



Council of the
European Union

Brussels, 12 April 2018
(OR. en)

**Interinstitutional File:
2018/0090 (COD)**

7876/18
ADD 4

**CONSOM 101
MI 246
ENT 65
JUSTCIV 85
DENLEG 28
CODEC 522
IA 92**

PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 12 April 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: SWD(2018) 98 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 (1) amending Council Directive 93/13/EEC, Directive 98/6/EC of
the European Parliament and of the Council, Directive 2005/29/EC of the
European Parliament and of the Council and Directive 2011/83/EU of the
European Parliament and of the Council as regards better enforcement
and modernisation of EU consumer protection rules and (2) on
representative actions for the protection of the collective interests of
consumers, and repealing Directive 2009/22/EC

Delegations will find attached document SWD(2018) 98 final.

Encl.: SWD(2018) 98 final



Brussels, 11.4.2018
SWD(2018) 98 final

COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposals for

DIRECTIVES OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

(1) amending Council Directive 93/13/EEC, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules

and

(2) on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC

{COM(2018) 184 final} - {SWD(2018) 96 final}

Executive Summary Sheet

Impact assessment on Proposal for a Directive introducing targeted amendments to EU consumer law Directives and Proposal for a Directive amending and replacing Directive 2009/22/EC on injunctions for the protection of consumer interests (New Deal for Consumers).

A. Need for action

Why? What is the problem being addressed? Maximum 11 lines

This Impact Assessment follows a Fitness Check of EU consumer law, an evaluation of Directive 2011/83/EU on Consumer Rights, both published in May 2017, and an evaluation of the Recommendation on Collective Redress, published in January 2018. Results show that, while the substantive rules are overall fit for purpose, their effectiveness is hindered by lack of awareness and by insufficient enforcement and consumer redress opportunities. In 2016, 20.1 % of EU consumers reported consumer rights-related problems and 24 % of traders thought compliance with consumer law was not good enough. This leads to consumer detriment and disruption of fair competition for traders. Furthermore, these evaluations showed the need for modernising the rules and removing disproportionate burdens in specific areas. Therefore, this Impact Assessment first addresses current ineffective mechanisms to (1) stop and deter infringements and (2) ensure that consumers get redress for harm suffered, especially in mass harm situations. It then looks at modernising some EU consumer rules in view of digital developments and removing disproportionate burdens on traders in specific areas. These problems are expected to become greater over time as consumer transactions intensify due to globalisation and digitalisation.

What is this initiative expected to achieve? Maximum 8 lines

The initiative aims at further consolidating a healthy consumer environment, which supports economic growth as consumer expenditure accounts for 56 % of EU GDP. The envisaged measures should, on the demand side, reduce consumer detriment, support trust and empower consumers to play their part in driving the markets. On the supply side, they aim to ensure fair competition and legal certainty for companies. The specific objectives are to: (1) improve compliance with EU consumer law and (2) modernise consumer protection rules and eliminate unnecessary costs for traders. This will contribute to the general objectives of: (1) ensuring a high level of consumer protection and (2) smooth functioning of the internal market, for the benefit of both consumers and traders.

What is the value added of action at the EU level? Maximum 7 lines

Consumer protection belongs to the shared competences of Member States and the EU. The problems identified in this Impact Assessment are widespread and have the same causes across the EU. In cases of widespread illegal practices affecting consumers in several Member States, enforcement must be based on a common and uniform substantive law framework. The Fitness Check Report found that the most important added value of EU consumer law is that the harmonised rules enable national enforcement authorities to address cross-border infringements harming consumers in several Member States more effectively. At the same time, the harmonised rules allow traders to trade cross-border more easily and at lower cost.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why? Maximum 14 lines

Concerning lack of compliance, a number of EU-level actions have been or are being taken to address the issues identified by the previous evaluations. This initiative focuses on problem drivers that have not yet been addressed otherwise. Non-legislative options are considered, but, as suggested in the evaluations, the proposed options are targeted legislative interventions. They would complement the legislative and non-legislative steps that have already been taken. As concerns modernising EU consumer rules, non-legislative approaches are also assessed, but in each case found not to be likely to fully address the problem drivers. The preferred package of options include interventions to ensure:

- More dissuasive and proportionate penalties for breaches of EU consumer rules,
- Remedies for victims of unfair commercial practices,

- Strengthened mechanisms for collective injunctions and redress,
- Increased transparency for B2C transactions on online marketplaces,
- Improved consumer protection for “free” digital services, i.e. provided without monetary payment,
- Modernisation of information requirements,
- Correction of imbalances in the right of withdrawal from distance and off-premises sale contracts.

Who supports which option? Maximum 7 lines

Consumer associations support all the proposed measures, except on information requirements and the right of withdrawal. **Business associations** support the suggested interventions on transparency for online marketplaces, “free” digital services (partly), information requirements and the right of withdrawal. There is some resistance from **business associations** to the proposed interventions on penalties, remedies, collective injunctions and redress and “free” digital services. Many **Member State authorities** support the proposed interventions on remedies, collective injunctions and redress, transparency for online marketplaces and “free” digital services. Some express concerns about interventions on penalties, remedies and the right of withdrawal.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)? Maximum 12 lines

The preferred package of options will make consumer redress easier and more effective, and thus reduce consumer detriment which will be beneficial particularly for vulnerable consumers. It will also improve compliance through increased deterrence. The intervention will be complementary to the revised CPC Regulation and support its effective functioning. By introducing improved redress opportunities and by filling gaps in current protection for digital transactions, consumer trust will be enhanced. Law-abiding traders will benefit from fairer competition. Compliant traders, including SMEs, will have reduced costs because of more balanced rules on the right of withdrawal, simplification of information requirements, improved efficiency in their online communication with consumers and harmonisation of rules, particularly for online transactions. Positive impacts can also be expected for the environment through ensuring greater deterrence of misleading environmental claims.

What are the costs of the preferred option (if any, otherwise main ones)? Maximum 12 lines

There will be no significant costs for compliant traders associated with interventions on penalties, remedies and collective injunctions and redress. Non-compliant traders will face additional costs from these interventions, in particular because of stronger penalties and because consumers will have better mechanisms to claim remedies, possibly also in collective proceedings, which will “skim off” illegally obtained profits. With the intervention on “free” digital services, providers of such services will have additional compliance costs. The intervention on transparency for online marketplaces also implies costs to adapt online interfaces to collect certain information from third party traders and pass it on to consumers. However, these two interventions will also generate savings due to more harmonised rules between the Member States and greater legal clarity. The interventions on information requirements and the right of withdrawal will bring savings for traders. No negative environmental or social impacts are expected.

How will businesses, SMEs and micro-enterprises be affected? Maximum 8 lines

In line with the existing EU consumer law acquis, no exemptions are provided for SMEs, including micro-enterprises. This would have been contrary to the general purpose of consumer protection rules and ultimately also contrary to the interests of SMEs, as consumers would have had a lower level of protection and thus less trust when buying from them. Whilst costs for businesses overall will be insignificant, the preferred package of options will reduce costs for businesses, including SMEs, in relation to the right of withdrawal and they will benefit from increased transparency when selling to consumers via online marketplaces. Stronger enforcement and redress mechanisms will reduce negative effects from unfair competition.

Will there be significant impacts on national budgets and administrations? Maximum 4 lines

Interventions on penalties, remedies and collective injunctions and redress will generate costs for those Member States that will need to reform national rules, for example, on penalties or consumer redress mechanisms. However, Increased compliance will generate savings due to reduced costs of administrative and judicial procedures. Collective redress mechanisms will rationalise judicial proceedings in mass harm situations.

Will there be other significant impacts? Maximum 6 lines

As the focus of the preferred package is improved compliance with EU consumer law, consumer rights will

become more tangible for the individual consumers and thus enhance citizens' and businesses' acceptance of the added value of EU rules. The intervention on collective injunctions and redress can contribute to better access to justice. Interventions on penalties, remedies and collective injunctions and redress are also likely to have positive impacts on vulnerable consumers and on the environment.

D. Follow up

When will the policy be reviewed? Maximum 4 lines

In addition to regular monitoring, an evaluation of the effectiveness, efficiency, relevance, coherence and EU added value of this legislative intervention is suggested 5 years after implementation by Member States, based on predetermined core progress indicators.