



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
D(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**

(draft version of 21 September 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: NEGATIVE

The Board gives a negative opinion since the report is deficient in the following key aspects, which should be improved.

- 1) The report should clarify why new rules should be established for the online sales of tangible goods that differ from the regime currently applicable to offline sales and what impact such a dual regime is expected to have. Moreover, it should explain why action is considered necessary now, before the conclusion of the planned fitness check of consumer law.**
- 2) The report should clarify why the present proposal is expected to go through the legislative process successfully, while previous similar attempts for full harmonisation have at least partly failed (e.g. the Common European Sales Law or the Consumer Rights Directive).**
- 3) The report should clearly assess the trade-off between foreseen positive impacts of increased legal clarity through full harmonisation and potential negative effects of decreased consumer protection in some Member States. It should also highlight the positions of stakeholders.**

Once revised, the IA must be resubmitted to the Board which will issue a new opinion on the revised draft.

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

(C) Main recommendations for improvements

1) Justify the introduction of two different regimes for online and offline sales of tangible goods. The report should clarify that, for at least some time (i.e. until the fitness check on consumer law is completed, assuming it reaches conclusions aligned with this proposal), two distinct sets of rules will co-exist for online and offline sales of tangible goods (with differences in at least some countries, for instance regarding hierarchy of remedies, notification duty, length of guarantees and the burden of proof). The concrete implications of this situation should be assessed, especially for small market operators.

2) Explain the need for timely action. The report should clarify the reasons for bringing forward this proposal as regards the sales of tangible goods before the fitness check on consumer law is completed and any related new proposals presented, which could cover both online and offline sales. Along these lines, it is important to clarify why the initiative cannot be limited to digital content only (where consensus is higher), and deal with the sales of tangible goods in the context of the fitness check.

3) Clarify why this attempt is likely to be more successful than previous similar endeavours. The report should explain in more depth why the political momentum around the Digital Single Market, the targeted approach and the binding character of the proposal offer sufficient guarantees for this initiative to be more successful than the Common European Sales Law or the Consumer Rights Directive in terms of reaching full harmonisation.

4) Clarify the different options and the related assessment. The report should elaborate on the extent to which the proposal reaches a balanced trade-off between predictability for traders and consumers, and an adjustment of the level of consumer protection (in some Member States downwards). Relevant information in this regard in Annex 8 should be brought forward to the main report. The report should clarify the positions of Member States and other stakeholders regarding the different options, distinguishing between tangible goods and digital content. Where appropriate it should provide arguments to explain why certain positions of stakeholders are not taken up. Finally, the report should include, as far as possible, quantitative estimates of the costs of the options, including for impacted businesses. Net impacts should be assessed, taking into account a potential substitution effect from offline sales to online sales. The impact for consumers faced by a decrease of some of their rights when buying online should also be clarified.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

It should be clarified throughout the report, and in particular in the options section, whether elements apply specifically to digital content, to tangible goods or to both.

(E) RSB scrutiny process

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| Reference number | 2015/JUST/008 |
| External expertise used | No |
| Date of RSB meeting | 14 October 2015 |