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Assessment of the *e*-Confidence initiative

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By

Carlos Almaraz

Adviser, Company Affairs Department

David Coleman

Adviser, Company Affairs Department

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INTRODUCTION

On 3 May 2000, a process called the “e-Confidence initiative” was launched by the European Commission in order to counter the lack of consumer confidence in electronic commerce¹. Consumers’ lack of confidence in the on-line world available via the Internet is a serious stumbling block preventing e-commerce from unleashing its potential.

In this document UNICE seeks to provide an assessment of a novel process which brought together, in an unprecedented forum, business, consumers and public authorities to agree on ways to boost consumer confidence for the benefit of all. Particular attention will be drawn to the breakthrough agreement reached by UNICE and BEUC, the European Consumers’ Organisation².

Preceded by a documented and first-hand description of the process, the subsequent assessment contained in this paper draws the conclusions and highlights the lessons to be learnt from this particular experience which opens up new possibilities for industry and consumer collaboration in the future.

BACKGROUND HISTORY: WHERE DID IT ALL START?

A special European Council was held on 23 – 24 March 2000 in Lisbon, under Portuguese presidency, to agree a new strategic goal for the European Union in order to strengthen employment, economic reform and social cohesion as part of a knowledge-based economy: “*to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion*”³.

Part of the strategy outlined in the conclusions of the above-mentioned European Council aimed at enabling the transition to “*a digital, knowledge-based economy*”, “*an information society for all*”⁴. Heads of State and Government signalled that, in order for Europe to reach its “*full e-potential*” and due to the speed of technological change, more flexible regulatory approaches might be required. As part of the European Council’s requests, it called on the Commission and Council to “*consider how to promote consumer confidence in electronic commerce*”⁵.

An indication regarding what the Commission considered a flexible regulatory approach can be found in the initial Commission eEurope initiative launched in December 1999. In this document, under the section entitled “*accelerating e-commerce*”, the Commission states⁶:

“In general terms, regulation of e-commerce should be limited because of the speed of change and the implications of globalisation. More emphasis must therefore be placed on the role of self-regulation and “co-regulation”, especially in helping to build consumer confidence, (...)”⁷

In this context, Commissioner David Byrne, responsible for health and consumer protection in the European Commission, launched what became known as the “e-Confidence initiative” which sought

¹ The take-up of electronic commerce has not been as extensive as originally foreseen in the late nineteen nineties, representing less than 1% of total retail sales with only a minority of Internet users (less than 5%) buying regularly on the Internet. See Eurobarometer, October 2000 *in* Commission Communication COM(2001)140 on Impact and Priorities, 13.3.2001, p. 9.

² Bureau Européen des Unions de Consommateurs or European Consumer Organisation : <http://www.beuc.org>

³ Presidency conclusions, Lisbon European Council – 23 and 24 March 2000, available at the following hyperlink: <http://ue.eu.int/Newsroom/LoadDoc.asp?BID=76&DID=60917&LANG=1>.

⁴ These conclusions were prompted by the Commission’s initiative launched in December 1999, entitled “eEurope, An information society for all, Communication on a Commission initiative for the special European Council of Lisbon, 23 and 24 March 2002”; available at the following hyperlink in PDF format: http://europa.eu.int/information_society/eeurope/news_library/pdf_files/initiative_en.pdf

⁵ See footnote 3, paragraphs 10 and 11

⁶ See footnote 4, p. 9.

⁷ Emphasis added

to “**promote consumer confidence in electronic commerce**” through what he believed to be a “**flexible regulatory approach**”.

e-CONFIDENCE INITIATIVE FIRST STEPS AND SCOPE

Commissioner Byrne, on the basis of “widespread recognition that consumer trust is a key condition for the take-off of e-commerce in Europe”, took the initiative of inviting to a meeting on 3 May 2000 a certain number of “key stakeholders”⁸ with an interest in e-commerce in the EU⁹.

The Commissioner stated in his invitation that most consumers are failing to embrace the opportunities of e-commerce because they consider this more risky than buying from a bricks-and-mortar business. He underlined that, if consumer confidence was not boosted in the medium of e-commerce, there was a risk that business to consumer (hereafter B2C) would not realise its full potential.

Business was already aware of the lack of confidence on the part of consumers being to a certain extent an impediment to the development of B2C e-commerce transactions. Businesses understood at an early stage that market-based mechanisms to foster consumer confidence were needed to complement and reinforce underlying regulation applicable to the medium. Business had already actively engaged in developing codes of conduct and their related trustmarks¹⁰.

There is a wide variety of “consumer confidence boosting schemes”: some are single issue schemes, for example focussing only on privacy or redress, while others address the full range of consumer concerns. Some are commercial undertakings; others operate on a non-profit basis. Some cover all of e-commerce; others are sector-specific. Some codes are issued by governments¹¹ while others purely by the private sector¹². The existing schemes can also differ in geographical coverage.

Although Commissioner Byrne welcomed the diversity and proliferation of schemes, believing that competition in this emerging market would “*weed out the ineffective and confirm those that work best in the interests of business and consumer*”, he also states that “*in the meantime there is a real risk that business and consumers alike may be overwhelmed by the competing claims on their confidence*”, (...) “*the trick is to provide business and consumers with a way of identifying schemes that meet certain standards of acceptability and with measures to evaluate or compare competing schemes.*”

FIRST WIDER STAKEHOLDER GROUP MEETING

The first meeting of what became known as the “Wider Stakeholder Group” took place on 3 May 2000 in the solemn setting of the meeting room of the Breydel building in Brussels where the twenty Members of the European Commission meet every week.

Commissioner Byrne, in his introductory speech, outlined his “three-pronged” approach to ensure consumer confidence in B2C e-commerce: (1) prevent problems arising through codes of conduct and trustmark initiatives, (2) tackle problems quickly and cheaply when they do arise – through “Alternative Dispute Resolution mechanisms” (hereafter ADRs) and (3) provide a safety net of last resort through the legal machinery of the Brussels and Rome Conventions. This latter point was not addressed any

⁸ Participating stakeholders: Telefonica, Ford, Intel, Test Achat (Belgian Consumer organisation, member of BEUC), Daimler Chrysler/GBDe (Global Business Dialogue on e-commerce), AOL, Microsoft, ABN AMRO Bank, Barclays, TrustUK, UNICE, France Telecom, Centro de Arbitragem de Lisboa, VISA, BEUC (European Consumers Organisation), Vivendi, EUROISPA (European Internet Service Providers Association), Hewlett Packard/GBDe, Eurochambres, Eurocommerce, ICRT (International Communications Round Table), FEDMA (Federation of European Direct Marketing), Clicksure, ECP.NL (Electronic Commerce Platform Nederland), ICC (International Chamber of Commerce), Direct Line Services, Procter & Gamble, Division System Planning.

⁹ Letter from Commissioner Byrne to UNICE and other stakeholders, convening a meeting for 3 May 2000.

¹⁰ A trustmark, similar to a “quality seal” conveys the message that a certain business has typically agreed to adhere to a set of common best practices, principles or guidelines and to provide redress mechanisms for a customer. The trustmark may involve an assessment of the merchant’s business practices prior to granting the mark.

¹¹ E.g.: in Australia see “Building Consumer Sovereignty in Electronic commerce – A Best Practice Model for Business” available at the following link: <http://www.ecommerce.treasury.gov.au>

¹² E.g.: in the United States see “Truste - Internet Web Site Privacy Principles”, available at the following link: <http://www.truste.org>

further during the meeting and participants concentrated instead on two key market-based methods that foster e-Confidence: codes of conduct and their related trustmarks and ADRs. In his speech, the Commissioner proceeded to outline what he thought stakeholders should agree upon: e.g. identify a set of general principles to be respected by all codes and provide a recognisable EU logo (to be incorporated in participating Trustmark Schemes thereby creating a recognisable common denominator in the level of protection afforded to consumers).

In his opening remarks, Commissioner Byrne stated that he was not proposing that the Commission regulate in this area. His suggestion was that general principles for codes of conduct be drawn up through a “co-regulation” initiative bringing together the key business and consumer stakeholders. He also stated that it would be useful if the Commission were to provide support in the form of chairmanship, secretariat and “some endorsement of the final outcome, possibly through a **Commission recommendation**”.

Regarding the European Commission’s role in the process, stakeholders present at the meeting agreed that, the Commission should not act purely as a ‘legislator’ in this process but instead as a facilitator by helping stakeholders to reach a consensus during future discussions.

CORE GROUP OF STAKEHOLDERS

A smaller 'core' group of those stakeholders was invited by the Commission to clarify the issues and, where there was consensus, provide a concrete basis for discussion, in the form of draft principles and guidelines, which, along with different options, will be submitted for discussion to the Wider Group.

The move from a Wider Stakeholder Group to the formation of the Core Group involved a certain selection process. This selection was made solely by the European Commission on the basis of criteria that were not all made public. The only hint of the criteria used for the selection of the core group is stated in the minutes of its first meeting on 5 June 2002¹³:

“ (...)– Members of the Core Group were asked to act, as far as possible, in a personal capacity. The criteria for choosing them had been partly dictated by their personal experience and involvement in several forums linked to e-commerce. The Wider Stakeholder Group and the e-Confidence Forum could be used to express positions on behalf of any of the groups they represented.”¹⁴

Thus it appears that personal experience and involvement in several forums linked to e-commerce “partly” dictated the Commission’s choice of participants whose role was to discuss and draft. Unfortunately there was a lack of transparency regarding the other criteria used for dictating the Commission’s choice.

Regarding the working methods of the Core Group, three possibilities were explored: meetings, e-mail and a website called the e-Confidence Forum¹⁵. The Core Group met regularly and at a demanding pace: almost every two weeks (except during the month of August). According to the available documents¹⁶, ten meetings were held starting 5 June 2000, ending 15 November 2000¹⁷. This pace implies not only a high level of commitment from participants but also a commitment of company/organisation resources. The assessment and drafting of the participants’ different contributions was extremely time-consuming. The use of websites as a forum for public contributions to the on-going discussions is a welcome initiative. However, it would benefit from being designed in

¹³ Minutes of all Core Group meetings are available on the e-Confidence Forum website: http://econfidence.jrc.it/default/show gx?Object.object_id=EC_FORUM0000000000000052

¹⁴ Emphasis added

¹⁵ Maintained by the “Joint Research Council” or JRC based in Italy: <http://econfidence.jrc.it/>. The Joint Research Centre is the European Union’s scientific and technical research laboratory and an integral part of the European Commission. It is a Directorate General, providing the scientific advice and technical know-how to support EU policies.

¹⁶ See footnote 14

¹⁷ Although omitted from the e-Confidence Forum (see footnote 14), the tenth and last meeting of the Core Group was held on 15 November 2000. During this meeting, it appeared that there were several issues where the Core Group did not reach a consensus. On the outstanding points, the Commission left until 22 November for participants to submit suggestions, after which the next meeting of the Wider Stakeholder Group would be convened.

a more “user-friendly” manner and more publicity made regarding its existence through, for example, the European Commission doing a press launch including a demonstration of the website.

The European Commission acted as Secretariat to the Core Group: convening and hosting meetings, preparing the minutes of the meetings, maintaining the website, etc. In this respect, the Commission acted as a ‘facilitator’. When questions were raised concerning the process and the methodology used in the process, the working methods for the exercise were considered “novel”¹⁸ and the process was considered a “learning” process.

The drafting work was distributed among participants and each contribution was then exchanged by e-mail and discussed at the following meeting. Despite significant progress, it appeared that there were issues on which no consensus could be reached. Indeed, there were divergences between BEUC, the only consumer representative body present in the meetings, and the industry representatives, in addition to a certain amount of dissension among the industry representatives themselves.

The outcome of the Core Group consisted of four documents covering first, general principles for generic codes of practice for the sale of goods and services to consumers on the Internet; second, specific guidelines for the interpretation of the general principles; third, guiding principles for ‘Approval and Monitoring’ bodies for e-commerce codes of conduct; and fourth, options for ‘Approval and Monitoring’ of e-commerce codes of conduct¹⁹. The documents reveal a certain lack of consensus among participants in the Core Group. As is apparent from the minutes of the Core Group meetings, the main ‘sticking’ point was agreeing on an appropriate Approval and Monitoring mechanism or the enforcement system which would be the means for ensuring that businesses and code owners who subscribe to these agreed criteria actually respect them in practice.

Although the final Core Group documents were produced before end of 2000, the final version was made available on the e-Confidence Forum on 29 March 2001²⁰, in view of the next and final meeting of the Wider Stakeholder Group.

At a high-level conference on the e-Economy in Europe on 2 March 2001 in Brussels²¹, Commissioner Byrne hinted at his disappointment regarding the outcome of the Core Group discussions:

“ (...) Not alone are there difficulties about the texts on general principles and guidelines, there are also differences of opinion about how codes of good practice should be approved and monitored.

“I have to say that, given the state of e-Confidence that I described earlier, I am clearly disappointed at the pace of progress on reaching agreement. I would have thought that the very existence and scale of the e-Confidence barrier would have provided sufficient impetus for all concerned to put sectional or ideological differences to one side.

“Surely it is in the interests of consumers to have confidence in and access to the clear potential of the new economy? And, surely it is in the interests of business to assure the vehicles for unleashing that potential?

“It seems clear to me that if the answer to either of these questions is in the negative, then, the confidence barrier cannot be broken.

*“This is a fundamental challenge to the stakeholders who have participated in my e Confidence initiative. The time is fast approaching to **get off the fence**. (...)”²²*

¹⁸ See in particular “Minutes of 6th Meeting-13 September 2002” available at: http://econfidence.jrc.it/default/show_gx?Object.object_id=EC_FORUM0000000000000052

¹⁹ Available on the eConfidence Forum at the following link: http://econfidence.jrc.it/default/show_gx?Object.object_id=EC_FORUM00000000000000F83

²⁰ *Id.*

²¹ Speech by David Byrne, European Commissioner for Health and Consumer Protection, The eConfidence barrier – New regulatory models - Conference on the e-Economy in Europe – European Parliament, Brussels, 2 March 2001, available at: http://europa.eu.int/comm/dgs/health_consumer/library/speeches/speech86_en.html

²² Emphasis added

UNICE “OFF THE FENCE”

By letter dated 27 March 2001, Commissioner Byrne convened the second and last meeting of the Wider Stakeholder Group for 23 April 2001 in order to assess the work achieved by the Core Group and to discuss the key issues where no consensus was reached. The Commissioner identified the major outstanding issues to be addressed in the Wider Group as the following:

- Whether the specific guidelines interpreting the general principles are necessary;
- Whether there should be an independent approval and monitoring system and if so, how this should be organised - in particular, the roles of national bodies and/or any EU-level body;
- What could be the respective roles of industry, consumer associations and public authorities and whether and how they should be involved in any approval and monitoring system.

UNICE, as a participant in the Wider Group, and through discussions with certain participants in the Core Group and with the Commission services mainly responsible for the e-Confidence initiative (i.e. Health and Consumer Protection Directorate General or “DG SANCO”), understood that, given the lack of consensus, the initiative was in a ‘deadlock’ with no apparent agreement in view.

UNICE believed that it was essential to make this initiative a success and to make clear to the European Commission that industry was committed to boosting consumer confidence in the on-line environment and that a Commission ‘hard law’²³ intervention was neither welcome nor needed.

In this context UNICE took upon itself to seek alignment among business organisations regarding the above-mentioned outstanding issues. In parallel, UNICE initiated discussions with the European consumer organisation, BEUC, to agree on a basis for future discussions.

Firstly, UNICE held several meetings with other business organisations²⁴ and managed to reach an aligned position²⁵ prior to the Wider Stakeholder meeting to be held on 23 April 2001²⁶.

Secondly, UNICE initiated discussions with BEUC to share views on the progress of the e-confidence initiative. Dialogue between UNICE and BEUC mainly focused on the basis of a UNICE proposal for Approval and Monitoring (two out of the three questions raised by Commissioner Byrne in his invitation letter to the meeting on 23 April). BEUC welcomed the proposal and was very positive, stressing that the aforementioned proposal was a good basis for further discussion and that dialogue and cooperation between consumers and business was essential to making the process a success. Nevertheless both parties agreed that most points of the proposal needed to be “fleshed out” at a later stage. BEUC expressed its intention to support UNICE’s main guidelines to be voiced at the next meeting of the wider group of stakeholders.

FINAL WIDER STAKEHOLDER MEETING

The meeting was convened by Commissioner Byrne to address the issues that remained unresolved and to achieve tangible progress.

²³ ‘Hard law’ is to be understood in this context as meaning a regulatory instrument issued by public authorities (in this instance the European Commission) which is binding on those to whom it is addressed (for example a Directive or a Regulation. See Article 249 EC) as opposed to ‘soft law’ which is not binding (for example a recommendation).

²⁴ International Chamber of Commerce (ICC), Federation of European Direct Marketing Associations (FEDMA), Global Business Dialogue on e-commerce (GBDe), Eurochambres, Eurocommerce.

²⁵ “Business comments on the core-group documents in view of the next Wider Stakeholder Group meeting on 23 April 2001”, 20 April, available at the following link: <http://212.3.246.117/Common/GetFile.asp?ID=13611&logonname=quest&mfd=off>

²⁶ Supported by ICC, GBDe, FEDMA and Eurochambres.

The discussions dealt mostly with the principles applicable for the sale of goods and services over the Internet and the principles for "Approval and Monitoring " bodies and the options for approval and monitoring.

In the meeting, UNICE presented the aligned business position to the Commission and the other participants. The following key messages were delivered by UNICE in response to the questions posed by the Commission:

- On whether the specific guidelines interpreting the general principles are necessary, UNICE called for the merger of the different sets of principles into a single document and for further discussion on its content.
- On whether there should be an independent approval and monitoring system and, if so, how this should be organised – in particular, the roles of national bodies and/or any EU-level body, UNICE shared its view that a European initiative should take a European approach - 15 national initiatives would lead to fragmentation of the market and would not facilitate cross-border shopping. Bureaucratic approval and monitoring systems should be avoided – instead creative use of web-based tools should be used to ensure openness and transparency. Approval should take the form of self-assessment with back-up of neutral third-party assessment. Monitoring should be achieved through periodic reporting and open scrutiny of a web-based e-confidence map should be encouraged.
- On the respective roles of industry, consumer associations and public authorities and whether and how they should be involved in any approval and monitoring system, it was mentioned that the Commission should support a European e-Confidence resource allowing a platform for exchange of ideas on a range of e-Confidence-related issues. A European supported initiative would help promote awareness of Trustmarks and consumer confidence in them. Consumers, industry and public authorities all have an adequate role in scrutinising trustmarks and in building consumer confidence.

UNICE also expressed its wish to pursue further talks with consumers on these matters. Consumer representatives welcomed the main lines of the UNICE statement and replied favourably to the idea of further discussions with UNICE.

Commissioner Byrne welcomed the willingness of UNICE and BEUC to work together to flesh out this general agreement in more detail.²⁷ The Commission signalled to both organisations that the results of the UNICE-BEUC discussions were expected by end of June 2001 in order to feed into the Commission's next steps after the summer to improve consumer confidence in electronic commerce²⁸. The Commission said that its next step would be to discuss within the Commission how to move forward in this area, but also in consultation with Member States and the European Parliament in view of bringing forward a recommendation.

Further to the Commission's positive reaction to UNICE's efforts to secure business alignment and to reach agreement with consumers, UNICE and BEUC resumed their discussions to agree rapidly on a proposal to be submitted to the Commission.

UNICE-BEUC DISCUSSIONS

Time pressure and the prospect of the Commission issuing a recommendation by the end of the year without stakeholder input increased both parties eagerness to reach an agreement in a short period of time. In response to those circumstances, UNICE and BEUC quickly agreed on a work programme and timetable. Three main points were identified for these bilateral discussions:

- A set of criteria or guidelines which Trustmark Schemes should comply with [hereinafter the "European Trustmark Requirements or ETR"];

²⁷ The Commission's press release is available at the following link:
http://europa.eu.int/rapid/start/cgi/questen.ksh?p_action.gettxt=qt&doc=MEMO/01/148|0|RAPID&lq=EN

²⁸ Letter from Commissioner Byrne dated 21 May 2001, to participants in the Wider Stakeholder Group held on 23 April 2001.

- A system for neutral third-party review and assessment [hereinafter "Third-Party Assessment"];
- The creation of a website on which Trustmark Schemes which comply with the agreed requirements would appear (this work was to be deferred until progress on the first two was made).

Both organisations discussed and agreed on the following proceedings:

Deliverables

- *Set of criteria or guidelines which Trustmark Schemes should comply with:*
 - set of criteria to be developed on the basis of the general and specific guidelines as discussed in the e-confidence group,
 - the criteria are intended to boost consumer confidence in e-commerce,
 - the criteria would apply to Trustmark Schemes,
 - alternative dispute resolution mechanisms (ADRs) to be excluded from the scope of the discussions.
- *System for neutral third-party review and assessment:*
 - including a description of "neutral" or "third party",
 - this should indicate on what basis the neutral party would assess compliance of a Trustmark Scheme with the agreed set of criteria or guidelines.
- *Creation of a website on which Trustmarks Schemes which comply with the agreed criteria or guidelines would appear:*
 - this should include a system identifying how Trustmark Schemes are listed or are removed (including indication of a complaint-handling mechanism),
 - proposal on how the website would be managed and supervised should be developed.

Creation and tasks of taskforces

It was agreed that three "taskforces" would be set up to work on the above-mentioned issues. These joint taskforces were created to work on a common position on each of those points to be agreed upon by their respective organisations. The third taskforce was to be in place when the first two had made substantial progress. Unfortunately, due to time restraints, the third taskforce was not put in place.

The taskforces would be formed of equal number of members from both organisations, selected according to two main criteria: expertise and availability. Two members from the Secretariat of each organisation (UNICE and BEUC) would organise meetings and participate in the taskforces' work.

Once substantial progress had been made, a joint Review Panel would review and finalise the documents produced by the taskforces before submission to the Commission.

Deadline

Those two taskforces had to strive to reach a common position on each of the above-mentioned points for discussion before the end of July 2001. Then the joint panel would aim to finalise the joint contribution before submitting it to the European Commission.

It was agreed that the Commission would be kept regularly informed of progress being made during the process.

On the basis of the plan described above, the first two taskforces were set up and became operational in June 2001.

Both taskforces met each between six and nine times starting on 6 June with the last meeting on 27 September 2001 especially devoted to drafting operations. Meetings were held almost weekly and

resulted in a considerable challenge for both organisations in terms of experts' availability and preparation of the discussions.

Both organisations shared responsibilities and organisational needs to ensure progress: place for meetings, circulation and revision of relevant documents, expert attendance, etc.

Discussions in the taskforces aimed respectively at developing a set of guidelines which on-line Trustmark Schemes would have to apply if they wish to participate in the European e-Confidence project and agreeing an 'Approval and Monitoring system' which should meet, as far as possible, the criteria set by Commissioner Byrne: be as light and unbureaucratic as possible, not require separate national bodies and include an effective form of Third Party assessment which must "be fair, credible, cost-effective and will ensure that agreed standards are implemented in practice"²⁹.

The background material used consisted essentially of the documents produced by the Core Group, the OECD guidelines for consumer protection in the context of electronic commerce³⁰ and a large number of existing consumer confidence-boosting initiatives at both European and International level.

At the end of September 2001, after several months of discussions and intense work, UNICE and BEUC concluded discussions and agreed on a set of requirements (the European Trustmark Requirements) and a model for approval and monitoring based on self-assessment backed up by an independent third party (Neutral Third Party Assessment). The agreement³¹ sets out the theoretical basis for such a system. It was jointly agreed that further work and thinking on the viability and practical implications of its establishment and running should be carried out prior to any final decision.

Although parties were able to agree on most issues during the discussions, several specific points proved difficult to reach a consensus on and were left open. In the text submitted to the Commission those issues are clearly indicated and accompanied by UNICE and BEUC's respective proposals. UNICE and BEUC agreed that the European Commission should act as mediator to either reach a compromise on the outstanding issues or to make a sufficiently justified choice between the options put forward by both parties.

It is important to note that while discussions were limited to the two parties concerned, UNICE in line with its policy of maximum transparency, regularly informed the other interested parties about any progress on the discussions with BEUC³². Any contribution or input received from them was duly recorded and taken into account as far as possible in the bilateral discussions.

Following the procedure agreed by UNICE and BEUC when negotiations begun, **the agreed contribution was sent to the Commission as joint input to the "e-Confidence initiative"**, on 16 October 2001 and posted on the e-Confidence Forum³³.

Subsequently, a UNICE and BEUC delegation met Commissioner Byrne to present the outcome of the stakeholder discussions formally on 10 December 2001³⁴.

Commissioner Byrne welcomed the breakthrough agreement between industry and consumers and reiterated that the e-Confidence initiative was a top priority for him, not only because of the importance of promoting consumer confidence on-line, but also as part of the debate on governance, in particular

²⁹ See footnote n° 27

³⁰ Available at the following website (PDF Format): <http://www1.oecd.org/publications/e-book/9300023E.PDF>

³¹ A visual representation of the model agreed by UNICE and BEUC is at annex. The complete agreement is available at the following address (in PDF format): [http://www.unice.org/C125679E00338D8B/AllDocumentsSearchEng/8F1F0574A2B8E2A3C1256AED0059711B/\\$File/011009E-Confidence.pdf](http://www.unice.org/C125679E00338D8B/AllDocumentsSearchEng/8F1F0574A2B8E2A3C1256AED0059711B/$File/011009E-Confidence.pdf)

³² In addition to the UNICE member federations (for a complete list see <http://212.3.246.118/content/default.asp?PageId=77>) and the European Commission, the following organisations were regularly informed of the on-going discussions: ICC, FEDMA, Eurochambres, GBDe and Eurocommerce.

³³ http://econfidence.jrc.it/default/show.gx?_app.page=show-DIS.html&Object.object_id=EC_FORUM000000000000400

³⁴ http://www.europa.eu.int/rapid/start/cgi/questen.ksh?p_action.gettxt=gt&doc=IP/01/1780/0/RAPID&lg=EN

stakeholder participation. He added, *"This agreement will provide a solid basis for a Commission recommendation that I hope to see adopted in the coming months."*³⁵

CURRENT STATE OF PLAY

UNICE expressed that several issues surrounding and about the joint UNICE-BEUC input to the Commission's e-Confidence initiative still required further effort.

First of all, the issue of funding was clearly identified by both parties as an essential element. It was mentioned to the Commission on several occasions that such a scheme should be funded by the European Commission, at least for a trial period, after which mixed systems could be considered in order to strive ultimately for a self-financing scheme.

Secondly, UNICE mentioned that prior to setting up such a scheme, in-depth market research was needed. Indeed, information indicated that the market for Trustmark Schemes had changed since the e-Confidence initiative was launched in May 2000 (end of the dot-com boom) and what was considered as the basis for the eConfidence initiative, i.e. the proliferation of different Trustmark Schemes providing different levels of consumer protection would confuse consumers more than reassure them and therefore not enhance consumer confidence in the medium of e-commerce, was not necessarily the case at present.

Thirdly, as mentioned above, some outstanding points needed to be decided upon by the Commission.

The European Commission in several fora reiterated the wish for a recommendation. In the Commission's Consumer Policy Strategy 2002-2006³⁶, the Commission makes the following statement: *"On the basis of this agreement [UNICE-BEUC agreement], the Commission intends to adopt a recommendation on consumer confidence in electronic commerce and will work with stakeholders to monitor the implementation of their agreement."*

This is also echoed, although in less detail, in the European Commission eEurope 2005 Action Plan³⁷: *"The Commission will work with stakeholders on trustmark requirements with a view to a Commission recommendation on consumer confidence in electronic confidence."*

In addition, in the Commission Green Paper on alternative dispute resolution in civil and commercial law³⁸ also refers explicitly to the agreement reached by UNICE and BEUC.

This evident *status quo* since October 2001 is not in keeping with the pressure the Commission sought to impose on stakeholders in the discussions and reveals the lack of a thought-out calendar regarding the process. In a process such as the one used in this e-Confidence initiative, the timetable for discussions, input and the final output needs to be clearly indicated from the beginning.

Although a very tight timetable was set for UNICE and BEUC to reach an agreement and provide their input to the Commission and the Commission's constant reminder that "time is of the essence", more than one year after stakeholders provided the Commission with substantial input, there is still no sign of concrete movement on this issue within the Commission. No recommendation has been published and no indication as to what will be decided regarding the afore-mentioned outstanding points has been provided.

³⁵ *Id.*

³⁶ Commission Communication COM(2002)208, *Consumer Policy Strategy 2002-2006*. See in particular point 3.1.4 pp. 14-15.

³⁷ Commission Communication COM(2002) 263, *eEurope 2005 : An information society for all*.

³⁸ Commission COM(2002)196, *Green Paper on alternative dispute resolution in civil and commercial law*. See in particular paragraph 41, p. 18.

PROS AND CONS OF THE PROCESS

As described above, the process leading to the final joint contribution by UNICE and BEUC was a challenging activity and represented a novel and unprecedented example of dialogue and cooperation between business, consumers and the European Commission in a specific matter of common concern.

UNICE and other participants have gained useful experience from this initiative and this should be used when assessing similar initiatives in appropriate areas.

As a matter of principle, UNICE is supportive of an increased recourse to alternative models to traditional legislation such as self-regulation, co-regulation, negotiated agreements or codes of conduct. They are valuable means that can respond more efficiently and more quickly to the fast-changing market and provide consumer confidence while securing business innovation. They should be an appropriate means to meet the core EU objectives of transparency, proportionality and accountability in the decision making process.

UNICE believes that greater use of these tools can contribute to 'better regulation'³⁹ in increasing the efficiency of Community decision-making. It is vital that the above-mentioned advantages of alternative regulatory models are borne in mind when assessing the most appropriate instrument to be used.

In this regard, UNICE is of the opinion that the Information Society field and in particular electronic-commerce is one of the areas where self-regulation and co-regulation can play an important role as opposed to traditional legislation. In the fast-changing market of new technologies, instruments that are flexible, easily adaptable to new circumstances and easy to be used are key for a smooth development of this area. Their use, review and implementation should prove less burdensome and lengthy than adoption of the classical regulations.

Those characteristics encourage stakeholders to invest resources and time in such instruments. In the particular case of the "e-Confidence initiative", it might be noted that the time advantage has not been fully realised. If similar initiatives are to be promoted, the observations outlined below need to be taken into account to assist in preventing such shortcomings.

At present, the EU lacks a coordinated approach and common terminology regarding alternatives to regulation. There is no clear and uniform definition and criteria for the use of those instruments. It would be advisable elaborate guidance or advice on the use of those alternative regulatory models that is applicable to all EC policies and enables a common understanding of the above-mentioned alternatives.

In the light of the afore-going, the novelty of the e-Confidence initiative and the UNICE-BEUC dialogue therein makes it difficult to categorise it in one of the models mentioned above. If it is to be analysed against the basic features of the existing alternative regulatory models, UNICE is of the view that this joint contribution would correspond better to the definition of a 'co-regulation' process in which representative stakeholders contribute to the elaboration of the content of a measure that a public authority endorses officially through a legislative act, binding or non-binding.

The practical experience gained during the process of discussions with BEUC show that participation in similar processes offers a number of advantages that can be summarised as follows:

- Promote mutual understanding of each party's position and facilitate achievement of a productive debate;

³⁹ "Better Regulation Package, 5 June 2002: COM(2002) 275, "European Governance: Better Lawmaking"; COM(2002) 278, "Action plan 'Simplifying and Improving the Regulatory Environment'"; COM(2002) 277, "Consultation document: Towards a reinforced culture of consultation and dialogue – Proposal for general principles and minimum standards for consultation of interested parties by the Commission"; COM(2002) 276, "Impact Assessment"; available at the following Commission website: <http://europa.eu.int/comm/governance/whatsnew.htm>

- Help reflection and substantiation of views, reducing recourse to mere disagreement or confrontation;
- Sharing and exchange of expertise and information;
- Identification of priorities and problems;
- Build up space and conditions for further dialogue.

However, on the basis of the experience gained from the eConfidence initiative, if this type of dialogue is to be promoted in the future, it is essential that the following observations be taken into account:

- Objectives of the initiative, criteria for participation and procedural criteria need to be clear from the outset;
- Role and the possible final endorsement by the Commission need to be identified from the beginning;
- Clear and adequate timetable/calendar for the proceedings needs to be established;
- Transparency throughout the process is essential for stakeholders to make informed decisions;
- The right to initiate such proceedings should be open to all stakeholders as well as the autonomy to participate.

Participation in this type of discussion has reinforced UNICE's reservations about the current ideas of institutionalising the dialogue between stakeholders, namely business and consumer associations, to negotiate and agree on certain issues upon the request of the Commission. This amounts to a forced dialogue that could diminish its usefulness and the autonomy of the parties to engage in voluntary ad hoc dialogue.

UNICE still has serious doubts about the creation of formal or institutional dialogue at EU level to conduct systematic discussions or negotiations on all consumer-related issues. Prior to such formalisation of stakeholder dialogue, fundamental issues need to be carefully considered such as democratic legitimacy, representativeness, accountability, independence and allocation of adequate resources to assess fully whether the appropriate conditions for such a dialogue are in place.

Instead, UNICE supports better and more regular dialogue between business and consumer organisations at EU level on carefully selected issues of common concern as was the case in the eConfidence initiative. Dialogue can also offer a preventive method to enhance mutual understanding and enable concerns to be addressed before they turn into "problems".

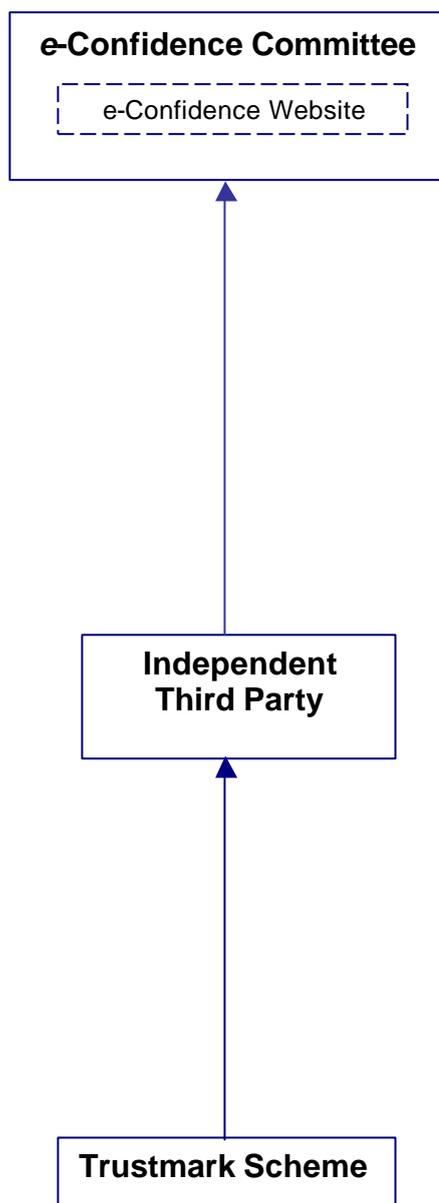
In this regard, UNICE encourages public authorities to promote and to act as a 'facilitator' of more dialogue between stakeholders at EU level. For this purpose there are a myriad forms and possibilities to organise that dialogue.

UNICE believes that efforts from all parties, including public authorities, should aim at facilitating and promoting this form of voluntary and informal dialogue between stakeholders which will create the environment for a more regular dialogue between the parties.

In conclusion, while the eConfidence initiative and the UNICE-BEUC dialogue was not a seamless process and, pending the final outcome from the Commission, it has nevertheless set an important precedent in the relationship between business and consumer representatives. It is a step towards the creation of a culture of dialogue at EU level and a tangible example of the idea of bringing Europe closer to its citizens.

* * *

ANNEX : VISUAL REPRESENTATION OF THE MODEL AGREED BY UNICE AND BEUC



The e-Confidence Committee shall

- be responsible for reviewing the whole e-Confidence scheme;
- manage the e-Confidence website;
- have the support of a Secretariat;
- be composed of Equal number of persons proposed and appointed by common accord between UNICE and BEUC. The latter will also appoint by common accord an independent chairman in consultation with the Commission.
- verify that each Third Party that has certified a “*declaration of compliance*” meets the definition of an “Independent Third Party”
- elaborate its internal rules of procedure for dealing with European compliance complaints, including a possible appeal mechanism via arbitration
- elaborate the content of the “*declaration of compliance*” and the “*annual compliance report*” once it is set up;
- send “*declaration of compliance*” forms to Trustmark Schemes and receive the forms duly filled in and certified by an Independent Third Party;
- send “*annual compliance reports*” forms to Trustmark Schemes and receive the forms duly filled in and certified by an Independent Third Party;
- In the case of dispute arising from the interpretation of the European Trustmark Requirements the Committee shall take the final decision;
- Deal with complaints regarding Trustmark Scheme’s compliance with the European Trustmark Requirements (hereafter, European compliance complaints).

Which Third Party? Trustmark Schemes will ask an Independent Third Party to certify their “*declaration of compliance*”, To perform this task the latter should meet the definition of an Independent Third Party

DEFINITION OF INDEPENDENT THIRD PARTY

An Independent Third Party shall:

- Be independent and seen to be independent so that no facts or circumstances appear, that an informed and reasonable person would question the Recognised Independent Third Party’s ability to act objectively. It must be free from any interest in the results of the assessment;
- Be able to take impartial decisions;
- Have policies and procedures in place that distinguish between the assessment / monitoring task and any other activities the Third Party is engaged in;
- Have the financial resources required for the operation of an assessment / monitoring system for at least one year;
- Have sufficient human resources possessing the necessary abilities, experience, competence and knowledge to perform the assessment task;

How does a Trustmark Scheme join the e-Confidence initiative?

1. Request a “*declaration of compliance*” form from the e-Confidence Committee;
2. Fill out the “*declaration of compliance*”;
3. Ask an Independent Third Party to certify the “*declaration of compliance*”;
4. Send the duly completed and certified declaration to the e-Confidence Committee;
5. The latter, when receiving an appropriate application (a duly completed “*declaration of compliance*” form, regularly certified by an Independent Third Party), shall
 - Allow the Trustmark Scheme to add this compliance to its trustmark;
 - Add the Trustmark Scheme to the e-Confidence website.

The Trustmark Scheme shall be informed of its duty to request from the e-Confidence Committee an “*annual compliance report*” form to be completed and certified by an Independent Third Party