



2016/2244(INI)

8.2.2017

AMENDMENTS

1 - 46

Draft opinion
Doru-Claudian Frunzulică
(PE595.762v01-00)

The functioning of franchising in the retail sector
(2016/2244(INI))

Amendment 1
Andreas Schwab, Ildikó Gáll-Pelcz

Draft opinion
Paragraph 1

Draft opinion

1. *Considers that the lack of homogeneity in its application across the Member States undermined the effectiveness of Commission Regulation No 330/2010;*

Amendment

1. *Regrets that, to date, there has been scarcely any information about the application of Commission Regulation No 330/2010 in the area of franchising;*

Or. de

Amendment 2
Stanisław Ożóg

Draft opinion
Paragraph 1

Draft opinion

1. *Considers that the lack of homogeneity in its application across the Member States undermined the effectiveness of Commission Regulation No 330/2010;*

Amendment

1. *Emphasises that Commission Regulation (EU) No 330/2010 has not been uniformly applied in the Member States;*

Or. pl

Amendment 3
Beatrix von Storch

Draft opinion
Paragraph 1

Draft opinion

1. Considers that the lack of homogeneity in its application across the Member States undermined the effectiveness of Commission Regulation No 330/2010;

Amendment

1. Considers that the lack of homogeneity in its application across the Member States undermined the effectiveness of Commission Regulation No 330/2010; *notes that, because of the different legal cultural traditions in the*

Member States, uniform application across the EU is impossible;

Or. de

Amendment 4
Neena Gill

Draft opinion
Paragraph 1

Draft opinion

1. Considers that the lack of homogeneity in its application across the Member States undermined the effectiveness of Commission Regulation No 330/2010;

Amendment

1. Considers that the lack of homogeneity in its application across the Member States undermined the effectiveness of Commission Regulation No 330/2010; *highlights the growth of e-commerce and its impact on the franchise business model as a significant challenge for the sector.*

Or. en

Amendment 5
Stanisław Ożóg

Draft opinion
Paragraph 2

Draft opinion

2. *Considers that the regulation's clauses on vertical restraints do not allow balanced representation of the two parties to the franchising and are not in line with recent market developments, in particular the exempted post-contractual clauses and purchasing conditions;*

Amendment

2. *Draws attention to Parliament's resolution of 11 December 2013, which emphasised the problems encountered by franchisees wishing to sell their business or change their business formula, whilst remaining active in the same sector; calls on the Commission to look into situations such as the ban on price-fixing mechanisms in franchise systems and the effects of long-term competition clauses, purchase options and the ban on multi-franchising;*

Or. pl

Amendment 6
Andreas Schwab, Ildikó Gáll-Pelcz

Draft opinion
Paragraph 2

Draft opinion

2. Considers that the *regulation's clauses on vertical restraints do not allow balanced representation of the two parties to the franchising and are not* in line with recent market developments, in particular the exempted post-contractual clauses and purchasing conditions;

Amendment

2. Considers that the *Commission should check whether the effectiveness of that regulation is not being undermined as a result of inconsistent application in the Member States and whether it is* in line with recent market developments, in particular the exempted post-contractual clauses and purchasing conditions;

Or. de

Amendment 7
Stanisław Ożóg

Draft opinion
Paragraph 3

Draft opinion

3. Considers that the implementation of the regulation through a mechanism of assessment *at European level* should be improved, *and stresses that the unsatisfactory follow-up action by the Commission prevents cross-border retail activity and fails* to create a level playing field within the single market;

Amendment

3. Considers that the implementation of the regulation through a mechanism of assessment should be improved; *calls on the Commission and the Member States to be more active in this area under the European Competition Network in order* to create a level playing field within the single market;

Or. pl

Amendment 8
Ildikó Gáll-Pelcz

Draft opinion
Paragraph 3

Draft opinion

3. Considers that the implementation of the regulation through a mechanism of assessment *at* European *level* should be improved, and stresses that the unsatisfactory follow-up *action* by the Commission prevents cross-border retail activity and fails to create a level playing field within the single market;

Amendment

3. Considers that the implementation of the regulation through a mechanism of assessment *within the* European *network of competition authorities* should be improved, and stresses that the unsatisfactory follow-up *within that network* by the Commission prevents cross-border retail activity and fails to create a level playing field within the single market;

Or. en

Amendment 9
Andreas Schwab

Draft opinion
Paragraph 3

Draft opinion

3. Considers that the implementation of the regulation through a mechanism of assessment at European level *should be improved, and* stresses that the unsatisfactory follow-up action by the Commission prevents cross-border retail activity and fails to create a level playing field within the single market;

Amendment

3. Considers that the *Commission should check to what extent* implementation of the regulation *could be improved* through a mechanism of assessment at European level; stresses that the unsatisfactory follow-up action by the Commission prevents cross-border retail activity and fails to create a level playing field within the single market;

Or. de

Amendment 10
Stanisław Ożóg

Draft opinion
Paragraph 4

Draft opinion

4. *Is concerned at the fact* that some Member States have *introduced* legislation on franchising *that prevents homogeneity* of the market; believes that *an approach*

Amendment

4. *Points out* that some Member States *already* have legislation on franchising, *which ultimately results in further fragmentation* of the market;

based on EU competition law enforcement and better implementation of the regulation at national level would improve distribution and increase market access for other Member States' businesses;

believes that better implementation of the regulation at national level *could help* improve distribution and market access for *businesses from* other Member States; *points out, at the same time, that legislation covering franchising as a business model varies among Member States, which can also discourage franchisees from entering into cross-border franchise networks;*

Or. pl

Amendment 11
Beatrix von Storch

Draft opinion
Paragraph 4

Draft opinion

4. Is concerned *at the fact* that some Member States *have introduced* legislation on franchising *that* prevents homogeneity of the market; believes that an approach based on EU competition law enforcement and better implementation of the regulation at national level would improve distribution and increase market access for other Member States' businesses;

Amendment

4. Is concerned that some Member States' legislation on franchising *is not compatible with the regulation because it* prevents homogeneity of the market; believes that an approach based on EU competition law enforcement and better implementation of the regulation at national level would improve distribution and increase market access for other Member States' businesses;

Or. de

Amendment 12
Neena Gill

Draft opinion
Paragraph 4

Draft opinion

4. Is concerned at the fact that some Member States have introduced legislation on franchising that prevents homogeneity of the market; believes that an approach based on EU competition law enforcement

Amendment

4. Is concerned at the fact that some Member States have introduced legislation on franchising that prevents homogeneity of the market; believes that an approach based on EU competition law enforcement

and better implementation of the regulation at national level would improve distribution **and** increase market access for other Member States' businesses;

and better implementation of the regulation at national level would improve distribution, increase market access for other Member States' businesses **and provide potentially a better deal for end consumers.**

Or. en

Amendment 13
Stanisław Ożóg

Draft opinion
Paragraph 5

Draft opinion

5. Believes that the Commission should also analyse the unintended impact of competition law, and that competition law measures should be evaluated not only in the light of market integration aims, but also as building blocks of private-law relations;

Amendment

deleted

Or. pl

Amendment 14
Stanisław Ożóg

Draft opinion
Paragraph 5 a (new)

Draft opinion

Amendment

5a. Points out the comprehensiveness of competition rules that apply when there is a risk to or a breach of the public interest with regard to ensuring that conditions suit the functioning of the economic market, rather than the situation of the individual entrepreneur;

Or. pl

Amendment 15
Stanislaw Ożóg

Draft opinion
Paragraph 6

Draft opinion

6. *Points out that the Commission should start public consultations with a view to correcting the model on which the future block exemption regulation is based and to establishing the concept of a franchising contract to be used in any future EU legislation, as well as for possible action in the area of private law;*

Amendment

deleted

Or. pl

Amendment 16
Andreas Schwab

Draft opinion
Paragraph 6

Draft opinion

6. Points out that the Commission should start public consultations *with a view to correcting* the model on which the future block exemption regulation is based *and to establishing* the concept of a franchising contract to be used in any future EU legislation, as well as for possible action in the area of private law;

Amendment

6. Points out that the Commission should start public consultations *and, in that context, check whether it is necessary to adapt* the model on which the future block exemption regulation is based, *in order to establish* the concept of a franchising contract to be used in any future EU legislation, as well as for possible action in the area of private law;

Or. de

Amendment 17
Ildikó Gáll-Pelcz

Draft opinion
Paragraph 6

Draft opinion

Amendment

6. Points out that the Commission should ***start public consultations with a view to correcting*** the model on which the future block exemption regulation is based and to establishing the concept of a franchising contract to be used in any future EU legislation, as well as for possible action in the area of private law;

6. Points out that the Commission should ***asses and inform the Parliament on the suitability of*** the model on which the future block exemption regulation is based and to establishing the concept of a franchising contract to be used in any future EU legislation, as well as for possible action in the area of private law;

Or. en

Amendment 18
Beatrix von Storch

Draft opinion
Paragraph 7

Draft opinion

7. Calls on the Commission to also ensure the recovery of any illegal state aid ***by means of tax advantages*** in the area of franchises and to show firmness in the conduct and result of ongoing inquiries, ***such as the McDonald's case; stresses, moreover, that the EU needs to have more stringent legislation on tax rulings, providing also for an effective system and a debt recovery procedure in favour of EU budget own resources***; calls on the Commission to rectify any infringement in the area of franchising with the view to ensuring fair competition across the single market;

Amendment

7. Calls on the Commission to also ensure the recovery of any illegal state aid in the area of franchises and to show firmness in the conduct and result of ongoing inquiries; calls on the Commission to rectify any infringement in the area of franchising with the view to ensuring fair competition across the single market;

Or. de

Amendment 19
Stanisław Ożóg

Draft opinion
Paragraph 7

Draft opinion

7. Calls on the Commission to ***also ensure the recovery of any illegal state aid***

Amendment

7. Calls on the Commission to ***consider the functioning of franchising in***

by means of tax advantages in the area of franchises and to show firmness in the conduct and result of ongoing inquiries, such as the McDonald's case; stresses, moreover, that the EU needs to have more stringent legislation on tax rulings, providing also for an effective system and a debt recovery procedure in favour of EU budget own resources; calls on the Commission to rectify any infringement in the area of franchising with the view to ensuring fair competition across the single market;

the retail sector, and, together with the Member States, to encourage franchisees to form associations; stresses, furthermore, that the Commission should look into infringements of contractual terms and unfair trading practices in the area of franchising with the view to ensuring fair competition across the single market;

Or. pl

Amendment 20
Ildikó Gáll-Pelcz, Andreas Schwab

Draft opinion
Paragraph 7

Draft opinion

7. Calls on the Commission to also ensure the recovery of any illegal state aid by means of tax advantages in the area of franchises and to show firmness in the conduct *and result* of ongoing inquiries, *such as the McDonald's case; stresses, moreover, that the EU needs to have more stringent legislation on tax rulings, providing also for an effective system and a debt recovery procedure in favour of EU budget own resources*; calls on the Commission to rectify any infringement in the area of franchising with the view to ensuring fair competition across the single market;

Amendment

7. Calls on the Commission to also ensure the recovery of any illegal state aid by means of tax advantages in the area of franchises and to show firmness in the conduct of ongoing inquiries; calls on the Commission to rectify any infringement in the area of franchising with the view to ensuring fair competition across the single market;

Or. en

Amendment 21
Neena Gill

Draft opinion
Paragraph 7

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Draft opinion

7. Calls on the Commission to also ensure the recovery of any illegal state aid by means of tax advantages in the area of franchises and to show firmness in the conduct and result of ongoing inquiries, such as the McDonald's case; stresses, moreover, that the EU needs to have more stringent legislation on tax rulings, providing also for an effective system and a debt recovery procedure in favour of EU budget own resources; calls on the Commission to rectify any infringement in the area of franchising with the view to ensuring fair competition across the single market;

Amendment

7. Calls on the Commission to also ensure the recovery of any illegal state aid by means of tax advantages in the area of franchises and to show firmness in the conduct and result of ongoing inquiries, such as the McDonald's *and Starbuck's* case; stresses, moreover, that the EU needs to have more stringent legislation on tax rulings, providing also for an effective system and a debt recovery procedure in favour of EU budget own resources; calls on the Commission to rectify any infringement in the area of franchising with the view to ensuring fair competition across the single market;

Or. en

Amendment 22
Ildikó Gáll-Pelcz

Draft opinion
Paragraph 8

Draft opinion

8. Considers that the *self-regulatory environment in the EU results in an inability to influence nearly 80 % of franchise chains in the EU, as they are not members of the national franchise associations*;

Amendment

8. Considers that the *effectiveness of the EU supply chain initiative needs to be assessed as membership of the national franchise associations is a pre-requisite for the participation in this initiative*;

Or. en

Amendment 23
Andreas Schwab, Ildikó Gáll-Pelcz

Draft opinion
Paragraph 9

Draft opinion

9. Calls on the Commission to *review*

Amendment

9. Calls on the Commission to *check*

the regulation *before 2018 and to (1) verify the impact of the horizontal approach on the functioning of franchising; (2) test whether the model of franchising adopted in the regulation reflects the market reality, and correct it if necessary; (3) assess the negative effects and proportionality of the permitted vertical restraints, taking into account also their impact on the functioning of franchising by establishing market standards, for example a revision of the definition of know-how and a reconsideration of the context of territorial exclusivity clauses and permitted options; (4) collect market information in terms of new trends, market development regarding network organisation and technological advances; (5) considering that the subject is not covered at the national level, further assess the new challenges franchisors and franchisees have to face in the context of e-commerce; (6) adapt the regulation in order to achieve a general improvement and align it with digitalisation of the economy;*

whether it is necessary to revise the regulation and, in that connection, to verify (1) the impact of the horizontal approach on the functioning of franchising; (2) whether the model of franchising adopted in the regulation reflects the market reality; (3) to what extent permitted vertical restraints are proportionate and have negative effects; (4) and what new challenges franchisors and franchisees have to face in the context of e-commerce and digitisation in general;

Or. de

Amendment 24 Stanisław Ożóg

Draft opinion Paragraph 9

Draft opinion

9. Calls on the Commission to **review the regulation before 2018** and to **(1) verify** the impact of the horizontal approach on the functioning of franchising; **(2) test** whether the model of franchising adopted in the regulation reflects the market reality, **and correct it if necessary;** **(3) assess** the negative effects and proportionality of the permitted vertical restraints, taking into account also their impact on the functioning of franchising by establishing market standards, for example

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Amendment

9. Calls on the Commission to **carry out a study** and to **inform Parliament as regards (1) verifying** the impact of the horizontal approach on the functioning of franchising; **(2) testing** whether the model of franchising adopted in the regulation reflects the market reality; **(3) assessing** the negative effects and proportionality of the permitted vertical restraints, taking into account also their impact on the functioning of franchising by establishing market standards, for example a revision of

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a revision of the definition of know-how and a reconsideration of the context of territorial exclusivity clauses and permitted options; (4) **collect** market information in terms of new trends, market development regarding network organisation and technological advances; (5) **considering that the subject is not covered at the national level**, further **assess** the new challenges franchisors and franchisees have to face in the context of e-commerce; (6) **adapt the regulation in order to achieve a general improvement and align it with digitalisation of the economy**;

the definition of know-how and a reconsideration of the context of territorial exclusivity clauses and permitted options; (4) **collecting** market information in terms of new trends, market development regarding network organisation and technological advances; (5) further **assessing** the new challenges franchisors and franchisees have to face in the context of e-commerce;

Or. pl

Amendment 25
Stanisław Ożóg

Draft opinion
Paragraph 10

Draft opinion

10. Stresses **that** the European **Parliament should be actively involved when regulations and directives on franchising are adapted**;

Amendment

10. Stresses the European **Parliament's desire to be** involved **in all work** on franchising **in the retail sector**;

Or. pl

Amendment 26
Neena Gill

Draft opinion
Paragraph 10

Draft opinion

10. Stresses that the European Parliament should be actively involved when regulations and directives on franchising are adapted;

Amendment

10. **Notes that national rules vary greatly from one Member State to another**; Stresses that the European Parliament should be actively involved when regulations and directives on franchising are adapted **in order to get a more consistent regulatory framework**;

Amendment 27
Beatrix von Storch

Draft opinion
Paragraph 11

Draft opinion

11. Believes that a reporting or complaint model should be set up by the Commission to simplify the information-gathering process as regards the market situation;

Amendment

deleted

Or. de

Amendment 28
Andreas Schwab

Draft opinion
Paragraph 11

Draft opinion

11. Believes that a *reporting or complaint* model should be set up by the Commission to simplify the information-gathering process as regards the market situation;

Amendment

11. Believes that a model should be set up by the *Member States for reporting, for making complaints and for submitting other relevant information they receive via a contact point or in any other way, with a view to simplifying* the information-gathering process as regards the market situation; *calls on the Commission to draw up, on the basis of that information, a non-exhaustive schedule of unfair contractual terms and practices;*

Or. de

Amendment 29
Ildikó Gáll-Pelcz, Andreas Schwab

Draft opinion
Paragraph 12

Draft opinion

12. ***Calls*** on the Commission to revise the rules on the enforcement of the regulation by Member States, while its application should be proportionally adjusted to fulfil its aim;

Amendment

12. ***Acknowledges that, on a national level, legislation has been enacted to protect franchisees, but the focus is on the pre-contractual stage, to impose disclosure obligations on the franchisor;*** calls ***therefore*** on the Commission to revise the rules on the enforcement of the regulation by Member States, while its application should be proportionally adjusted to fulfil its aim;

Or. en

Amendment 30
Beatrix von Storch

Draft opinion
Paragraph 12

Draft opinion

12. Calls on the Commission to ***revise the rules on the*** enforcement of the regulation by Member States, ***while its application should be proportionally adjusted to fulfil its aim;***

Amendment

12. Calls on the Commission to ***combat government failure to ensure*** enforcement of the regulation by Member States ***by revising the rules and removing those that prevent the aim of the regulation from being achieved;***

Or. de

Amendment 31
Ildikó Gáll-Pelcz

Draft opinion
Paragraph 12 a (new)

Draft opinion

12 a. Regrets that it does not help to correct this situation that national systems have not provided for enforcement mechanisms which are efficient in assuring continuation of the franchise relationship;

Amendment

Amendment 32
Ildikó Gáll-Pelcz

Draft opinion
Paragraph 13

Draft opinion

13. Calls on the Commission to ***ensure equal*** and independent representation of the interested parties to franchising contracts, and to take action to strengthen the self-organisation of franchisees at the EU and national level, in order to ***grant*** franchisees ***equal access to*** the public debate on franchising and establish a level playing field;

Amendment

13. Calls on the Commission to ***work towards an appropriate*** and independent representation of the interested parties to franchising contracts ***in the European supply chain initiative***, and to take action to strengthen the self-organisation of franchisees at the EU and national level, in order to ***allow*** franchisees ***to better participate in*** the public debate on franchising and establish a level playing field;

Amendment 33
Ildikó Gáll-Pelcz, Andreas Schwab

Draft opinion
Paragraph 13 a (new)

Draft opinion

Amendment

13 a. Stresses that regulation should maintain and increase market confidence in franchising as a way of doing business as it encourages entrepreneurship not only in SMEs that become franchisors, but also in individuals who become franchisees;

Amendment 34
Beatrix von Storch

Draft opinion
Paragraph 14

Draft opinion

Amendment

14. Calls on the Commission to introduce guidelines on franchising contracts, in order to better shape the normative environment of franchising contracts;

deleted

Or. de

Amendment 35
Miguel Urbán Crespo

Draft opinion
Paragraph 14 a (new)

Draft opinion

Amendment

14a. Calls on the Commission to work towards a standard regulation establishing the rights of franchisors and franchisees in terms that prevent the imposition of unfair conditions by brand managers passing on their know-how to a network of franchisees, with more transparent formats, and prevent the establishment of secret ad hoc conditions unconnected to technical processes for producing the service in question.

Or. es

Amendment 36
Miguel Urbán Crespo

Draft opinion
Paragraph 14 b (new)

Draft opinion

Amendment

14b. Calls on the Commission to establish minimum criteria regulating maximum rates of commission for sale,

profit and exclusive provision of equipment and setting out the subsidiary responsibilities of the company managing the brand, as head of the network. Those responsibilities shall include establishing and ensuring compliance with labour standards and standards for decent and high-quality service, which the franchisor is ultimately responsible for enforcing.

Or. es

Amendment 37
Ildikó Gáll-Pelcz

Draft opinion
Paragraph 15

Draft opinion

15. Stresses that collecting information on bankruptcies would require cross-border cooperation with national bodies and a comprehensive analysis of the existing differences among the national markets;

Amendment

deleted

Or. en

Amendment 38
Beatrix von Storch

Draft opinion
Paragraph 15

Draft opinion

15. Stresses that collecting information on bankruptcies would require cross-border cooperation with national bodies and a comprehensive analysis of the existing differences among the national markets;

Amendment

15. Stresses that collecting information on bankruptcies would require cross-border cooperation with national bodies and a comprehensive analysis of the existing differences among the national markets and that, accordingly, that should not be proceeded with; stresses that market players are better placed to exchange information, of whatever nature, if they are not hampered in the process by red

tape;

Or. de

Amendment 39
Beatrix von Storch

Draft opinion
Paragraph 16

Draft opinion

16. Calls on the Commission to correct market failures ***through legislative action, either*** by tackling unfair trading practices ***or by better regulating retail law, contract law or/and competition law;***

Amendment

16. Calls on the Commission to correct market failures by tackling unfair trading practices;

Or. de

Amendment 40
Miguel Urbán Crespo

Draft opinion
Paragraph 16

Draft opinion

16. Calls on the Commission to ***correct market failures through legislative action, either by tackling unfair trading practices or by better regulating retail law, contract law or/and competition law;***

Amendment

16. Calls on the Commission to ***draw up EU rules obliging brand managers to establish a national and international register of companies linked to their brand. For the purposes of tax assessment and preventing tax evasion, it is essential that undertakings within the network provide a joint annual report of their annual accounts, setting out in its main chapter transfer prices, together with proof of compliance with the relevant tax obligations in the various countries in which they operate, detailing their various activities and the volume of business for each activity (turnover, number of employees, facilities, points of sale) in each tax jurisdiction.***

Or. es

Amendment 41
Ildikó Gáll-Pelcz

Draft opinion
Paragraph 16

Draft opinion

16. ***Calls on the Commission to correct market failures through legislative action, either by tackling*** unfair trading practices ***or by*** better regulating retail law, contract law or/and competition law;

Amendment

16. ***Points out that the existing fragmented and low level of cooperation within different national enforcement bodies is not sufficient to address cross-border challenges regarding*** unfair trading practices; ***calls on the Commission to correct market failures through action*** by better regulating retail law, contract law or/and competition law;

Or. en

Amendment 42
Stanisław Ożóg

Draft opinion
Paragraph 16

Draft opinion

16. Calls on the Commission to ***correct market failures through legislative action, either by*** tackling unfair trading practices or ***by*** better regulating retail law, contract law or/and competition law;

Amendment

16. Calls on the Commission to ***propose an EU approach aimed at effectively*** tackling unfair trading practices or better regulating retail law, contract law or/and competition law;

Or. pl

Amendment 43
Ildikó Gáll-Pelcz, Andreas Schwab

Draft opinion
Paragraph 16 a (new)

Draft opinion

Amendment

16 a. Stresses that UTPs in franchising

can only be determined after specific analysis has been carried out in which also the view of franchisees has been taken into account, believes that the next step should be to organise a multi-stakeholder debate to discuss unfair practices in franchise supply chains and possible solutions and this can be reached by organizing an Expert Platform, as has been the case with food supply chains, or by opening a public consultation;

Or. en

Amendment 44
Andreas Schwab

Draft opinion
Paragraph 17

Draft opinion

Amendment

17. Calls on the Commission to provide a non-exhaustive list of contractual terms and practices allowed and prohibited in order to facilitate the self-assessment process of any future regulation.

deleted

Or. de

Amendment 45
Beatrix von Storch

Draft opinion
Paragraph 17

Draft opinion

Amendment

17. Calls on the Commission to provide a non-exhaustive list of contractual terms and practices allowed and prohibited in order to facilitate the self-assessment process of any future regulation.

deleted

Or. de

Amendment 46
Beatrix von Storch

Draft opinion
Paragraph 17 a (new)

Draft opinion

Amendment

***17a. Calls on the Commission to abide
by the principle of contractual freedom.***

Or. de