

European Union consumer protection: legal aspects. Green paper

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The Green Paper set out a number of options and questions on the future of the regulation and enforcement of consumer protection. It suggested the idea of developing a framework directive on fair commercial practices. It also suggested the development of a legal instrument for cooperation between enforcement authorities. The Green Paper received a wide response from business, consumer organisations and national governments and agencies. The consultation identified a broad consensus along the following lines: -a majority of respondents accept the case for reform of EU consumer protection legislation. The current situation is holding back the internal market for consumers and for business. -a majority of respondents expressing a preference wish to proceed on the basis of a framework directive. -a large majority expressing a preference, endorsed the Commission's idea of developing a legal instrument for cooperation between national enforcement bodies. This communication sets out an action plan for further consultation with the Member States and stakeholders. As a first step, an outline of the issues to be covered in a framework directive is attached in an annex. The paper looks at possible contents of a directive and investigates codes of conduct, non-binding guidance and stakeholder participation. A framework directive should bring about, inter alia: -maximum harmonisation with a high level of consumer protection; -simplification and, where possible, deregulation of existing provisions should be prioritised; -application of the principle of mutual recognition and control by country of origin (Internal Market principles); -on the one hand, legal certainty. On the other, the legislation should be time-proof and technology-neutral as possible, avoiding overly prescriptive rules. -the scope of the legislation should be based on the wider concept of "fair commercial practices" and not only on the narrower concept of "misleading practices." It should also be phrased in terms of actions that are unfair - i.e, an obligation not to trade unfairly rather than a duty to trade fairly. -it should be based on a general clause, which could consist of two core elements: the unfairness of the practice; and a "consumer detriment test." The general clause would have to be substantiated by a number of specific rules (the "fairness/unfairness categories") concerning different stages of the business to consumer relationship. A non-exhaustive list of examples to illustrate the general clause would be drawn up. -possible elements of fairness/unfairness categories include a prohibition on business from engaging in misleading commercial practices, and a duty to disclose to the consumer all material information. The primary focus should be on unfair practices that cause detriment to the interests of consumers as a whole, rather than individual cases, in line with existing practice. Enforcement procedures are discussed. Reactions to the communication should be sent to the Commission no later than 30 September 2002.