU trust-mark.

Who supports which option?

For digital content, a majority of general business stakeholders see a need for EU action in the form of full harmonisation; the IT industry is more divided. Consumer organisations recognise the need to act and support full harmonisation provided that a high level of consumer protection is guaranteed. A majority of responding Member States also welcome EU action on digital content. For goods, businesses are in favour of action at EU level. While a majority would support full harmonisation, others would prefer the application of the trader's law. Several Member States and consumer associations are against changing the Rome I Regulation. Consumer organisations would only support full harmonisation if the level of consumer protection is high and existing national consumer protection levels are not reduced. Member States are divided on the need to act. For both digital content and goods, almost all respondents are in favour of dealing with business to consumer contracts only. A majority of stakeholders warn about the possible fragmentation between online and offline sales of goods. However, the Commission will take necessary steps to avoid such fragmentation and the benefits to act now outweigh this risk of legal fragmentation.

What are the benefits of the preferred option?
The preferred policy option will eliminate contract law related barriers to cross-border online trade, both for consumers and traders. Removing these obstacles is an incentive for cross-border trade: if the barriers related to contract law were lifted, the number of businesses selling online cross-border could increase by more than 5 percentage points. According to a very conservative estimate, this would mean that 122,000 more businesses would be selling online across borders. Intra-EU exports will increase by 0.04 % which corresponds to around €1 billion. Increased online retail competition will lead to retail prices going down in all Member States, averaging -0.25% at EU level. As a result of this price decrease and increased consumer trust stemming from uniform EU rights, there will be additional consumer demand. Household consumption, which mirrors consumers' welfare, will rise in every Member State with an EU average of +0.23% which corresponds to about €18 billion. The number of consumers buying online cross-border could increase by almost 7 percentage points. This would mean that between 8 and 13 million additional consumers would start buying online cross-border. The average amount spent annually by each cross-border buyer would also increase by €40. This increase in supply and demand will have direct effects on the main macroeconomic variables in each Member State and in the EU as a whole. Overall the real EU GDP is expected to gain 0.03% which represents a permanent increase of about €4 billion in EU's annual GDP.
What are the costs of the preferred option?
As to compliance costs, businesses will incur one-off costs in order to adapt their contracts to the new rules. These costs amount to around €7,000 per enterprise. However, these costs will be more than compensated by the fact that traders interested in exporting will be enabled to sell to consumers in all EU Member States, without having to face additional contract law related costs to adapt their contract to each Member State's mandatory contract law rules. Businesses will also incur costs linked to the concrete consequences of the application of the new rules to their contracts with consumers. However, it is not possible to assess the level of these costs because they will depend for example on whether and to what extent the business supplies faulty products.
How will businesses, SMEs and micro-enterprises be affected?
Businesses will face costs to comply with the new law but even more benefit from fully harmonised rules to export goods and digital content throughout the EU. Micro-enterprises will not be exempted from the new legislation which will apply in full to SMEs: exemptions would decrease consumers' trust when purchasing from them. There is no justification for giving consumers less protection when they buy from an SME instead of a bigger supplier. It would therefore undermine the benefits for them of having one single set of rules applying throughout the EU. The initiative will particularly be beneficial to SMEs, which are more affected by the costs to adapt their contract to mandatory rules of other Member States and are often confined to their home market. Foreign trade is an important way for them to benefit from the advantages of economies of scale. SMEs face a problem in finding customers. This would be easier to cope with in the online context, since the internet enables online sales at reduced costs compared to offline trade.
Will there be significant impacts on national budgets and administrations?
Except for the obligation to transpose the Directives into national law and enforce them, there are no practical implications for public administrations. Uniform contract law rules on faulty products in the EU will facilitate enforcement by Member States and, in particular, cross-border joint enforcement actions undertaken by the Consumer Protection Co-operation authorities.
Will there be other significant impacts?
The initiative will have a positive impact on fundamental rights. The initiative will ensure a uniform high level of consumer protection throughout the EU (Article 38 of the Charter of Fundamental Rights) although for goods this will lead to changes to the level of protection in certain Member States. It will increase consumers' awareness of the economic value of their personal data in in conformity with Articles 7 and 8 of the Charter and current and future EU law. Businesses will sell more easily domestically and cross-border (Article16). Uniform rules will facilitate the exercise of one's right to an effective remedy before the courts (Article 47).
D. Follow up
When will the policy be reviewed?
The Commission will monitor the implementation of the Directives and launch an evaluation to assess how effectively they reach their objectives 5 years after their entry into application.