

**EU CONSUMER RIGHTS
DIRECTIVE: PRE-CONTRACTUAL
INFORMATION REQUIREMENTS
FOR CONTRACTS OTHER THAN
DISTANCE OR OFF-PREMISES**

Impact assessment

AUGUST 2012

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Title: EU Consumer Rights Directive: Pre-contractual information requirements for contracts other than distance or off-premises IA No: RPC12-BIS-1439 Lead department or agency: Department for Business, Innovation and Skills Other departments or agencies:	Impact Assessment (IA)
	Date: 08/06/2012
	Stage: Consultation
	Source of intervention: EU
	Type of measure: Secondary legislation
	Contact for enquiries: Stella D'Italia

Summary: Intervention and Options	RPC Opinion: Amber
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Cost of Preferred (or more likely) Option					
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as	
NA	NA	NA	No	NA	

What is the problem under consideration? Why is government intervention necessary?

Consumers are not always provided with the information they need to make informed buying choices, for example in relation to transparency over additional charges such as freight, delivery or postal charges. Even when these matters are clear in national laws, divergent consumer laws across the EU, including on the minimum level of information to be provided before a consumer commits to buy, reduce consumer confidence in shopping cross-border and dis-incentivise businesses from engaging in cross-border trade in the first place. The CRD is intended to consolidate EU consumer protection legislation on these matters, bringing clarity and lowering the burden of disparate information requirements for both businesses and consumers.

What are the policy objectives and the intended effects?

The UK Government is required to implement the CRD by December 2013 and to bring the measures into force by June 2014. It is clear that consumers need transparent accessible information on the nature and price of the product or service they are considering purchasing, if they are to make good choices. Research, such as that commissioned by OFT, suggests that lack of transparency may be used by unscrupulous businesses, to draw consumers to make less than optimal choices. Easier access to clear information about prices and reliable information on quality and post-contractual arrangements will ensure that consumers and honest businesses can enjoy the benefits of trade in the UK and across the EU.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

As an agreed European Directive, the do-nothing option is not available. As a maximum harmonisation Directive, there are few options, and little flexibility in implementation.

Option 1: To apply the pre-contractual information requirements in Chapter II of the CRD (pre-contractual information to be provided for on-premises sales) to contracts within the scope of the CRD and take advantage of the option to exempt ‘contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion’.

Option 2 Apply the pre-contractual information requirements in the CRD to contracts within scope of CRD but do not exempt day-to-day contracts with immediate performance.

Option 1 is our preferred option. It covers those contracts which are likely to be economically significant and where the consumer will not have the benefit of repeated experience to help judgement, whilst ensuring that transactions with which the consumer is very familiar are not subjected to disproportionate information requirements. Day-to-day transactions will in any case continue to be covered by the information provisions such as those set out in other consumer legislation, for example the Consumer Protection from Unfair Trading Regulations 2008 (CPRs), and Provision of Services Regulations 2009.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** July 2019

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.



Signed by the responsible SELECT SIGNATORY:

Date: 13/08/2012

Summary: Analysis & Evidence

Policy Option 1

Description: Apply pre-contractual information requirements in the CRD to contracts within the scope of the CRD and exempt contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: NA

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	NA	NA	NA

Description and scale of key monetised costs by 'main affected groups'

NA

Other key non-monetised costs by 'main affected groups'

- Costs of business compliance with new information requirements: These are not likely to be significant as the CRD has notable overlaps with information requirements contained in other legislation (notably Consumer Protection from Unfair Trading Regulations 2008, together with The Provision of Services Regulations 2009). The requirements which are genuinely new are very limited. and their effect is set out under the costs and benefits of option 1 below. They are difficult to predict with any certainty at this stage. We expect transition and familiarisation costs to be negligible and by implication difficult to quantify with any certainty. We plan to use the consultation and responses received from stakeholders in order to improve our understanding of the size of these impacts.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	NA	NA	NA

Description and scale of key monetised benefits by 'main affected groups'

NA

Other key non-monetised benefits by 'main affected groups'

- Consumers are able to make purchasing decisions which are better informed, particularly in relation to prices and after-sales services, having a better idea of the product or service they are purchasing. Therefore consumer detriment in the area is likely to fall.
- Fewer cases of disputes and by implication lower dispute resolution costs, where these arise as a result of issues related to pre-contractual information.
- Clarity and certainty in relation to minimum information requirements for both consumers and (particularly) businesses.
- Enhanced transparency in relation to pre-contractual terms facilitates competitive and efficient markets.
- Facilitates cross-border trade, benefiting both businesses and consumers, through greater harmonisation of pre-contractual information requirements across Member States.

Key assumptions/sensitivities/risks	Discount rate (%)	
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We have not been able to obtain estimates of the impact of the information requirements. However given that the requirements generally replicate information requirements in other consumer legislation we do not consider it likely that these are significant. We will include questions for stakeholders which should help inform our view on the likely impact of the proposals. Evidence will be sought during the consultation, particularly in relation to business costs in complying with the information requirements.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	NA	Benefits:	NA	Net: NA
			No	IN/OUT/Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Apply pre-contractual information requirements in the CRD to contracts within the scope of the CRD and do not exempt contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	NA	NA	NA

Description and scale of key monetised costs by ‘main affected groups’
 NA

Other key non-monetised costs by ‘main affected groups’
 The impacts of option one will also apply here (since option 2 only extends the scope of option 1). In addition, more small traders (newsagents, coffee shops, greengrocers etc.) will be caught. Applying the information requirements to familiar routine transactions may place an unnecessary burden on smaller traders in particular.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	NA	NA	NA

Description and scale of key monetised benefits by ‘main affected groups’
 NA

Other key non-monetised benefits by ‘main affected groups’
 Any incremental benefit this option brings, when compared to option 1, will be limited. Day-to-day transactions are unlikely to represent purchases where the consumer will derive much benefit from enhanced information.

Key assumptions/sensitivities/risks	Discount rate (%)
We have not been able to obtain estimates of the impact of the information requirements. However given that the requirements generally replicate information requirements in other consumer legislation we do not consider it likely that these are significant. We will include questions for stakeholders which should help with informing us on the likely impact of the proposals. Evidence will be sought in relation to business costs in complying with the information requirements.	

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NA	Benefits: NA	Net: NA	YES	IN

Evidence Base (for summary sheets)

This IA is part of a bundle. The bundle consists of a covering IA which sets out the general context, scope and aims of the CRD as a whole, followed by four 'sub-IA's, one on each of the key areas covered by the CRD, and which are highlighted in the bullets below.

The CRD sets out provisions broadly as follows:

Chapter II:

- Pre-contractual information requirements where traders sell on-premises

Chapter III:

- Pre-contractual information requirements and cancellation rights for consumers where traders sell at a distance
- Pre-contractual information requirements and cancellation rights for consumers where traders sell off-premises

Chapter IV:

- 3 additional requirements applicable to all sale and services contracts, however sold.

This IA relates to Chapter II provisions for traders selling on-premises.

For convenience, the covering IA is attached as an annex to each of the individual IAs.

Problem under consideration

1. Consumers are not always provided with the information they need to make informed buying choices. Specific areas of consumer detriment are not adequately addressed in current EU law, for example in relation to freight, delivery or postal charges. These issues become more prevalent when considering that consumers do not always read all the terms in contracts, raising the likelihood of disagreements with traders.

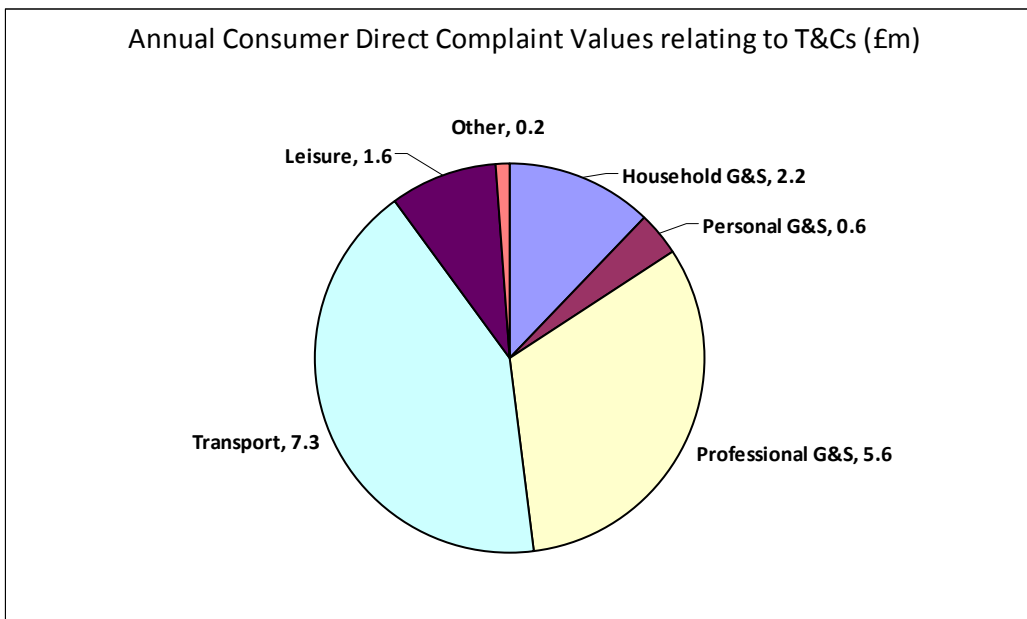
2. Consumers may be put off from reading the entirety of contracts due to the complex and/or lengthy language contained therein. A survey conducted by the OFT on consumer contracts found that most buyers do not read contracts in detail, and even if the information is not buried in the small print, how it is presented may nevertheless adversely affect the consumer's ability to choose well.¹ It is clearly not enough for traders to give information, and pay no attention to how it is given. Information must be clear and comprehensible to be of most value.

Rationale for intervention

3. The UK Government is required to implement the CRD by December 2013 and to bring the measures into force by June 2014. It is clear that consumers need transparent accessible information on the nature and price of the product or service they are considering purchasing, if they are to make good choices, with research in the area supporting this view. For example, research commissioned by the OFT, suggests that lack of transparency may be used by some businesses, to draw consumers to make less than optimal choices, and that presenting all relevant information early in the buying process would stimulate competition.² Easier access to clear information about prices and reliable information on quality and post-contractual arrangements will discipline the market and aid consumers.

4. Evidence suggests that consumer detriment arising from issues relating to contractual terms is significant. Consumer Direct (CD) acts as an initial gateway for consumers seeking advice relating to a wide range of consumer issues. CD records consumer complaints according to the products or service the call relates to and also the broad issue that the consumer raises. Between 2009 and 2010, CD received 14,669 complaints relating to contractual terms and conditions. Chart 1 below shows the value of these complaints as reported by the individual consumer and categorised by broad sector. The average annual value of complaints relating to contractual T&Cs is just over £17m. Although we cannot reliably estimate the proportion of these complaints likely to benefit from the CRD proposals on informational requirements, the changes are likely to improve consumer awareness prior to entering into contractual obligations.

Chart 1: CD average annual complaints

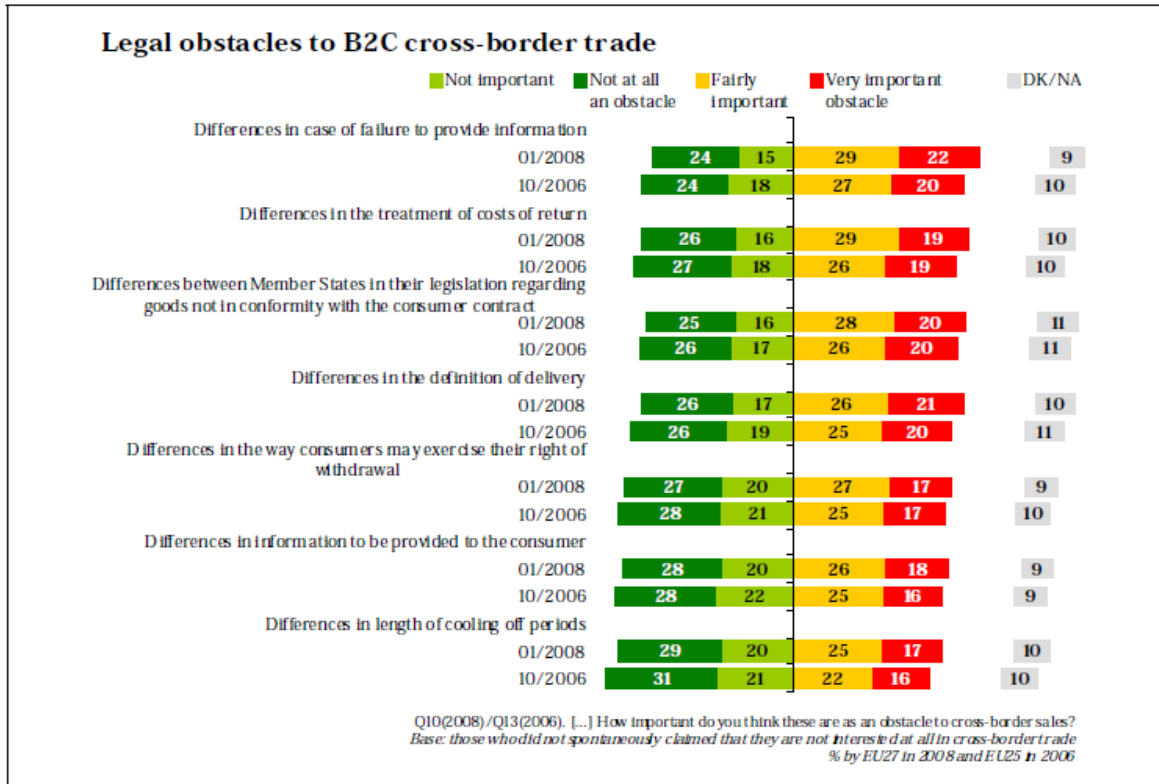


¹ OFT (2011), 'Consumer Contracts', Available here: http://www.of.gov.uk/shared_of/market-studies/consumercontracts/oft1312.pdf.

² Huck, S., Zhou, J., Duke, C. (2011), 'Consumer Behavioural Biases in Competition', a report prepared for the OFT, available here: http://www.of.gov.uk/shared_of/research/OFT1324.pdf.

5. The EC has found that differences in information requirements can act as a significant barrier to cross-border trade between businesses and consumers. Surveys conducted in 2006 and 2008 found that differing information requirements are a major source of impediment to cross-border trade, with businesses for example being reluctant to sell or set-up in other European countries.³ Importantly, issues around information requirements are increasingly seen as a barrier to cross-border trade.

Figure 1: Obstacles to cross-border trade



Source: Flash Eurobarometer 224 (2008)

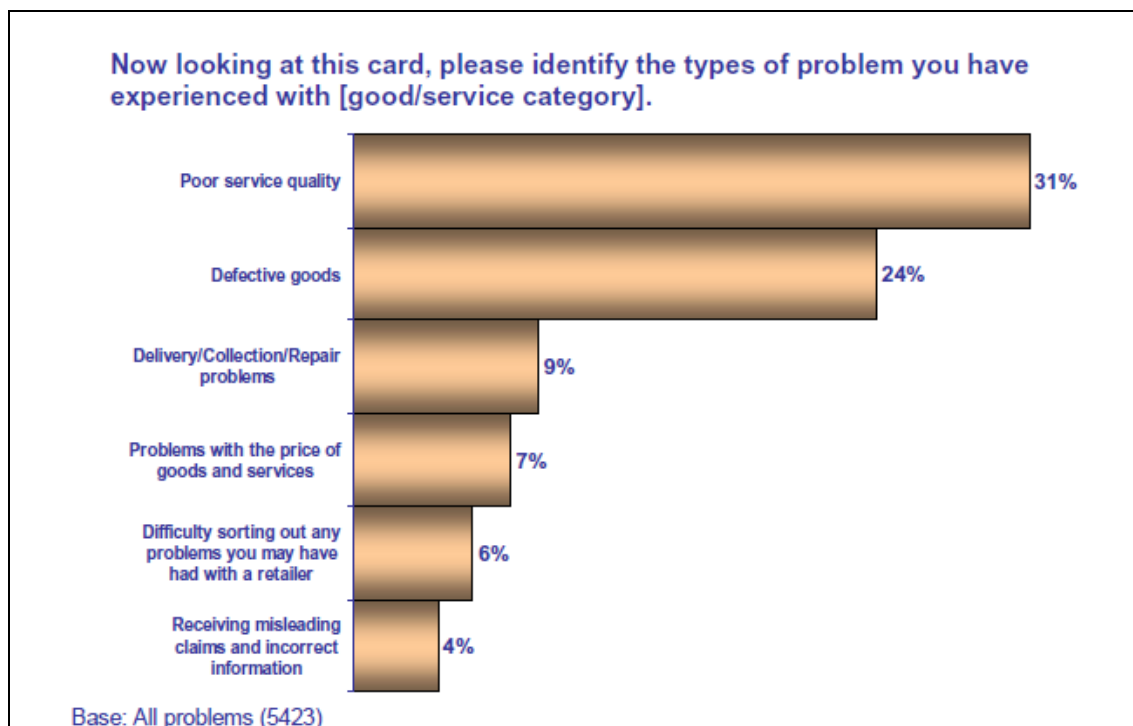
6. The EC has also found that consumers are generally unaware or confused about the pre-contractual informational requirements by which businesses must abide. For example 56 per cent of respondents agreed or strongly agreed that the information provided is generally unclear and 50 per cent said that the level of information was insufficient. Circa 47 per cent stated that no information was provided at all. Focus group discussions with consumers revealed that consumers generally do not read contractual terms and conditions, implying that they are generally very poorly informed as to their rights and obligations.

7. An OFT survey of consumer problems also found evidence of consumer detriment arising from informational problems.⁴ As chart 2 below shows, 4 per cent of consumers stated that the consumer issues they faced arose as a result of receiving misleading or incorrect information.

³ EC (2008), 'Proposal for a Directive on Consumer Rights: Annex 2', Available here: http://ec.europa.eu/consumers/rights/docs/proposal_annex_en.pdf.

⁴ OFT (2008), 'Consumer Detriment: Assessing the Frequency and Impact of Consumer Problems with Goods and Services', Available here: http://www.of.gov.uk/shared_of/reports/consumer_protection/oft992.pdf

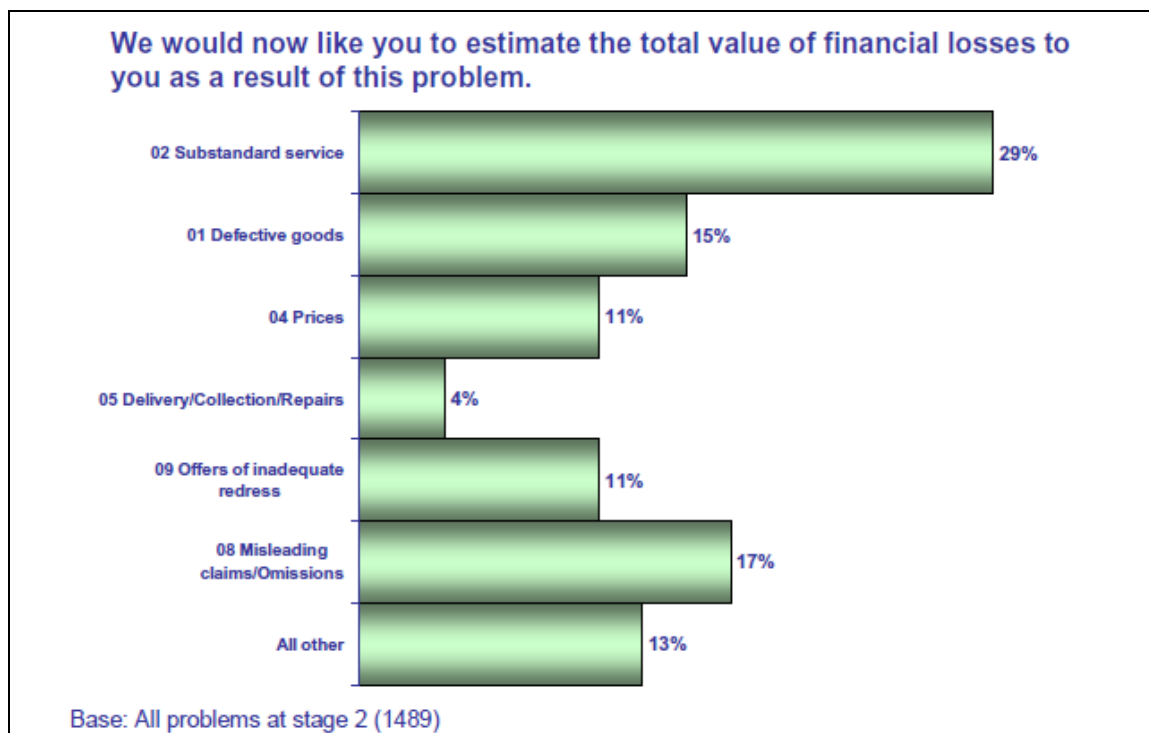
Chart 2: Consumer problems by source



Source: OFT consumer detriment report (2008)

8. Crucially, the value of the detriment arising from problems related to misleading or incorrect information is significant, accounting for 17% of the value of consumer problems. This indicates that the degree of detriment per consumer problem, as a result of informational issues is relatively greater than the other categories. Therefore improvements in consumer information, including pre-contractual information, is likely to help mitigate a proportion of this detriment.

Chart 3: Consumer problems by value



Source: OFT consumer detriment report (2008)

Policy objective

9. High level of consumer protection and clarity and consistency of information to allow consumers to make informed choices.

- Transparency should drive competition and growth, allowing those businesses offering the best value to flourish.
- Clarification and greater consistency in information obligations on traders should aid understanding, legal certainty, increase compliance and decrease compliance costs
- The overall CRD package is aimed at facilitating cross-border trade, benefiting both consumers and businesses, through greater harmonisation of consumer law across EU Member States.

Key requirements for on-premises contracts (Article 5 of the CRD)

10. Before consumers are bound by a contract concluded on the trader's business premises, the trader has to provide the consumer with the following contractual information, **in a clear and comprehensible manner**:

- The main characteristics of the goods or services being purchased;
- Information on the trader, such as business name, address and telephone number;
- The total price of the goods or services including taxes, or where the nature of the product or services means that the total price is not easily calculated, the way the price is to be calculated, together with information about any additional freight, delivery or postal charges;
- Details on payment, delivery and performance arrangements and complaint handling;
- A reminder of a legal guarantee of conformity for goods and conditions for after-sales services or commercial guarantees;
- The duration of the contract or where indeterminate, conditions for terminating the contract.
- Where relevant the functionality and technical protection measures for digital content;
- Any relevant interoperability of digital content with hardware and software that the trader is aware of or would be reasonably expected to be aware of.

11. The above are also applicable to contracts for the supply of water, gas and electricity, where these are not limited volume sales, for district heating and for digital content not supplied on a tangible

medium, such as digital downloads. (Water, gas and electricity of limited volume and digital content on a tangible medium are all treated as goods and so the above requirements will apply as a matter of course.)

12. Description of options considered (including do nothing)

As an agreed European Directive, the 'do nothing' option is not available.

Option 1: To apply the pre-contractual information requirements in the CRD to contracts for goods, services, digital content and utilities, within the scope of the CRD and take advantage of the option to exempt "contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion" (Article 5 (3)).

Option 2: To apply the pre-contractual information requirements in the CRD to contracts for goods, services, digital content and utilities, within the scope of the CRD and do not exempt "contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion".

13. Discarded policy options

While the CRD is a maximum harmonisation Directive, there are a small number of provisions where Member States (MS) are given discretion on their application. One of those is the option to exempt day-to-day transactions mentioned above but there is another:

- Article 5(4) which states that MS may adopt additional informational requirements to those listed above, provided they do not conflict with other EU legislation, and apply these to the contracts covered by the CRD. Therefore MS have the opportunity to extend the minimum pre-contractual information requirements as appropriate.

It is the view of the Department for Business, Innovation and Skills that this would not be warranted and that the level of information required in the CRD, together with information obligations as set out in the Consumer Protection from Unfair Trading Regulations 2008, and the Provision of Services Regulations 2009, provide sufficient transparency to allow consumers to make informed choices.

Costs and Benefits of Option 1

14. Of the information requirements listed in Article 5, only the latter three, on reminder of legal guarantee, on functionality and interoperability of digital content, and on duration of the contract, and conditions for terminating the contract are notably new. The others already have comparable provisions in the Consumer Protection from Unfair Trading Regulations 2008, and Provision of Services Regulations (POS) 2009⁵. **Therefore we would not expect that the requirements would pose a significant additional burden on businesses, particularly when noting that the Directive allows for the exemption of day-to-day transactions, which are performed immediately at the time of completion.** Under option 1, we would take advantage of this exemption, in order to exclude transactions where the consumer is far less likely to require the level of detail provided for in the information described above, prior to the contract conclusion. While we cannot estimate with any certainty the cost of these requirements at this stage, it is noteworthy that the information requirements are in the main straightforward and in line with requirements contained in other consumer legislation.

15. There is, in the CRD, a new explicit requirement to describe, if relevant, the functionality and interoperability of any digital content. Although a new explicit requirement, such information would appear necessary to enable the consumer to select appropriate digital products, and as such is likely to already be supplied as a matter of routine by the majority of businesses. This assumption will be tested in the consultation. The provision that information on interoperability is limited to that which the trader could reasonably be expected to be aware of, should help reduce any potential burden that such a requirement might otherwise impose.

⁵ Retail is classed as a distributive service and covered by the POS 2009

16. It is our view that the incremental impact on business costs of the changes is likely to be small, something reflected in comments⁶ from business which recognise the parallels between the CRD requirements for on-premises contracts and those in the Unfair Commercial Practices Directive⁷. As highlighted above⁸, there are very limited additional requirements arising from the CRD provisions. Therefore, we would expect the impact on business to be minimal, including transition costs⁹ and the costs of familiarisation¹⁰ for business. We plan to use the consultation to obtain estimates of the costs of this option, as well as the incremental impact arising from the greater scope of the proposals under option 2.

17. The EC in its own impact assessment report finds that the common set of rules on the information to be provided to the consumer will result in considerable benefits arising in the way the internal market works, through facilitating cross-border trade. The EC also finds that improvements are also likely to arise in relation to minimising the legislative burden on business (through simplified consumer legislation across Member States and higher legal certainty) and also resulting in higher consumer welfare (through improved access to pre-contractual information).¹¹

18. We acknowledge that we have not been able to obtain estimates of the impact of the information requirements. However given that many of the requirements are already imposed in other consumer legislation we do not consider it likely that these are significant. The forthcoming consultation should help inform us of the likely impact of the proposals. Evidence will be sought in relation to business costs in complying with the information requirements.

Costs and benefits of option 2

19. Article 5(3) of the CRD allows Member States not to apply the article 5 information provisions to day-to-day transactions where the contract is performed immediately (e.g. the purchase of a cup of coffee). Thus, as an alternative to the preceding option, we could also apply the information requirements to day-to-day contracts and which are performed immediately at the time of conclusion.

20. Day-to-day transactions will, by their nature, be familiar to consumers and will usually be for lower value contracts. Whilst there is potential benefit from improved clarity and certainty arising from the additional information requirements in some cases, it seems unlikely that the information provisions will be necessary or useful in the vast majority of scenarios. Article 5 states that the information need only be given if it is not already apparent from the context. The nature of most day-to-day on-premises purchases performed immediately, means that such information *will* be obvious. (The consumer buying a coffee knows it's a coffee, knows the location of the trader, can see the price of the coffee and issues such as duration of contract and interoperability are not relevant). Requiring businesses to review all such sales, for compliance purposes, will incur costs, without notable compensatory benefits to consumers.

21. We cannot estimate with any certainty the incremental costs and benefits of option 2 (over option 1) for the following reasons:

- The new information requirements largely replicate requirements found in other consumer legislation.
- It is difficult to quantify with any reasonable certainty day-to-day transactions, meaning it is difficult to quantify the proportion of additional transactions that the information requirements are likely to impact on.
- The benefits of the additional information requirements are likely to be extremely difficult to estimate as they depend on the context of the sale, which will be infinitely variable.

22. An indication of the scope of the proposal can be obtained from figures by the UK Payments Council on cash transaction values. While this approach clearly misses out on the number of transactions using other methods of payments such as cheques and debit cards, it is a useful guide to the scope of the

⁶ Consultation on CRD proposal (Nov 2008 – Feb 2009) to inform negotiations

⁷ Implemented in the UK by the Consumer Protection from Unfair Trading Practices Regulations 2008

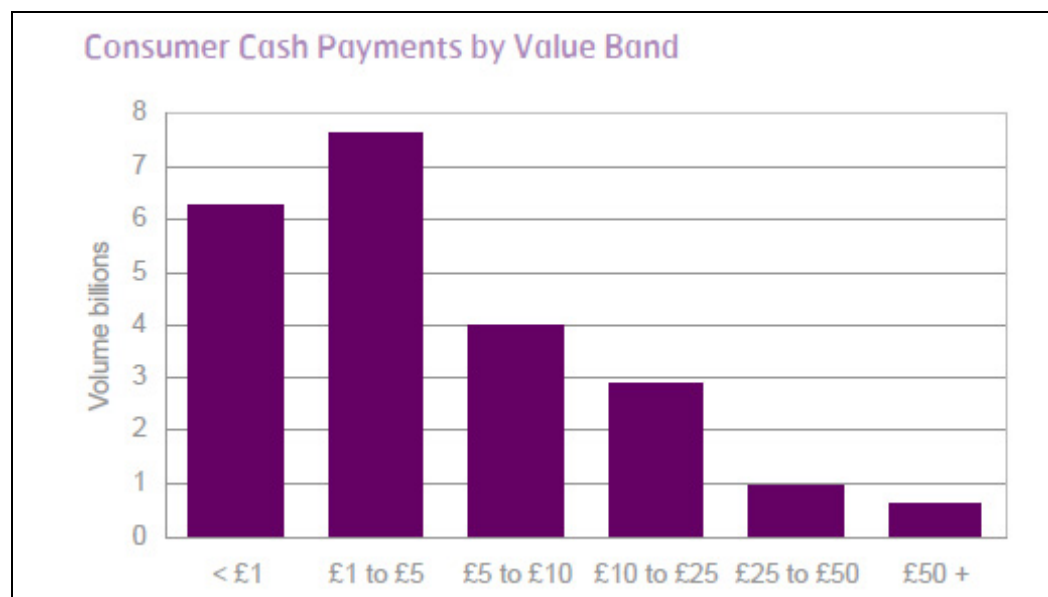
⁸ See paragraph 14.

⁹ Transition costs are likely to be in the form of reprinting advertisements and agreements due to the change in the pre-contractual information requirements.

¹⁰ Familiarisation costs are likely to be costs such as legal advice of the implications of the proposals or staff training costs.

proposals. We would expect day-to-day transactions to be routine purchases and typically of a lower value. While day-to-day transactions are likely to vary in terms of value, it is likely that the majority of day-to-day transactions reside in the categories below the £50+ band in Chart 4 below. It is clear that the imposition of the pre-contractual information requirements even on day-to-day transactions is likely to impact on a significant number of transactions, implying that while the information requirements might impose a very small burden on each transaction, they are likely to affect a significant number of transactions.

Chart 4: Cash transaction volumes by value band



Source: Payments Council

23. The costs of Option 2 could, therefore, be significant, whilst the benefits would probably be low and would be speculative. In the absence of strong persuasive evidence emerging from the consultation process, the Government is, therefore, minded not to proceed with this option.

Rationale and evidence that justify the level of analysis used in the IA (proportionality approach):

24. We have drawn, where possible, on existing research and figures. However, the relatively small change in obligations for traders, and the generally straightforward nature of additional information requirements, resulting from this option, should mean that costs are not significant. The forthcoming consultation will seek to gather more concrete information on this aspect.

Risks and assumptions:

25. We acknowledge that we have not been able to obtain estimates of the impact of the information requirements. However given that the requirements generally replicate information requirements in other consumer legislation we do not consider it likely that these are significant. We will include questions for stakeholders which should help with informing us on the likely impact of the proposals. Evidence will be sought in relation to business costs in complying with the information requirements.

Direct costs and benefits to business calculations (following OIOO methodology):

26. Having regard to the proportionality approach in impact assessment design, we have not quantified the impacts of the proposals on business at this stage. We will seek information during and through the consultation process to enable estimates to be made. As described above, the new information requirements largely replicate the information requirements in other consumer protection legislation, implying that the costs to business are likely to be minimal.

¹¹ See page 30 of the Commission's impact assessment report, which is available here: http://ec.europa.eu/consumers/rights/docs/impact_assessment_report_en.pdf

Summary and preferred option with description of implementation plan.

27. In summary, we propose to apply the pre-contractual information requirements in the CRD to contracts within the scope of the CRD and take advantage of the option to exempt “contracts which involve day-to-day transactions and which are performed immediately at the time of their conclusion”. Option 1 is, therefore, our preferred option. It strikes the right balance between consumer protection in relation to significant contracts, while excluding smaller contracts, where consumers, by the day-to-day nature of the transaction, will already be familiar with the information. For all transactions not covered by this option, the requirements of the Consumer Protection from Unfair Trading Regulations (CPRs) and Provision of Services Regulations 2009 will continue to apply, to ensure consumers receive all relevant information. This approach seems to us justified on the basis that, ignoring the exemption could potentially bring additional burdens on business, without evidence of notable benefit to consumers. The forthcoming consultation will seek further views on this approach.

28. Implementation is likely to be effected by copying out of the relevant provisions of the Directive (provided of course that we are satisfied that copying out is sufficiently clear), through section 2.2. of the European Communities Act 1972. Accompanying guidance will help businesses and consumers ensure that they clearly understand any new obligations which may apply. Legislation must be adopted and published by 13 December 2013, and should come into force on 13 June 2014.

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