



**EC REGULATION ON CONSUMER
PROTECTION CO-OPERATION**

COMM (2003) 443

Public consultation

SEPTEMBER 2003



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

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Introduction

Purpose of consultation

This consultation seeks views on the draft Regulation on Consumer Protection Co-operation. It also seeks views on the Regulatory Impact Assessment, which is attached as Annex A.

Responses

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Closing date

Responses must be received by 12 December 2003.

Confidentiality

Your response to this consultation document may be made publicly available in whole or in part at the Department's discretion. If you do not wish all or part of your response (including your identity) to be made public, you must state in the response which parts you wish us to keep confidential. Where confidentiality is not requested, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the Internet.

Consultees

Please tell us if you know of others who would be interested in receiving this consultation.

Background & Summary

1. In its 2001 Green Paper on EU Consumer Protection¹ the European Commission argued that a legal framework was required for co-operation between public authorities to create a more robust enforcement network across the European Union. The argument was based on the identification of a number of gaps and shortcomings in the application of cross-border co-operation between Member States under current systems and agreements. This can be caused by inadequate powers to investigate infringements outside their jurisdictions; the inability to share information cross borders; and the lack of a necessary counterpart body in another jurisdiction with whom to co-operate. Further, there are other factors coming into play that demand a stronger, more effective cross-border enforcement framework. These include the growth of shopping across frontiers, driven by electronic commerce and the Euro, and the pending enlargement of the EU, where the increase in intra-EU trade will no doubt lead to more opportunity for cross-border consumer fraud.

2. The Commission also anticipate the need for a stronger enforcement structure to support the Directive on Unfair Commercial Practices (UCPD) on which formal negotiation began in July 2003. This is because the Directive, if implemented, will widen the legislative base of EU consumer law. The DTI is also currently consulting on this proposal, and details of this consultation can be found at www.dti.gov.uk/ccp/consultations.htm. The deadline for responses to the consultation on the proposed UCP Directive is 17 October 2003.

3. In February 2003, the Commission circulated a draft to allow Member States to examine the detail of the Regulation and its implications. The proposal was formally adopted by the Commission on 18 July 2003.

4. The Regulation would establish a network of public bodies with the powers to co-operate and share information with each other for the purposes of enforcing EC legislation that protects consumers' interests. It would also provide an enhanced role for the Commission in co-ordinating administrative co-operation and common projects designed to inform, educate and empower consumers.

5. Key features of the Regulation are:

- Formalised co-operation through a network of public enforcement bodies on intra-Community infringements that protect consumers' interests;
- A minimum level of enforcement powers for those bodies;

¹ http://europa.eu.int/comm/consumers/prot_rules/admin_coop/index_en.htm

- Requirements to provide mutual assistance for the exchange of information and co-operation on cross-border cases;
- A single liaison body in each state to facilitate this co-operation;
- Co-ordinating and supporting role for the Commission, including information and education projects
- Establishment of an Advisory Committee to assist the Commission in implementing the practical procedures for the operation of the Regulation

6. A regulation was chosen as the appropriate instrument because it provides arrangements for co-operation between public authorities of direct applicability. The legal basis is Article 95 of the Treaty of the European Community, which supports the functioning of the internal market.

Background to UK policy and approach to the Regulation

7. One of the key DTI objectives underpinning our vision to create 'prosperity for all' is placing empowered and protected consumers at the heart of an effective competition regime. This involves championing effective enforcement of consumer law, in the UK and across borders. The Enterprise Act 2002 supports this objective by creating a single, unified enforcement regime across the consumer field with wider powers to obtain injunctive relief to stop breaches of legislation and rules of law that harm the collective interests of consumers. It also gives consumer enforcement authorities more powers to share information and co-operate with their counterpart bodies in other countries. For further information about these measures see www.dti.gov.uk/enterpriseact.

8. In order to facilitate cross-border co-operation, we are engaged in other multilateral and bilateral agreements. The Organisation for Economic Co-operation and Development (OECD) has just agreed a set of guidelines designed to improve co-operation between its members, including information sharing and co-operation on cases of cross-border fraud. These guidelines form a strong foundation for cross-border enforcement and raise the profile of consumer protection worldwide². The DTI and the Office of Fair Trading (OFT) also signed a Memorandum of Understanding on competition and consumer protection co-operation with the United States Federal Trade Commission³ in 2000. We hope to agree similar arrangements with Canada, Australia and New Zealand in the near future.

² More information about the OECD and the Guidelines can be found at www.oecd.org.

³ More information about the Government's Memorandum of Understanding with the United States Federal Trade Commission can be found at www.ftc.gov

9. The UK (through the OFT) is also a prominent member of the International Consumer Protection Enforcement Network (ICPEN)⁴, an organisation which has been instrumental in successfully tackling consumer fraud cross borders. ICPEN also has a European sub-branch, which is the main body for informal co-operation within the EU.

10. DTI, OFT and HM Treasury, welcome this focus on improving the enforcement of consumer protection laws. We believe this is key to building up confidence for business and consumers to trade across borders, thus helping to strengthen the internal market. Enforcement systems vary greatly across Europe and we see evidence of rogue traders who are able to exploit the gaps between them. Cases the OFT have dealt with recently include alleged 'psychics' and clairvoyants; misleading health and diet claims; misleading prize draws (including some that claim to be UK based but have a PO Box hiding an overseas connection); and timeshare and holiday club scams. This can often involve small and nimble companies that can emerge in different guises and in different countries.

11. In the UK, many of the basic tenets of the proposal are already evident both in the participation described above and in domestic legislation, most clearly in provisions of the Enterprise Act. We have a long established public enforcement regime, and enforcement bodies have the ability to co-operate with other jurisdictions. Some aspects of the Regulation however would be new. These include some of the enforcement powers competent bodies would be required to have, and we will be paying particular consideration to these provisions in our consultations.

12. There is general support among other Member States, although some countries that do not have a public enforcement regime, including Germany, Netherlands and Luxembourg, are less supportive, preferring to rely on informal co-operation channels. We hope however that the negotiation will make good progress over the coming year.

Next steps

13. The Regulation is subject to the co-decision procedure, which means that the European Parliament and the Council will decide it jointly. During the process, amendments to the proposal can be made, and we will seek input from consultees at these stages. The negotiation begins in September.

⁴ Until recently, ICPEN was named the International Marketing Supervision Network (IMSN). More information is available at www.imsnrcc.org

Summary of questions

1. Do you agree with the scope of this Regulation?
2. Do you have any comments regarding the competent bodies and minimum powers that are being proposed?
3. If introduced, do you agree that it is sensible to introduce these powers in respect of both cross border and domestic enforcement? Would you support enforcement bodies having more powers to gain redress on behalf of harmed consumers?
4. Do you have any comments about the mutual assistance arrangements?
5. Do you have any comments on the information exchange provisions in this Regulation?
6. Do you agree with the mutual assistance principles and the circumstances where it can be refused?
7. Do you have any comments about the role of the Commission in this Regulation?
8. Do you have any comments about the provisions in Chapter V?

Consultation On The Regulation Of The European Parliament And Council On Co-Operation Between National Authorities Responsible For The Enforcement Of Consumer Protection Laws ("The Regulation On Consumer Protection Co-Operation")

14. The DTI welcomes comments on this proposed Regulation, including comments about the overall purpose and direction of the Regulation, and/or reactions to specific questions posed in this section of the consultation document. We would also welcome comments on the partial Regulatory Impact Assessment (Annex A). A 'full' Regulatory Impact Assessment will accompany the finalised legislation.

Chapter I Objectives, definitions, scope and competent authorities

15. This section contains the overall objective of the Regulation which is to "*lay down the conditions under which the competent authorities in the Member States responsible for the enforcement of the laws on consumer protection are to be designated and co-operate with each other and with the Commission to ensure compliance with those laws and in order to enhance the protection of consumers' economic interests*".

16. It is proposed that the scope of the Regulation is limited to intra-Community infringements that protect consumers' interests (the Directives and Regulations to which this measure will apply are listed in Annex 1 of the Regulation). This mirrors the legislation covered by the Injunctions Directive (98/27/EC), and additionally includes the Unfair Commercial Practices Directive (if implemented); the Regulation on nutrition and health claims made on foods (if implemented); Regulation 295/1991 establishing common rules for a denied-boarding compensation system in scheduled air transport, and the Regulation establishing common rules and assistance to air passengers in the event of denied boarding and of cancellation or long delay of flights (if implemented). The Regulation is not intended to affect rules on: private international law, in particular rules related to court jurisdiction and applicable law; judicial co-operation in criminal or civil matters; Community laws relating to the internal market; and Community laws relating to television broadcasting services (the Television Without Frontiers Directive), except in relation to advertising.

17. On this legislative base, the Regulation would set up a network of competent authorities. These are defined as "*any public authority established either at national, regional or local level with specific*

responsibilities to ensure compliance with the laws on consumer protection". The Explanatory Memorandum sets out in some detail why the Commission believes it is essential the bodies are public. This includes the view that only public authorities will be able to have the necessary enforcement (including investigatory) powers, and only public authorities can have sufficient access to information and can guarantee confidentiality of that information. In the UK, we expect to designate the OFT as the lead competent body with responsibility for liaison with the Commission and with the competent authorities nominated in other Member States. We would also welcome the inclusion of trading standards departments as competent bodies, and will be considering further if other public enforcement or regulatory bodies should be designated. These arrangements would ensure that enforcement action is dealt with by the most appropriate public body and is effectively co-ordinated by the OFT.

18. Article 4 sets out the minimum investigation and enforcement powers the competent authorities must possess. These include the right to:

- a. access to any relevant document in any form;
- b. request (or seek court orders to obtain) any relevant information ;
- c. carry out on-site inspections;
- d. request in writing that a seller or supplier cease the intra- Community infringement;
- e. obtain a binding commitment from a trader to cease the intra-Community infringement and to publish the commitment;
- f. require (or seek a court order requiring) the cessation of the intra-Community infringement and to publish decisions;
- g. ensure that court action can be taken against the trader in the event that they fail to comply with an order put upon them, including fines; and
- h. seek court orders to freeze and/or sequester assets

19. OFT do not currently have the powers listed at a, c and h above. If these powers were introduced in the UK via this Regulation, they would only be applicable to cross-border cases. This Regulation raises a question therefore as to whether these powers should also apply to infringements of domestic legislation, which harm UK consumers; otherwise, there is a risk that business is subject to different regimes depending on where the consumer is based. It also raises the further question of whether the ability to seize assets should be accompanied by a power to redistribute those assets to consumers who had suffered financial loss as a result of the infringement, i.e. provide monetary redress. There are a number of issues around what happens to the funds once they have been frozen or sequestered, and these questions will be addressed in a project DTI will

be undertaking in the next few months. For more information about this project, contact Clare Williamson via the contact details above.

20. Although there may be more than one competent body, it is also proposed that there must also be one designated 'contact point' to facilitate co-operation and communication between Member States. We propose that this body should also be the OFT.

1. Do you agree with the scope of this Regulation?

2. Do you have any comments regarding the competent bodies and minimum powers that are being proposed?

3. If introduced, do you agree that it is sensible to introduce these powers in respect of both cross border and domestic enforcement? Would you support enforcement bodies having more powers to gain redress on behalf of harmed consumers?

Chapter II Mutual Assistance

21. This section establishes a number of reciprocal mutual assistance rights and obligations between competent authorities. These cover: requests for information, including 'spontaneous' exchange of information; requests for enforcement action to stop the infringement; and the co-ordination of surveillance and enforcement activity. When undertaking an investigation, the requested authority can use the steps they see fit to deal with the infringement, but in consultation with the applicant authority (the competent authority which requests their assistance). It can however, involve a competent official from the applicant authority if they request it.

22. This enforcement arrangement reflects one of the basic premises of this Regulation which is that the competent authority in the country of the consumer is best placed to understand and judge the harm to that consumer; and the authority in the country of the trader is best placed to act against them. This system is designed to foster a culture of mutual assistance and reciprocity.

23. Article 9 sets out that Member States shall co-ordinate investigations when they become aware that more than two Member States are being harmed by the infringement. It also provides an assistance role for the Commission, including participation in co-ordination meetings. This scenario is likely to arise with, for example, Internet scams that can affect several countries.

24. The articles in this chapter, and all following chapters, are to be adopted in accordance with the procedure set out in Articles 3 and 7 of Decision 1999/468/EC (laying down the procedures for the exercise of implementing powers conferred on the Commission)³. That is, the Commission will abide by certain advisory procedures.

4. Do you have any comments about the mutual assistance arrangements?

Chapter III General conditions governing mutual assistance

25. Article 10 contains the mutual assistance principle that goes to the heart of this Regulation. It states that "*competent authorities shall fulfil their obligations under this regulation as though acting on behalf of consumers in their own country and on their own account or at the request of another competent authority in their own country*".

26. In considering this article, it should be noted that UK legislation already enables enforcement authorities, under certain circumstances, to take enforcement action to protect foreign consumers. Under Part 8 of the Enterprise Act, the OFT and other enforcers can apply for enforcement orders to stop Community infringements by traders established in the UK but which harm the collective interests of consumers anywhere in the European Economic Area. In addition in relation to domestic infringements, Section 232 of the Act provides that

" Goods or services which are supplied wholly or partly outside the United Kingdom must be taken to be supplied to or for a person in the United Kingdom if they are supplied in accordance with arrangements falling within subsection (5)". Subsection (5) states that " these arrangements fall within this subsection if they are made by any means and –

- (a) at the time the arrangements are made the person seeking the supply is in the United Kingdom, or*
- (b) at the time the goods or services are supplied (or ought to be supplied in accordance with the arrangements) the person responsible under the arrangements for effecting the supply is in or has a place of business in the United Kingdom"*

27. Making these arrangements by 'any means' includes electronic means, including internet transactions, so the effect is that an application can be made for an enforcement order (under section 215 of the Act) against an e-trader based in the UK whose actions constitute a domestic infringement directed at consumers anywhere in the world.

³

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999D0468&model=guichett

Information exchange

28. Article 11 sets out how information should be requested and exchanged, including ensuring that the requesting authority provide sufficient information to enable the requested authority to fulfil the request, and that requests are channelled through liaison officers, competent authorities or competent officials.

29. Article 12 provides that information supplied may only be used for the purpose of ensuring compliance with the laws that protect consumers' interests. This restriction on the use of the information supplied is arguably not as narrow as that than under section 243 of the Enterprise Act, which provides that information must not be used for any purpose other than that for which it was first disclosed. Should an overseas authority wish to use information supplied under section 243 for a different purpose than that originally specified, a further request to the UK authority would be required.

30. Article 12 further provides that information supplied:

- Must be capable of being used in evidence on the same basis as similar documents obtained in their own country;
- Is confidential, unless the disclosing authority consents to its disclosure or
- It is used in evidence or is disclosed as part of the publication of commitment or decision in Article 4(3)(e) and (f);
- Is safeguarded where disclosure is restricted by rights and obligations provided in the Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Directive 95/46/EC). That is, in cases involving criminal prosecution, breach of ethics for regulated professions, national security, public security and defence.

31. Article 13 contains provisions in relation to the further disclosure of information from and to third countries. This can only be done in so far as the information exchange is permitted by bilateral agreements with third countries and, in relation to the disclosure of information to third countries, only with the consent of the competent authority that originally supplied the information.

32. In considering these provisions, it should be noted that the Enterprise Act has just brought in new powers for the OFT to share information with overseas authorities in certain circumstances. Part 9 of the Act provides that a public authority may disclose information to any overseas public authority for the purpose of any criminal investigation relating to consumer or competition matters. Disclosure may also be made of the purposes of overseas civil proceedings under legislation that

is equivalent to consumer laws to the UK⁴. In addition, our bi- and multi-lateral co-operation agreements, referred to above, also contain information exchange provisions.

Ability to refuse an assistance request

33. Article 14 sets out the limited circumstances under which a request for assistance may be refused. These are where:

- It would impose a disproportionate administrative burden on the requested authority in relation to the scale of the detriment;
- Judicial proceedings have been started or a final judgement made on that particular case;
- The request is not well founded

34. Despite these 'get out' clauses, the mutual assistance principles behind this Regulation make clear that the *default position is to act*, and there must be very strong grounds for refusal.

5. Do you have any comments on the information exchange provisions in this Regulation?

6. Do you agree with the mutual assistance principles and the circumstances where it can be refused?

Chapter IV Community Activities

35. This chapter establishes how Member States should co-ordinate enforcement and administrative co-operation and outlines the supporting role for the Commission. This includes the collection and collation of consumer complaints received by the competent authorities of the Member States. It contains detailed provisions for enforcement activities including: relevant training (including language training) and exchange programmes for officials, collection and classification of consumer complaints; and development of sector-specific networks. Administrative co-operation includes co-ordination of information and guidance programmes; support for the activities of consumer representatives, support for extra-judicial dispute settlements and statistical research.

36. The Explanatory Memorandum however allows that these are 'possible' areas for co-ordination and it is up to the Member States and the Commission to decide over time the precise nature of the activities.

⁴ Enterprise Act Part 9 ('Information')
www.legislation.hmso.gov.uk/acts/acts2002/20020040.htm

37. Article 18 provides for a Community role in making third party agreements. The Regulation is a single market consumer protection measure, and therefore there is shared competence between Member States and the Community. Shared competence means that Member States have the freedom to act in so far as the Community has not already acted in the area in question. The wording of Article 18 appears to give the Community exclusive competence to act in matters covered by the proposed Regulation. This, therefore, has implications for our ability to make future co-operation arrangements with third countries in relation to consumer protection co-operation. We are concerned to safeguard our ability to make arrangements where necessary to ensure the protection of UK consumers, so this is an area we will be seeking clarification from the European Commission.

7. Do you have any comments about the role of the Commission in this Regulation?

Chapter V Final provisions

38. This chapter provides for the role of a Standing Committee to assist the Commission in implementing the practical procedures for the operation of the Regulation, in line with Decision 1999/468/EC (see paragraph 24 above). The Committee will contain members of either enforcement or policy agencies, depending on the issues being discussed, and may also invite "qualified entities" - notified to the Commission under Article 3 of the Injunctions Directive - to participate.

39. This chapter also sets out the monitoring requirements by requesting biannual reports on the application of the Regulation from each Member State. Annex II gives further detail about what should be contained in the annual reports.

8. Do you have any comments about the provisions in Chapter V?

**Regulation of the European Parliament and Council on
Co-operation between National Authorities Responsible
for the Enforcement of Consumer Protection Laws
("The Regulation on Consumer Protection Co-
operation")**

Partial Regulatory Assessment

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A Introduction

1. In its 2001 Green Paper on EU Consumer Protection, the European Commission identified a perceived gap in the enforcement of laws intended to protect the economic interests of consumers in the EU. It argued that there was a need for a legal framework for co-operation between public authorities responsible for the enforcement of consumer protection laws. After further consultation, the Commission drew up a draft instrument and in February 2003, circulated it to Member States for initial consideration. The Regulation was then formally adopted and published by the Commission on 18 July 2003.

B Objective

2. The objective of this Regulation is to eliminate barriers to cross border enforcement of EU consumer protection legislation. This will give businesses more confidence to sell, and consumers to shop, across frontiers thereby supporting the smooth functioning of the internal market. Effective enforcement will be all the more important with the enlargement of the European Union in 2004 and the opportunities for cross-border shopping increases, driven by e-commerce and the single currency. It will also be needed to support the Directive on Unfair Commercial Practices if adopted by the Council and the European Parliament. This is because the Directive, if implemented, will widen the legislative scope of EU consumer law.

C Background

3. Despite a substantial set of EU consumer protection laws, cross border enforcement is very difficult to achieve in practice as enforcement mechanisms vary greatly between Member States. Although the Injunctions Directive (98/27/EC) gives designated enforcement bodies the power to apply for injunctions in another Member State, where the interests protected by that enforcement body are affected by an infringement in that Member State, there remains the formidable hurdle of bringing an application in a foreign jurisdiction and under law with which the body may be unfamiliar. This inevitably means there are gaps in consumer protection that can be exploited. The lack of a public enforcement body in some countries is a particular problem as it means that co-operation and information sharing can be severely limited.

4. In the UK, the Enterprise Act 2002 provided the Office of Fair Trading (OFT) with more power to disclose information on consumer cases with overseas public enforcement bodies. It also gives our consumer protection a more international focus by providing that enforcement authorities can act in the interest of foreign consumers

under certain circumstances. Welcome though these developments are, they are only effective if a public enforcement body exists in another Member State. There is also no guarantee that other countries will reciprocate by acting in the interests of UK consumers.

5. As well as the existing legal framework, informal co-operation arrangements exist. The main forum is the European branch of the International Consumer Protection Enforcement Network - ICPEN Europe. The forum meets twice a year to discuss and exchange information on cases and share best practice. This informal network is valuable channel of co-operation, but it can only operate within the existing legal co-operation frameworks.

6. The UK is signatory to multilateral and bilateral consumer protection co-operation agreements. The Organisation for Economic Co-operation and Development (OECD) has just agreed a set of guidelines designed to improve co-operation between its members, including information sharing and co-operation on cases of cross-border fraud². The DTI and OFT also signed a Memorandum of Understanding on competition and consumer protection co-operation with the United States Federal Trade Commission³ in 2000 and hope to agree similar arrangements with Canada, Australia and New Zealand in the near future.

7. Consumers and consumers associations have a role in bringing private civil law actions in courts, although the difficulty, length and cost of these actions mean this route is not an effective driver for consumer protection and redress in the EU.

8. Redress can also be sought via alternative dispute resolution (ADR), through ombudsmen or by arbitration. To facilitate ADR, the EC has set up the European Extra Judicial Network (EEJ-Net) of alternative dispute resolution bodies. EEJ-Net is designed to help consumers access ADR schemes if they have disputes with traders in other Member States. Although a valuable low cost and user-friendly complement to formal enforcement mechanisms, it can only be part of the enforcement picture, as it ultimately relies on the businesses involved being willing to co-operate and seek a resolution to the complaint.

² More information about the OECD and the Guidelines can be found at www.oecd.org.

³ More information about the Government's Memorandum of Understanding with the United States Federal Trade Commission can be found at www.ftc.gov

⁴ Until recently, ICPEN was named the International Marketing Supervision Network (IMSN). More information is available at www.imsnricc.org

D Risk assessment

9. In July 2002-June 2003, the OFT received a total of 12,039 complaints about cross-border cases, of which 4702 related to traders based in the EU, EEA and candidate countries. In only its first few months of operation, the EEJ-Net recorded 1115 cross-border disputes, and The Consumer Sentinel, a US led international enforcement project, has recorded 4100 cross-border complaints from consumers against traders in the EU, EEA and candidate countries since 1999 over half of which occurred in January to September 2002.

10. These figures indicate that a lack of proper enforcement affects consumer confidence in shopping cross-border. In a recent Eurobarometer survey, 43% of those consumers who were less confident in cross-border shopping said that enabling their own national authorities to intervene abroad on their behalf was very important in increasing their confidence. (A further 33% said that such a measure would be important). If consumers are not confident that protection will be properly enforced, this will deter them from shopping cross border and businesses will also lack the confidence to reach out to other countries. This will ultimately hinder the growth of the single market.

11. On the other hand, the lack of an effective cross-border enforcement regime works in favour of rogue traders. The ability of new technologies to allow wrongdoers to hide their identities and quickly change locations and guises further exploits the gaps in protection. Also, the enlargement of the EU while bringing new trading opportunities will inevitably bring new scams and fraudulent practices. Unless a more formal co-operation structure is put in place, we run a high risk that the problem will expand well beyond its current proportions.

12. The Commission recently published its proposal for a Directive on Unfair Commercial Practices. If this Directive is implemented, it has the potential to increase EU consumer protection. However, there is also a risk that this new legislation would not be effective if it is not underpinned by a robust enforcement mechanism.

E Options

13. To achieve the objective of effective enforcement of EU consumer legislation there are three main options; no action; enhancement of informal channels of co-operation; and regulatory measures in the shape of this draft Regulation.

Option 1: No action

14. Maintaining the status quo would do nothing to tackle the main barriers to effective co-operation, and the risks, identified above, if the enforcement question is not addressed. ICPEN Europe for example, although very effective within the boundaries in which they can operate, do not always have the powers to share information to the extent that would allow them to co-operate fully on live cases. Even if clear evidence is available, taking action against the wrongdoers is only possible where the appropriate authority has the will and means to act. Otherwise, enforcement depends on private consumer actions, which are virtually non-existent in cross border cases.

15. The 'no action' approach would therefore not meet the objective.

Option 2: Enhance informal co-operation mechanisms

16. The alternative to regulatory solutions would be to boost efforts and resources to enhance informal and voluntary co-operation mechanisms. There are a number of different possibilities here. These include

- a. Raising the status of existing informal co-operation agreements such as ICPEN Europe. This could be done by for example, providing resource for the development of more sophisticated online information databases and the development of more structured co-operation procedures;
- b. Greater unilateral efforts by the UK to establish co-operation arrangements with other Member States and third countries;
- c. Raising the status of the OECD Guidelines on consumer fraud.

17. These options are all being developed now. For example, for option (a) ICPEN is continuing to build new mechanisms for information sharing and co-operation; and for option (b) – as noted above – the Government is engaged in international co-operation agreements where they are needed to help protect UK consumers. However, as these arrangements are not formal or legally binding, they do not tackle the real barriers to co-operation: inability to share information and inability to act on behalf of foreign consumers. Therefore, these approaches can only meet the objective to a very limited extent.

Option 3: Regulatory action as proposed by the Consumer Protection Co-operation Regulation

18. Regulatory action as it is proposed by this Regulation would create a formal framework for co-operation. It provides for:

- Formalised co-operation through a network of public enforcement bodies on intra-Community infringements that protect consumers' interests;
- A minimum level of enforcement powers for those bodies;
- Requirements to provide mutual assistance for the exchange of information and co-operation on cross-border cases;
- A single liaison body in each state to facilitate this co-operation;
- Co-ordinating and supporting role for the Commission, including information and education projects;
- Establishment of an Advisory Committee to assist the Commission in implementing the practical procedures for the operation of the Regulation

19. In terms of meeting the objective, this regulatory approach would do so to a great extent.

F Costs and benefits

Option 1: No action & Option 2: Informal co-operation:

Benefits

20. Continuing to focus on informal co-operation mechanisms has the advantage of not requiring the pursuit of a lengthy EU negotiation, which involves resources of officials and key stakeholders for 1-2 years. This approach can also involve more players to develop more immediate solutions.

Costs

21. These options bring no extra costs in terms of policy, implementation or compliance for business. However, the larger costs to business from unfair competition from rogue traders and to consumers who purchase shoddy goods and services of failing to fully tackle the shortcomings of cross-border protection need to be set against this. OFT estimate that consumer detriment relating to European cross border cases is around £180m. In terms of particular sectors, they estimate that UK consumers lose more than £100 million per year to deceptive overseas mailings (although the figure is likely to be higher). For timeshare or Holiday Club rip-offs – the second biggest source of consumer complaints involving other countries - 664 complaints were received by the OFT about Holiday Clubs over the course of a year, where total loss to the consumer amounted to more than £1 million (or over £1600 per person).

Option 3: Regulatory action as proposed by the Consumer Protection Co-operation Regulation

Benefits

22. The Regulation will significantly enhance the ability of the OFT to use its information sharing powers to full effect and gain the co-operation of enforcement agencies in other Member States when scams emanating from their territories are harming UK consumers. This will both encourage consumers to come forward and report cases, and discourage wrongdoers from embarking in this kind of practice.

23. It is difficult to put an exact figure on how much overall will be saved economically by this activity. OFT estimate that if better enforcement co-operation only achieved a 5% saving to consumers (which is a low estimate) this would equate to £5-10 million overall.

24. In terms of how it will affect the UK consumer regime – much of the structure and legal framework being proposed is already in place. We already have – through the OFT and local Trading Standards Authorities – an established public enforcement regime. However, the Regulation would require some changes to the powers of the OFT. These are: New powers to have access to any relevant document in any form; make on-site inspections; and freeze and/or sequester assets. These powers could enhance the effectiveness of cross border enforcement, and it may be that if this Regulation is implemented, it will be appropriate to consider applying these powers to domestic legislation as well.

Costs

Compliance costs

25. Businesses are already under an obligation to honour their legal obligations to consumers – therefore compliance costs on legitimate business is zero.

Policy and implementation costs

26. Policy costs involve resource from DTI and key stakeholders to negotiate the Regulation which would be likely to be somewhere between 1 to 2 years. In terms of implementation, OFT would need to ensure resources were available to take more cases on behalf of enforcement bodies in other Member States, and monitor and co-operate on cases where enforcement bodies in other Member States are acting on their behalf. Importantly, they would need extra resources for new powers of access to information and on-site inspections, and resource to pursue asset-freezing cases in court. In turn, there might be additional costs for

the court service if actions to protect consumers in other Member States could not be settled voluntarily without the need for court action:

27. OFT would also need adequate resource to fulfil their obligations in relation to increased administrative co-operation such as co-ordinated information campaigns and exchange programmes. Overall, the new resource the Regulation will require for the OFT is estimated to be 2-3 staff members, which would be in the region of up to £100,000.

Sectors likely to be affected

28. This regulation concerns enforcement bodies directly, and as noted above, this does not affect businesses that fully comply with their obligations to the consumer.

G Summary of costs and benefits of options

Option	Benefits	Costs
Option 1: No action	None	No cost to business Avoids administrative costs of negotiating an EC Regulation, but costs to business of not tackling cross-border consumer fraud remain. In particular, informal solutions will not make a material difference to the ability of UK enforcement authorities to share information and co-operate with other Member States
Option 2: Enhanced informal co-operation	Focusing on informal mechanisms can involve more players to develop more immediate solutions	As for option 1
Option 3: Regulation as proposed	The Regulation will enable UK enforcement authorities to combat cross border scams by significantly enhancing their ability to share information and co-operate on live cases, thereby strengthening consumer protection across the EU.	No cost to business Costs to DTI and key stakeholders of negotiating the Regulation, and estimated resource implication to OFT is up to staff members

H Equity and fairness

All options

29. No legitimate business should be disproportionately affected by this Regulation.

I Small firms' impact test

All options

30. The Regulation will only directly affect small businesses that are trading fraudulently or unfairly.

J Competition assessment

Options 1 & 2

31. No impact.

Option 3: Regulation

32. The Regulation does not add to the level of consumer protection but ensures that existing laws are enforced properly. This focus on strong enforcement will have the effect of protecting legitimate business and have a positive effect on both national and intra-community trade and competition.

K Monitoring and review

33. Regular monitoring of levels and effectiveness of enforcement is built into the Regulation, but it will also be subject to Parliamentary review every three years.

L Summary and recommendation

34. Only a regulatory approach – in the shape of the proposed Regulation - will deliver the necessary changes to effectively tackle cross-border consumer fraud and help create a harmonised vision of consumer protection that will support the internal market.

List of Consultees

Advertising Association
Advertising Standards Association
Alliance of Independent Retailers and Businesses
Amazon
Amway
Association for Payment and Clearing Services
Association of British Insurers
Association of British Travel Agents
Association of Building Hardware Manufacturers
Association of Independent Businesses
Association of Translation Companies
Beachcroft Wansbroughs
Booksellers Association
British Advertising Gift Distributors Association
British Association of Toy Retailers
British Audio Dealers Association
British Bankers Association
British Ceramic Confederation
British Chambers of Commerce
British Copyright Council
British Cutlery and Silverware Association
British Footwear Association
British Hardware and Housewares Manufacturers Association
British Interior Textiles Association
British Jewellery and Giftware Federation
British Leather Confederation
British Luggage and Leathergoods Association
British Marine Equipment Council
British Market Research Association
British Promotional Merchandise Association
British Retail Consortium
British Toy and Hobby Association
Broadcast Advertising Clearance Centre
Business and Accounting Software Developers Association Ltd
Business Europe
Business Services Association
Cabinet Office
Camelot
Chartered Institute of Marketing
Citizen's Advice
Citizen's Advice Scotland
Clifford Chance
Computer Software and Services Association
Computing Suppliers Federation
Confederation of British Industry
Confederation of Passenger Transport UK
Consumer Credit Association
Consumer Credit Trade Association
Consumers Association
Consumers International
Corporation of London
Cosmetic Toiletry and Perfumery Association Ltd
Creative Industries Association
Credit Card Research Group
Credit Services Association
Cutlery and Allied Traders Research Association
Department for Constitutional Affairs
Department for Transport
Department of Culture, Media & Sport
Department of Enterprise, Trade and Investment for Northern Ireland
Digital Content Forum
Direct Mail Service Standards Board
Direct Marketing Association
Direct Selling Association
Entemp
Ergo
EURIM
Europe Analytica
Federation of British Hand Tool Manufacturers
Federation of Crafts and Commerce
Federation of Small Business
Finance and Leasing Association
Finance Industry Standards Association
Financial Ombudsman Service Ltd
Financial Services Authority
Food Standards Agency
Foreign & Commonwealth Office
Forum of Private Business
Gardenex: Federation of Garden and Leisure Manufacturers
General Consumer Council for Northern Ireland
Greeting Card Association
Guernsey Trading Standards
Health Food Manufacturers Association
Hire Association Europe

HM Treasury
 Home Office
 Incorporated Society of British Advertisers
 Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS)
 Independent Food Retailers Confederation
 Independent Footwear Retailers Association
 Independent Television Commission
 Institute of Credit Management
 Institute of Direct Marketing
 Institute of Directors
 Institute of Management
 Institute of Practitioners in Advertising
 Institute of Public Relations
 Institute of Sales Promotion
 International Consumer Policy Bureau
 International Swaps and Derivatives Association
 Internet Service Providers Association
 Law Commission
 Law Reform Committee
 Law Society
 Law Society for Northern Ireland
 Law Society for Scotland
 Lighting Association
 Local Authorities Co-ordinators of Regulatory Services
 London Internet Exchange
 Mail Order Traders Association
 National Association of Estate Agents
 National Association of Tool Dealers
 National Consumer Council
 National Consumer Credit Federation
 National Consumer Federation
 National Federation of Consumer Groups
 National Federation of Retail Newsagents
 National Lottery Commission
 National Newspaper Mail Order Protection Scheme
 National Packaging Council
 National Wool Textile Export Corporation
 Office of Telecommunications
 Office of the Information Commissioner
 Ombudsman for Estate Agents
 Organisation of Timeshare in Europe
 Outdoor Advertising Association
 Outdoor Industries Association
 Patent Office
 Periodical Publishers Association
 Photo Marketing Association International
 Post Office
 Provision Trade Federation
 Radio Advertising Clearance Centre
 Radio Authority
 Radio, Electrical and Television Retailers Association
 Retail Motor Industry Federation
 Reward Group
 Scotch Whisky Association
 Scottish Consumer Council
 Scottish Executive
 Scottish Motor Trade Association
 Scottish Software Federation
 Scottish Textiles Network
 Small Business Europe
 Small Electrical Appliance Marketing Association
 Society for Motor Manufacturers and Traders Ltd
 Software Industry Federation
 Trading Standards Institute
 UK Representative to the European Union
 Union of Independent Companies
 VISA International Service Association
 Wales Office
 Welsh Consumer Council
 Which? Legal Services
 Wine and Spirit Association of Great Britain and Northern Ireland

The consultation criteria

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others) and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated. The complete code is available on the Cabinet Office's web site, address <http://www.cabinet-office.gov.uk/servicefirst/index/consultation.htm> .

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Mr Philip Martin, DTI Consultation Co-ordinator, Room 564, 1 Victoria Street, London SW1H 0ET or telephone him on 020 7215 6206 or email philip.martin@dti.gsi.gov.uk