



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2015)

Opinion

Title

DG JUST – Impact assessment on the amended Proposal for a Regulation on a Common European Sales Law through the Directives on the Supply of Digital Content and the Online Sale of Tangible Goods

(resubmitted version of 29 October 2015)*

(A) Context

The Digital Single Market (DSM) Strategy covers the supply of digital content (e.g. music, games, films, software or cloud storage) and the online sale of tangible goods. E-commerce within the EU retail sector is growing faster than offline trade and this initiative addresses the significant untapped growth potential of e-commerce. Differences in national contract laws are reported by businesses as one of the main obstacles to the full development of cross-border e-commerce in the business to consumer sector (B2C). Such barriers have created costs, mostly affecting micro and small enterprises, hindering their ability to engage in online cross-border trade. In addition, consumers are not confident when buying online goods or digital content across borders. One of the major reasons is their uncertainty about their key contractual rights. This results in missed opportunities for online purchase, a narrower range of goods at less competitive prices and financial detriment when faced with faulty digital content.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion to the resubmitted version of the impact assessment report.

Overall, the revised report has improved in line with the Board's recommendations. It brings additional explanation on why action is considered necessary now, acknowledges the risk of having two distinct regimes for online and offline sales during an assumed transitional phase, and clarifies the link with the fitness check of the consumer protection legislation. Complementary information is also provided on the lessons learned from previous attempts to pursue full harmonisation in the consumer protection area. The revised report further clarifies the impacts of the different options and the position of the different groups of stakeholders on each of them, distinguishing between the sale of tangible goods and digital content.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

Nevertheless, apart from solely acknowledging the risk of having two distinct regimes for online and offline sales, the report should analyse the potential impacts of such a situation (in particular on SMEs and consumers) in case it would occur.

The Board notes that, given the time constraints, the revised version of the report has not been subject to an inter-service meeting before resubmission to the Board.

(C) Main recommendations for improvements:

- Include in the main report a summary table describing the possible temporary discrepancies between contract rules for online and offline sales in specific EU Member States introduced by this proposal.
- While the risk of having two different regimes for online and offline sales during a transitional phase is stated as small and largely manageable, it may still materialise as the timing and final outcome of any possible follow-up to the consumer law fitness check is difficult to determine in advance. Therefore, the report should elaborate on the possible impact of such a situation, especially for small market operators and consumers.
- Further explain how the learnings from the previous attempts to harmonise consumer law have been used to set the level of consumer protection for the proposed substantive provisions.
- Although it may not be quantifiable, the report should acknowledge the probable adjustment in employment from the offline to the online sector, which would somewhat reduce the net gains in terms of job creation.

(D) Procedure and presentation

The readability of the report has improved and the addition of tables adds further clarity on the key aspects for each option, distinguishing between tangible goods and digital content. Editing and formatting should be done on the final version.

(E) RSB scrutiny process

Reference number	2015/JUST/008
External expertise used	No
Date of RSB meeting	Written procedure (an earlier version of this report was discussed by the Board on 14 October 2015, for which an opinion was issued on 16 October 2015).