



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 8.11.2004
SEC(2004) 1390

COMMISSION STAFF WORKING DOCUMENT

Consumer Confidence in E-Commerce: lessons learned from the e-confidence initiative

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1. INTRODUCTION

The European Union has made the competitiveness of the European economy, one of its priorities as the work in the context of the Lisbon Reform Agenda witnesses. Consumer protection, and its contribution to this agenda, is one of the essential elements that contribute to competitiveness. Good consumer protection rules and systems strengthen consumer confidence in the functioning of the market. This strengthens demand and, ultimately, competitiveness.

Consumers who lack confidence in the functioning of the market and the protection of their interests at home and abroad will be even more reluctant to make major purchases outside their own country. Consequently the full force of competition will not be felt either at national level or in the retail Internal Market – thus reducing the competitive potential of the European Union's Internal Market.

A key medium for consumer purchasing is electronic commerce, since it has an unrivalled potential for cross-border transactions, and thus providing consumers with the opportunity to benefit fully from open competition across the internal market.

However, for this to work, the medium also must have consumers' confidence.

2. THE E-COMMERCE MARKETPLACE¹

Reports on the structure of the e-commerce market in Europe suggest that consumers still lack this confidence in the e-commerce market. Practically 90% of the e-commerce market² consists of business-to-business transactions, and the development of the consumer market continues to lag behind.

Even though most analysts believe that growth is picking up (reported market growth in B2C e-commerce, depending on the sector, is in two digit figures³, but remains low in absolute terms), this information shows that the full potential of the market is not being realised for consumers.

¹ It should be noted here that data on the evolution of the e-commerce market are difficult to analyse, and that in particular, it is complicated to develop information that allows to accurately compare B2C and B2B market data.

² European Information Technology Observatory (EITO 2004)

³ Visa presentation at conference : « Building consumer confidence in the online marketplace » Dublin, 15 March 2004: year-on year growth: 97%, EITO: 2003-2007: 50% year-on-year growth

3. CONSUMER TRUST IN E-COMMERCE

Other data reflects that development in the use of the internet has been rapid⁴ There are estimated to be already 185 million European internet users⁵, and Internet penetration in EU households has moved from 18% in 2000 to 43% in November 2002.

Despite the figures, e-commerce is continuing to suffer from lack of consumer confidence. 83% of EU consumers, according to a Eurobarometer poll of September 2003 (published March 2004⁶) still do not use the internet for shopping, and 25% of consumers do not find Internet sites credible as a medium for shopping⁷.

This information is backed by data gathered by market operators and consumer organisations who concur that, on a number of key issues, e-commerce as such does not have consumers' trust. Payment security ranks as issue number one, but product delivery, and information to consumers, as well as issues such as refunds and withdrawal conditions, are of equally serious concern⁸. Consumers are, in general, much more concerned about losing their money, or not obtaining what they ordered, when buying over the internet, than they would be on the high street⁹. The e-commerce reports undertaken by the network of European Consumer Centres in 2003 and 2004 appear to confirm that there are good grounds for consumers' lack of confidence in e-commerce. Some of the problems encountered include delivery failings, refunds, and product warranties in shopping over the internet¹⁰.

Other issues affecting the functioning of the Internet do not help in creating a climate of confidence. Spam, or unsolicited commercial e-mail, is a major issue, with spam

⁴ First Report on the application of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), COM (2003) 702 final

⁵ Source: Interactive Advertising Bureau UK, 2002, <http://www.iabuk.net>. This is estimated to grow to 190 million by the end of this year by eMarketer, <http://www.europemedia.net>.

⁶ Eurobarometer poll on issues related to e-commerce:

http://europa.eu.int/comm/consumers/topics/btoc_ecomm.pdf

⁷ This is confirmed by studies that show that the information provided by websites is either not in compliance with legislation (see Report of the European Consumer Centres about the e-commerce market in the EU ("Realities of the European online marketplace", 2003) and the study by Consumers International on shopping online 2001 - Should I buy – shopping online 2001 – Consumers International 2001), or not verifiable as to trustworthiness or accuracy (Consumers International report on "web credibility", 2002)

⁸ Payment security is ranked first at between 48% (Eurobarometer) (see reference above). Delivery is a real issue for consumers: the Report of the European Consumer Centres about the e-commerce market in the EU comments that 33% of ordered goods were not delivered. The same report comments that lack of information, and lack of compliance with relevant rules, concerning the right to withdrawal are a significant issue (non compliance between 9 and 24%). This also confirms results of earlier research done into shopping online by organisations like Consumers International.

The Eurobarometer Study on cross-border e-commerce confirms that 36% of consumers are concerned about delivery.

⁹ It should be noted that concerns and problems in reality may not always match. The same Eurobarometer poll which confirms that 36% of consumers are concerned about delivery, also indicates that, of those polled who had bought over the Internet, there were 17% who actually had complaints (still a significant number but about 50% lower than the "concerned" group) was among these complaints, the main problems were: product damaged: 34%, not delivered on time: 29%, never received: 24%, not the product ordered: 19%.

¹⁰ ECCs' e-commerce report, see above

messages constituting up to 60% and more of internet traffic – and engaging in online shopping increases the chances of spam. The collection and further transfer to third parties of vast masses of personal data, “identity theft” (the theft and abuse of users’ identification data such as credit card details as well as spying on consumers without their knowledge while they surf the Internet) are also growing problems.

All of these issues were discussed at the Conference on Building Consumer confidence in the online marketplace, which took place under the auspices of the Irish Presidency in March of 2004¹¹. Representatives from consumer organisations, business and governments confirmed that consumer confidence in e-commerce remains an issue and took stock of the efforts being made to bolster this confidence.

4. BUSINESS AND SMALL AND MEDIUM ENTERPRISES

It has become clear that consumer trust depends to a large extent on the perception of a particular company/site as being trustworthy, and on a secure telecommunications connection. This is confirmed by the fact that major operators, who benefit from what is known as “brand recognition” in the marketplace benefit from the growth of the market. This does not always appear to be the case for other enterprises. In particular SMEs have confirmed that they need enhanced consumer confidence in the responses given to an open consultation on legal barriers in e-business, recently organised by the Commission¹².

5. THE MEANS TO INCREASE CONSUMER TRUST IN E-COMMERCE

5.1. Legislation

Over the years, the European Union as a legislator has set in place a number of legislative instruments that seek to give consumers the protection that they need in an integrated single marketplace. These rules also apply to e-commerce. This legislation includes rules against misleading advertising, and unfair contract terms, as well as guarantees. It also sets rules for distance selling, requiring, among other things, that consumers receive all relevant information and allowing them to withdraw within a certain time period¹³. The Directive on e-commerce’s provisions on information and transparency requirements, on commercial communications, and on the promotion of the codes of conduct and out of court dispute settlement, along with the basic principles regarding electronic contracts, provide for high standards in the conduct of

¹¹ Information on: http://www.eu2004.ie/templates/meeting.asp?sNavlocator=5%2C13&list_id=259

¹² Legal Barriers in e-business: the results of an open consultation of enterprises SEC 2004/498: http://europa.eu.int/comm/enterprise/ict/policy/doc/legal_barriers_sec_2004_498.pdf

¹³ Directive 97/7/EC of the European Parliament and of the Council on the protection of consumers in respect of distance contracts (OJ L 144, 4.6.1997, p.19), Directive 1999/44/EC of the Council and European Parliament on certain aspects of the sale of consumer goods and associated guarantees (OJ L 171, 7.7.1999, p.12), Council Directive 84/450/EEC relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ L 250, 19.9.1984, p.17) and Directive 97/55/EC of the European Parliament and of the Council amending Directive 84/450/EEC concerning misleading advertising so as to include comparative advertising (OJ L 290, 23.10.1997, p.18)

online business in all Member States. Such standards are a prerequisite for increasing consumer confidence¹⁴.

There is also data protection legislation which provides protection against unfair use of personal data, as well as provisions requiring information on what data is being collected, how they are being processed and whether the data will be transferred to third parties¹⁵. Such legislation also grants individuals the right to access personal data held about him/her and to rectify it if such data is incomplete or inaccurate.

Efforts to offer increasingly high-level protection through increasingly efficient legislative means continue, and the proposed Directive on Unfair Commercial Practices which bans unfair (e.g. misleading or aggressive) selling methods will ensure that the same rules apply across the EU¹⁶.

5.2. Enforcement and Redress

In addition, in order to help consumers assert their rights across borders, the European Commission has set up a number of consumer assistance networks. These include the network of European Consumer Centres and European Extra-Judicial network, which aim at providing assistance for out-of-court resolution of consumer complaints and settlement of disputes, particularly across borders, as well as Fin-Net, a network which aims specifically at solving consumer complaints in the financial services area across the EU¹⁷.

Enforcement of consumer protection legislation in the world of e-commerce poses particular challenges. Enforcement authorities themselves have recognised the issue, both within the EU, and internationally. Within the European Union, legislation on enforcement cooperation was adopted on 7 October 2004¹⁸. This regulation will ensure proper cooperation among national enforcement authorities so that the activities of rogue traders who operate across borders can be effectively tackled. Efforts are also underway internationally to address the growing problem of global rogue traders. Cooperation within, for example, the Organisation for Economic Cooperation and Development has yielded first attempts at dealing with selected issues of enforcement, particularly on spam¹⁹. A network of contact points was set up to combat fraudulent and deceptive commercial practices, and a task force against spam was set up in August 2004.

¹⁴ Directive 2000/31/EC of the Council and European Parliament on certain legal aspects of information society services, in particular electronic commerce (OJ L 178, 17.7.2000, p.1)

¹⁵ Data protection directive: Directive 2002/58/EC

¹⁶ Proposal for a Directive of the European Parliament and of the Council concerning unfair business-to-consumer practices in the Internal Market and amending Directives 84/450/EEC, 97/7/EC and 98/27/EC (the Unfair Commercial Practices Directive)

¹⁷ http://www.europa.eu.int/comm/internal_market/finservices-retail/finnet/index_en.htm#overview

¹⁸ Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws ("the Regulation on consumer protection cooperation")

¹⁹ Among others, the e-consumer website (www.econsumer.gov) was set up to collect cross-border consumer complaints

The ICPEN (International Consumer Protection and Enforcement Network), aims at facilitating cooperation among enforcement authorities in 29 countries, most of whom are OECD members²⁰.

5.3. Confidence Building

Legislation and enforcement provide the backbone for consumers' confidence in the marketplace. However, this is not enough. For example, consumers have to be confident that a particular e-commerce trader is complying with the rules and is, therefore, a safe supplier²¹.

They want to be sure that the trader has the technical means to guarantee that payments can be made online without risk.

Other issues, such as the way in which complaints are handled, or the overall handling of consumers' orders, are good business practices. Although they may be regulated to some extent, they also depend on the individual behaviour of the e-commerce business, or e-merchant.

In particular, the consensual development of self-regulatory instruments such as trustmarks, based on codes of good business conduct, can enhance the perceived trustworthiness of less well-known businesses in the e-commerce area, and they have been actively encouraged in the context of the 1999 eEurope initiative of the European Commission²².

6. CODES OF CONDUCT AND THE E-CONFIDENCE INITIATIVE

6.1. Guidelines for e-commerce

Against this backdrop, various initiatives have been taken at the government and private sector levels to provide guidance to businesses and consumers on best practices in e-commerce, which would, in addition to legislation, allow consumers to recognise e-commerce sites as trustworthy, depending on the best practices they adhered to²³.

The guidelines for e-commerce adopted by the Organisation for Economic Cooperation and Development (OECD)²⁴ are an important reference in this area. They were developed to provide a basis for the development of best practices and

²⁰ Ref website : <http://www.icpen.org>

²¹ As mentioned in chapter 3, not only are consumers concerned about the credibility of websites, but compliance with some rules, particularly on information to be provided, appears to be an issue for e-commerce operations.

²² E-Europe: An information society for all, Communication on a Commission initiative for the special Council at Lisbon, 23-24 March 2002,

http://europa.eu.int/information_society/eeurope/news_library/pdf_files/initiative_en.pdf

E-Europe 2005 Action Plan

(http://europa.eu.int/information_society/eeurope/2005/all_about/action_plan/index_en.htm) and

eEurope resolution: http://europa.eu.int/information_society/eeurope/2005/doc/all_about/resolution.doc

²³ See point 4.8 of the First Report on the application of Directive 2000/31/EC on electronic commerce – COM(2003) 702 final

²⁴ OECD guidelines for consumer protection in e-commerce:

http://www.oecd.org/document/51/0,2340,en_2649_34267_1824435_1_1_1_37441,00.html

best practices codes and trustmarks at the international level, and have indeed served as a model for codes which were developed subsequently, such as the European Trustmark Requirements, and the guidelines developed by the Global Business Dialogue on e-commerce.

6.2. The e-confidence initiative

In 2000, the European Commission launched the “e-confidence initiative”. At the time, the European Commission felt that consumer confidence could be enhanced by identifying a set of common principles for codes of conduct aimed at gaining consumer trust, particularly since rapid proliferation of trustmarks and codes at the time was considered as potentially confusing for consumers. The initiative involved a large number of the concerned business and consumer stakeholders²⁵. Ultimately, this led to the joint drafting by BEUC and UNICE of the European Trustmark Requirements²⁶. The Commission Services, at the time, took the position that they would follow-up on this work, possibly with a Recommendation.

6.3. Trustmarks and Codes at EU and global level

During the past three years, a number of initiatives has been taken to launch international codes of best practice, or trustmark schemes.

Examples of these schemes are: GBDe guidelines, Eurolabel, Trusted Shops, Global Trustmark Alliance, Webtrader. They are very different in scope and set-up. Some are only guidelines for operators/trustmarks. Others are clearly a set of minimum requirements to which local labels can conform. Others are, de facto, trustmark codes by themselves. Some of them are still on the drawing board, and have been for some time, confirming the difficulty in developing, and correctly defining the activities of an international best practices scheme. Others are operational, but lack visibility. With the exception of Webtrader, consumer involvement is, for most of these schemes, very limited, if not non-existent.

7. THE EUROPEAN TRUSTMARK REQUIREMENTS (ETR)

The ETR developed by BEUC and UNICE aim at providing guidance to anyone seeking to set up a trustmark scheme. The initial idea behind the ETR was that any trustmark could have its organisation and code certified as conforming with the ETR, and obtain an EU “logo”.

The European Trustmark Requirements include independent monitoring and certification process, and provide a model for how this process could be organised. In particular, they foresee the certification of trustmark codes through an independent

²⁵ List of stakeholders: Telefonica, Ford, Intel, Test Achat (Belgian Consumer organisation, member of BEUC), Daimler Chrysler/GBDe (Global Business Dialogue on e-commerce), AOL, Microsoft, ABN AMRO Bank, Barclays, TrustUK, UNICE, France Telecom, Centro de Arbitragem de Lisboa, VISA, BEUC (European Consumers Organisation), Vivendi, EUROISPA (European Internet Service Providers Association), Hewlett Packard/GBDe, Eurochambres, Eurocommerce, ICRT (International Communications Round Table), FEDMA (Federation of European Direct Marketing), Clicksure, ECP.NL (Electronic Commerce Platform Nederland), ICC (International Chamber of Commerce), Direct Line Services, Procter & Gamble, Division System Planning

²⁶ The Text of the European Trustmark Requirements is attached as annex 4

third party, and the monitoring of their performance against the ETR on the basis of annual reports. They also foresee the establishment of an e-confidence committee which would oversee the certification and monitoring process, and, in particular, assess the Independent Third Party itself against specific criteria to ensure overall trustworthiness of the scheme.

Despite initial hopes for a speedy implementation, it became clear, after the ETR had been presented to the European Commission, at the end of 2001, that the momentum behind the initiative had faded. Repeated efforts by the Commission Services to marshal financial backing from industry for the setting-up of the certification and monitoring scheme were not successful. Even though this was disappointing, it was perhaps not surprising, given the slower than expected evolution of the e-commerce market and the collapse of the “dot.com bubble”. In the view of the Commission services it is important to test the effectiveness of self-regulation at EU level - for example, through efforts such as the joint development of codes between business and consumers, and their effective implementation. A lack of success in this area would augur badly for the concept of self-regulation, resulting in a need for greater reliance on legislation to adequately protect consumers’ interests.

The Commission Services now return to the issue as the e-commerce market is showing increasing signs of picking up, and in a political context where the Lisbon agenda for economic reform is continuing to emphasise the issue of consumer confidence in the functioning of the market. In its Spring report to the European Council of February 2002²⁷, the European Commission highlighted lack of confidence of consumers in electronic commerce as an important brake on cross-border transactions and in the development of competitiveness in the EU economy.

It would go beyond the scope of this document to analyse these issues in detail. However, some of this work is currently being carried out by a study launched in 2003 by the European Commission, which tries to define the critical success factors for trustmark operations²⁸.

7.1. Overall assessment of the ETR

The Commission Services have undertaken a rough assessment of the European Trustmark Requirements against a set of indicative elements they consider essential for trustmark codes (see annex 1). The ETR came favourably out of this assessment. The Commission Services are therefore of the opinion that the work done by stakeholders on the development of a set of European Trustmark Requirements deserves to be commended. The results, jointly elaborated by consumers and business representatives, sets a benchmark for best practices in e-commerce in the EU. Nevertheless, we note that certain gaps would need to be filled (e.g. with respect to recent developments in legislation). The Commission Services believe that the proposed monitoring and certification system should be revisited in the light of recent experience, and with the aim to make it more operational than the current proposal.

²⁷ Delivering Lisbon - Reforms for the European Union - COM 2004/29

²⁸ General invitation to tender DG SANCO No : 2003/B1/08, contract awarded to ECP.NL in December 2003.

The Commission Services want to highlight here three specific issues which were left undecided at the time of the drafting of the ETR.

- The definition of the e-merchant (inclusion of advertisers and marketers in the definition, or limit the definition to “parties offering to sell goods and/or services”);
- The deadline for sending acknowledgment of orders (“at the latest within two days” or “as soon as possible, e.g. two days”);
- The timing of the billing process (“with the exception of personalised goods and services, only after dispatch, unless consumer explicitly agrees otherwise” or non-inclusion of this proposal).

The Commission Services are of the view that codes such as the ETR are most useful if they contain provisions that set an even higher standard of consumer protection than the protection offered by legislation. They are, therefore, supportive of those proposals described above, which either correspond to accepted best practice by e-commerce merchants, or can very easily be complied with by subscribers.

Regarding monitoring and certification, the Commission Services believe that the Commission’s role does not include involvement in the oversight of an organisation which is aimed at policing the application of what is essentially a self-regulatory code of best practice. In the institutional context, the Commission has, however, committed itself to informing the other institutions of codes which are satisfactory, and contribute to the attainment of Treaty objectives²⁹.

Finally, a major weakness of the ETR is that it provides no business plan explaining how the mechanism proposed in the ETR will be financed and maintained over time.

8. LESSONS LEARNED

It is the experience of the Commission Services that involvement of all relevant stakeholders in the development of codes is important. In the case of the ETR, which is intended to boost consumer confidence, the input and support of consumer (as well as business) organisations has been essential.

The Commission’s Services also believe that it is not the Commission’s role to participate in the structures set up by private operators to implement their own codes of best practice.

The Commission Services are of the view that the e-confidence exercise and the European Trustmark Requirements have been a useful process on the road to strengthening consumer confidence in e-commerce. They would suggest that the concerned stakeholders, and in particular BEUC and UNICE, consider updating and finalising this EU code of best practices in e-commerce. Business, in particular, should revisit the mechanism for certification and monitoring.

²⁹ Interinstitutional Agreement on Better Law-Making: 2003/C 321/01, in particular articles 22-23

Commission Services could facilitate efforts to achieve such results, particularly as regards the updating of the principles in the light of existing, or recently adopted, EU legislation which is relevant to e-commerce.

In this context, it might also be useful to reflect on how existing consumer-friendly mechanisms for resolving complaints, such as the European Extra-Judicial Network and the network of European Consumer Centres could be involved in dispute resolution schemes associated with the ETR and whether this would contribute to its perceived trustworthiness.

Finally, the Commission Services underline the need for business to go the extra mile to gain consumer confidence. E-commerce merchants ultimately bear the responsibility for ensuring that consumers trust them enough to begin shopping online and to remain satisfied as on-line customers. It is up to e-merchants, in particular, to see how far they are prepared to go to make a European reference for best practice in e-commerce into a reality. The basis has been laid with the e-confidence initiative.

ANNEX 1: BENCHMARKING THE ETR

1. The ETR and EU legislation

The first requirement that any code of conduct should fulfil, is that it should conform to EU legislation, adding recommended practice to the legal requirements where necessary and appropriate to enhance consumer confidence.

The European Trustmark Requirements fulfil this first requirement for the major part. Since they have been drafted in 2001, it is clear that they would need to be updated with regard to current legislation, such as for example the Directive on Data Protection of 2002³⁰, as well as legislation currently before Council and Parliament, such as the proposed Directive on Unfair Commercial Practices, and the Regulation on Consumer Protection Cooperation.

In many cases, particularly as far as the information about the conditions for purchase is concerned, and the protection of minors or children, the ETR go beyond the requirements of EU legislation. In most other areas, the ETR include requirements that are equivalent to EU legislation, but are phrased in a more user-friendly, or broader, manner.

The Commission Services' assessment of this aspect of the ETR is that they adhere to EU legislation to the extent necessary and appropriate, but that given the time that has passed between their drafting and this analysis, they would need to be updated to ensure that they reflect the latest state of EU legislation. The Commission Services would of course be prepared to assist in efforts to do this, as outlined in chapter 8 below.

2. Which best practices?

As mentioned initially, the principal concerns of consumers who use e-commerce are payment security, delivery, and data security concerns overall, and credibility of the information, or the web site as such. These findings are confirmed by other studies³¹.

Other issues of concern are spam, which contributes to consumers' concerns about using e-commerce websites. Children's safety, not only in terms of exposure to illicit content, but also in terms of being lured into commercial transactions without parents' consent, is a real concern in a society where PCs are increasingly frequent in homes and cannot always be supervised.

Best practices therefore need to include provisions that deal with these issues.

Dispute settlement provisions are also crucial. Particularly in e-commerce, where no physical access to the e-merchant is possible, the explicit availability of a dispute settlement system will enhance consumers' confidence that if they do have a problem with the transaction, there are means to solve this.

³⁰ Directive 2002/58/EC

³¹ In particular: Cross-Border shopping report, dti, October 2002, focus group study on Cross-Border Shopping in 28 European Countries:
http://europa.eu.int/comm/consumers/topics/cross_border_shopping_en.pdf

Finally there are also best practices that apply to codes of conduct themselves. Transparency about the codes' application, and its content, as well as its overall trustworthiness, are essential elements: without adequate information about the code and its applicability, consumers will not be able to make a judgment as to why it is trustworthy. Verification, by an independent third party, of the correct application of the code, is also crucial: some studies have shown that a number of complaints related to e-commerce transactions actually relate to the non-application of a trustmark code³².

The following elements could be included in a sensible list of generic best practices which would contribute to the trust of consumers in e-commerce. This list is neither intended to be exhaustive, nor to be determinative, and is based on input received from consumer representatives and research into consumer opinions on trust in e-commerce:

- Security of payment
- Information about the goods and services on offer (including visual, technical, price, special conditions information)
- Contract information (before conclusion of the contract)
- Information on: Delivery conditions (including complete cost and timing)
- Information on: Payment conditions (including all tax and delivery information)
- A Refund scheme (own or linked to credit card)
- Information about the merchant
- Dispute settlement provisions (i.e. not only availability of a complaint handling mechanism, but also access to and ADR scheme that complies with EU recommendations on the subject)
- Data protection provisions and security provisions
- Child-proofing
- Disclaimer with regard to EU legislation (i.e. certification that compliance is guaranteed, and which legislation is complied with)
- Independent third party certification and monitoring, including documentation about the certification and monitoring process
- Complaint procedure about application of the code
- Transparency about the content of the code, and adherence conditions
- Transparency about code subscribers (i.e. adhering operators)
- Transparency about enforcement, and sanctions in case of non-compliance
- Involvement of consumer organisations in setting-up the scheme
- Regular review of the code and the mechanism

³²

Are Trustmarks Trustworthy? A comparison and evaluation of leading European B2C trustmark initiatives and a general discussion of the trustmark concept

The European Trustmark Requirements include provisions on all of these elements, but could be strengthened concerning the provisions making compliance with relevant legislation transparent, and on refund conditions.

ANNEX 2 OTHER RELEVANT EU INITIATIVES: E-EUROPE ACTION PLAN, COMMUNICATION AGAINST SPAM, SAFER INTERNET PROGRAMME, E-BUSINESS INITIATIVES

1. The e-Europe Action Plan

Over the past years, the European Commission has, through the e-Europe action plans, provided a policy framework for the development of the information society at the EU level. This action plan includes efforts to develop an environment favourable to e-business³³. New advanced applications and e-services which rely on broadband infrastructure will depend on a number of factors relating to trust including notably a secure micro-payment environment and the enforcement of Intellectual Property Right protection through interoperable Digital Rights Management.

2. Enterprise Policy – e-business initiatives

In the area of Enterprise Policy, more specifically in the field of facilitating ICT uptake for the European enterprises, especially SMEs, the main policy challenge has recently shifted to the efficient and productive integration of ICT into business processes. Similar kinds of developments have taken place also within B2C e-commerce. In this context, it is to be noted that SMEs face challenges both in terms of cost, and regarding the legal and regulatory framework in e-commerce³⁴.

The open consultation of enterprises on legal barriers in e-business³⁵ conducted in the third quarter of 2003, has confirmed the existence of remaining barriers for conducting e-business, including e-commerce. Some of these barriers perceived by European enterprises, especially SMEs, consist of the differences between national legal provisions applicable to e-business: these circumstances raise legal uncertainties and the cost of compliance with law, both in general and more particularly for cross-border B2C e-commerce.

The results of the open consultation demonstrate that enterprises would favour fully harmonised rules, which would increase legal certainty in e-business and encourage companies to conduct business electronically across the borders. In particular, in the field of consumer protection, full harmonisation would strengthen confidence in the internal market for consumers and businesses alike³⁶.

In order to improve this situation, a better understanding of the legal and administrative practices within the EU, especially at the level of Member States would be useful. A benchmarking of the existing practices could then lead to an exchange of best practices. Community initiatives have been launched to increase our understanding and knowledge in this area. The results of these initiatives are to

³³ See above: e-Europe Action Plan

³⁴ Communication from the Commission: Adapting e-business policies in a changing environment: The lessons of the Go Digital initiative and the challenges ahead (COM 2003 148 final)

³⁵ [Commission Staff Working Paper](#). "Legal Barriers in e-business: the results of an open consultation of enterprises", SEC(2004)498, of 26.4.2004

³⁶ The results of the consultation were further discussed at the European e-Business Legal Conference "e-Business without frontiers: The legal challenges ahead", in Dublin, Ireland, on 27-28 April 2004, A report on the conference discussions has been published in the Europa website (http://europa.eu.int/comm/enterprise/ict/policy/doc/legal_barriers_conf_sum_rep.pdf) and is also available in printed form, in the series Enterprise Publications.

be disseminated through the eBSN (e-Business Support Network of national and regional policy makers). This will also enable exchanges of best practice.

3. Safer Internet Programme

Under the Safer Internet Programme, a call for proposals was published on 4 September 2003 to encourage a system of visible “quality site labels” to assist users in identifying providers that adhere to codes of conduct. The QUATRO project which has been selected aims to provide a common platform for quality labels³⁷.

In addition, on 4 August 2004 a call for proposals was published for pilot actions on self-regulation. The purpose of the proposals should be to advance the state of the art of self-regulation across Europe by promoting codes of conduct and memoranda of understanding. The proposals should aim at putting in place not only the means of agreement on such codes, and for amending them as required, but also credible mechanisms for monitoring compliance, taking complaints and sanctions for non-compliance, together with means of making the public aware of their existence. The coverage of the self-regulatory activity should include illegal and harmful content and protection of minors. It could however cover other areas, including (for example): data protection, unwanted content (spam), consumer issues of electronic commerce and quality of service³⁸.

4. Spam

Article 13(1) of the [Privacy and Electronic Communications Directive](#) requires Member States to prohibit the sending of unsolicited commercial communications by fax or e-mail or other electronic messaging systems such as SMS and MMS unless the prior consent of the addressee has been obtained (opt-in system).

In addition, the Commission has produced a report on the implementation of the various measures and regulatory instruments adopted to combat spam: the “Communication on unsolicited commercial communications or spam”³⁹.

5. The role of research

The correct implementation of legislation also needs electronic tools to ensure its effective application when e-commerce transactions are processed. The use of such automatic tools thus contributes to increase confidence in e-commerce. Examples for such tools are pieces of software, which are part of the e-commerce application, and which increase the security of the transaction as well as ensuring the privacy of the personal data delivered by the consumers.

In the framework of the European Community IST research programmes (FP5 and FP6), several projects were funded to help the development of tools for a better

³⁷ http://europa.eu.int/information_society/programmes/iap/projects/self-regulation/quatro/index_en.htm

³⁸ Communications : "Connecting Europe at high speed : recent developments in the sector of electronic communications" COM(2004/ 61 - 03.02.2004; "Mobile Broadband Services" - COM 2004/447; 'eEurope 2005 Action Plan : an update' COM 2004/380 - 17.05.2004; eEurope 2005 Mid-term Review - COM 2004/108 - 18.02.2004

³⁹ COM 2004/28 final

security in the e-commerce, and to allow consumers to keep control of their personal data the way they are used by the enterprises.

Other projects, such as E-CommLEX, gathered information of relevant regulatory issues across the EU in order to assist enterprises to comply with relevant legislation. Projects like E-Arbitration-T and CCForm provided tools for online dispute resolution and enhanced consumer complaint mechanisms.

SMEs also encounter some difficulties to adjust to new forms of e-commerce, due to the large investment needed in keeping up with innovation of products and services. For example, the mobile e-commerce sector is very promising but needs huge investments in term of research before launching new services which could attract consumers. MOSQUITO and MYCAREVENT are two projects dealing with this issue.

ANNEX 3: DRAFT ANALYSIS OF ETR AGAINST SELECTED EU LEGISLATION:

This is a tentative comparison to the text of selected adopted EU legislation. A comparison with applicable law in the Member States would require detailed verification of legal provisions in 25 countries and would go beyond the scope of this document.

The ETR sets as a “precondition” the requirement to be in conformity with EU legislation⁴⁰. The ETR provide for a number of conditions that are stricter than what is required in EU legislation, for example concerning e-Commerce and Data protection. There are some provisions, however, which appear to be more explicit in EU legislation than provided for in the text of the ETR.

In particular:

- EU law clearly sets minimum conditions for exercising the right of withdrawal as far as distance contracts are concerned (Directive 97/7/EC, art. 6 and the respective provision of Directive 2002/65/EC on distance marketing of consumer financial services).
- The provisions regarding the acknowledgement of order are more specific and require more information to be provided to the consumer than the ETR indicates (Directive 97/7/EC, art. 5 and the respective provision of Directive 2002/65/EC on distance marketing of consumer financial services).
- With regard to the Data protection chapter it should be mentioned that EU law establishes the right to remedies and sets liability provisions in particular by Directive 2002/58/EC that recently entered into force (see IP/03/1492 of 31.10.2003: “New privacy rules for digital networks and services - Directive kicks in today”), while the ETR does not make any reference to this⁴¹.

The ETR is nonetheless more detailed in some aspects, and goes beyond the provisions in relevant EU legislation. The rules concerning fair commercial practices and pre-contractual information are fairly similar to those existing in EU actual law. In a number of cases, the ETR go beyond legislation simply because they turn into general or overall requirements provisions which are limited in scope in relevant legislation. This is the case for example, with the requirement to use plain and intelligible language. Concrete examples of where the ETR set requirements that are additional to EU legislation, would be:

- The UNICE-BEUC project focuses on the protection of children and poses special requirements concerning the websites addressing children. Relative EU provisions remain general in this area (Directive 97/7/EC, art. 4.2; Directive 2000/31/EC, art. 16.1.e).
- The UNICE-BEUC project insists on the importance of information provided to the consumer in relation with alternative dispute resolution schemes and security and authentication systems.

⁴⁰ Legislation referred to in this annex is :

The Distance Selling Directive: 97/7/EC; the directive on distance selling of consumer financial services: 2002/65/EC; the second data protection directive: 2002/58/EC; the e-commerce directive: 2000/31/EC; Misleading advertising Directive: 1984/450/EEC; the first data protection directive: 1995/46/EC.

⁴¹ This may be related to the fact that the Directive was adopted in 2002, after the finalisation of the ETR.

- The ETR expressly recognises the consumer’s right to review the goods/services to be purchased and the selected payment method, the right to cancel or modify the order, to express an informed consent to the purchase and retain a complete record of the transaction. EU law covers only the possibility of correcting possible input errors (Directive 2000/31/EC, art. 10.1.c, art. 11.2).
- The requirement for on-line access to an in-house complaint system and for information on an alternative dispute resolution scheme is included in the ETR and thus becomes part of merchants’ responsibilities. No such requirement exists in EU legislation.
- Finally, it should be mentioned that EU law already covers some points on which BEUC and UNICE have not reached any agreement.
- Concerning the deadline for the dispatch of the acknowledgement of order, EU law refers to “without undue delay” (Directive 2000/31/EC, art. 11.1) or “good time” (Directive 97/7/EC, art. 5.1) but it does not set a definite time limit (with the precision however that acknowledgement must be received “at the latest at the time of delivery”).
- With regard to the billing process, EU law does not require the dispatch of the good in order for the payment procedure to begin. On the contrary, it accepts the possibility of contracts requiring payment in advance (Directive 97/7/EC, art. 4.1.a).

Conclusion:

The ETR require full conformity with EU law for participating trustmarks, as a precondition for the application of the ETR themselves.

The ETR also go beyond the requirements of EU legislation in a number of areas. On some points, notably right to withdraw, and some information provisions, the text of relevant EU legislation is more specific or detailed than the ETR.

It is clear that the main purpose of the ETR is to add to EU legislation, and not to repeat it. However, there may be some aspects, for example the latest developments of EU legislation, on which the ETR could usefully be updated, completed, or made more explicit – where necessary referencing existing legislation. It could also be useful to revisit the list of legislative instruments to which the ETR refer/on which they base their requirements, to see whether this list is complete.

Finally, it could be useful to further explicit the requirement to comply with applicable legislation by adding a requirement to be in conformity with relevant local or national rules to the extent that they derive from EU legislation. This is particularly relevant for EU rules based on minimum harmonisation and where therefore Member States may have introduced provisions which go beyond EU requirements.

ANNEX 4 : E-CONFIDENCE PROJECT (UNICE – BEUC)

See separate document