

# Public consultation on the targeted revision of EU consumer law directives

Fields marked with \* are mandatory.

## About you

\*1 You are welcome to answer the questionnaire in one of the 24 official languages of the EU. Please let us know in which language you are replying.

English

\*2 You are replying

- as an individual in your personal capacity
- in your professional capacity or on behalf of an organisation

\*3 You are replying on behalf of:

- a national consumer association
- a European-level consumer association
- a company (or group of companies)
- a national business association
- a European-level business association
- a national consumer enforcement authority
- a national public enforcement authority in a specific area (energy, telecom etc.)
- a European Consumer Centre
- a government authority (ministry) in charge of consumer policy
- another public body /institution
- a professional consultancy/ law firm
- a think tank/ university/ research institute
- other

\*5 Please indicate the **country** where you live or, if you reply on behalf of an entity, the country where it has its headquarters/ place of establishment.

Germany

\*7 Publication of your **response**

*Note that, whatever option chosen, your response may be subject to a request for public access to documents under [Regulation \(EC\) N° 1049/2001](#)*



**my response can be published with my personal information** (I consent to the publication of all information in my response in whole or in part including my name or my organisation's name, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication)

- my response can be published without the information I provided in replies to questions about my or my organisation's name, registration number and e-mail address** (I consent to the publication of all the other information in my response in whole or in part (which may include quotes or opinions I express). I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.)

\*9 (If full response can be published). Please provide **your full name** or the **name of the entity** on whose behalf you are replying.

100 character(s) maximum

Rebekka Weiss, Federal Association for Information Technology,  
Telecommunications and New Media

Is your organisation included in the [EU Transparency Register](#)?

If your organisation is not registered, we invite you to register [here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

11 (if full response can be published). If your organisation is registered, please indicate the **Register ID number**.

30 character(s) maximum

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13 (if full response can be published). Please give your **e-mail address** in case we have questions about your reply and need to ask for clarifications.

r.weiss@bitkom.org

\*17 What is the core/main activity of your company/ group of companies or the companies that your association represents (multiple replies possible):

- Sale of goods to consumers
- Provision of services to consumers
- Provision of digital content to consumers
- Manufacturing of goods
- Online marketplace (i.e. allowing consumers and traders to conclude online sales and service contracts on the online marketplace's website)
- Other

\*18 Please tick the box(es) corresponding to the sale channel(s) that your company/ group of companies or the companies represented by your association use:

- online (over the internet)
- brick and mortar shop
- doorstep/off-premises (where the trader makes an offer to the consumer or concludes a contract with the consumer in a place which is not the business premises of the trader, in particular

transactions taking place in the home of the consumer without prior agreement for example in the home of the consumer or at excursions organised by the trader.)

\* 19 Do you (or the companies represented by your association) use online marketplaces to sell goods /provide services or digital content?

- yes
- no

## 1. Short Questionnaire

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The evidence gathered during the [Fitness Check of EU consumer law and the evaluation of the Consumer Rights Directive](#) (CRD) indicate that, overall, the current EU consumer law acquis is still fit for purpose and does not require a major overhaul. However, infringements of consumer rights (lack of compliance with consumer law by traders) remain at relatively high levels.

21 What should be done, in your opinion, to ensure that traders comply better with consumer protection rules?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
EU and Member States should stimulate self-regulation by traders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Enforcement authorities should be given more financial and administrative resources	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Penalties for infringing consumer law should be strengthened (more proportionate, effective and dissuasive)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Victims of unfair commercial practices should be given rights to claim remedies from the traders (for example, to terminate the contract or claim damages)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

22 Please explain your reply and describe any other solution that you would like to propose.

As the regulatory framework already offers a very strong protection to consumers and grants various rights to consumers, self-regulatory measures should be encouraged and strengthened throughout the EU. Self- and co-regulatory measures have proven to be effective and more adaptable to the fast changing environmental influences in the digital market. New products can often be included better and faster into an existing self-regulatory standard. Such circumstances lead to a better and innovative-friendly environment without lacking regulatory guidelines for the respective industry.

An increase in enforcement is not necessary and the penalties for infringing consumer law are already severe enough. Hence, a new balance must be found between the already burdensome requirements for many traders and service providers and the interests of the consumers. This balance, however, cannot be achieved through further regulatory measures and an increase in enforcement, but rather through an increase in trust in the relevant markets (which can most likely be achieved through self-regulatory measures). Whether and what kind of remedies are open to consumers should always be assessed individually, taking into account the specifics of each case.

## 1.1 Clearer consumer rules for the digital economy

### 1.1.1 Platform transparency

An 'online marketplace', in the following questions, is a service provider which allows consumers and traders to conclude online sales and service contracts on its website.

The [Fitness Check and the evaluation of the Consumer Rights Directive](#) (CRD) showed that some consumers are confused when using online marketplaces. Firstly, it often seems unclear whether consumers buy from the platform itself or from someone else. Secondly, it is often not clear whether the contracting partner acts as trader and is therefore subject to EU consumer law or as a non-trader, against whom EU consumer rights cannot be invoked. For example, in a case leading to a reference for a preliminary ruling at the Court of Justice of the European Union, a consumer buying on a platform was denied the right to withdraw from the contract under the Consumer Rights Directive. Only then did the consumer learn that the seller was claiming not to be a trader (Case C-105/17 Kamenova).

25 In your professional experience, do consumers face the following situations when buying on online marketplaces?

	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer is not sure whether they bought from the online marketplace itself or from someone else	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Consumer is not sure which rights they have, because it was unclear if the person they bought from was bound by EU consumer rules or not	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

26 Please explain your reply, including any other problem you have noticed that consumers experience when concluding contracts on online marketplaces.

The information requirements regarding online marketplaces are extensive already. The current legal framework obliges traders and service providers to

provide extensive information, many of these already in the pre-contractual stage. These information include details about the trader/service provider on the marketplace and details regarding the contractual steps, which already clarify the contractual obligations for the consumer and informs him about his contractual partner.

29 In your professional experience, do consumers experience harm (e.g. financial and/or time loss, psychological harm) when buying on online marketplaces due to the following problems:

	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer was denied the right to cancel the order and return the product within 14 days	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Consumer was denied a repair or replacement of a faulty product	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Consumer did not know to whom to direct his/her claim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

30 Please explain your reply and describe which kind of harm consumers suffer and which type of goods or services this relates to.

Due to an already high rate in compliance with the existing regulations, harm regarding the abovementioned problems is not an issue. Consumers are exercising their rights successfully throughout the industries and are getting further support from consumer associations. The answer to any unclarities of a consumer regarding the opponent of a claim is simplification, not the introduction of additional layers of regulatory mechanisms. If the information requirements are simplified, issues regarding ambiguities could be avoided.

### 1.1.2 "Free" online services

"Free" online services in the following questions refer to online services for which consumers do not pay with money but provide data (e.g. cloud storage, e-learning, social network services).

The rules under the [Consumer Rights Directive](#) (CRD) on pre-contractual information requirements for traders and the 14-days right of withdrawal for consumers apply to all contracts for online provision of digital content (e.g. downloads of software, movies or songs) irrespective of consumer's payment with money. On the other hand, these CRD rules currently only apply to contracts for online services (such as subscription to cloud storage or social networks) for which the consumer pays with money. This calls for

discussion as to whether the protection under the CRD should be extended also to contracts for online services for which the consumer provide data and does not pay with money. In this respect, the [upcoming EU rules on consumer remedies regarding 'defective' digital products](#) (rules that are currently negotiated by the European Parliament and the Council) may cover online services irrespective of whether the consumer pays with money.

34 Based on your professional experience, do consumers suffer harm (e.g. financial and/or time loss, psychological harm) when concluding contracts for "free" online services due to the following problems:

	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer was not informed about the main features of the service, such as its functionality and compatibility with his/her IT equipment (e.g. information on whether the service will be fully interoperable with his/her hardware and software)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Consumer could not cancel the service within 14 days	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

35 Please explain your reply, including description of harm due to any other problems that consumers face, according to your professional experience.

There is no harm due to the non-existence of a cancellation right for free services. Providers of free services grant consumers the right to cancel the contract at any time, hence, giving him the opportunity to disengage from the contract as he wishes. An additional right of cancellation would therefore not strengthen his position above what he is already allowed to do: withdraw from the contract. The introduction of a cancellation right for such contracts would rather complicate the contracting process, burden the trader or service provider with additional information requirements in the pre-contractual and contractual stage and would most likely confuse the consumer. Given the fact that consumers are used to having a cancellation right when buying goods or services online (or door-to-door selling), getting information about a cancellation right could lead to the misunderstanding that the consumer has to pay for the (actually) free services. This additional right could therefore have a detrimental effect for both consumers and service providers/traders. Furthermore, the user can withdraw the permission to use his or her private data if the permission was a precondition for the services.

The majority of providers of free services already inform their users about compatibility etc., as it is in their interest to describe the product to engage the user. But implementing a corresponding legal requirement would burden such providers of free services, as the provisions are often not simple enough to be implemented without legal advice, legal requirements would lead to possible claims and procedures, and could consequently lead to the service provider refraining from offering his service free of charge, as he cannot

implement and offer his services any longer without payments.

36 In your view, is it problematic that consumers do not have the **right to be informed** (before acquiring the service) about the main features of "free" online services (e.g. on functionality and interoperability with hardware and software)?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
No, it is not a major issue	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it creates harm for consumers including when they use services cross-border	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Yes, it discourages consumers from acquiring such online services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Yes, it disrupts level playing field between digital traders offering services with and without payment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

37 Please explain your reply.

There is no harm due to the non-existence of a cancellation right for free services. Providers of free services grant consumer the right to cancel the contract at any time, hence, giving him the opportunity to disengage from the contract as he wishes. An additional right of cancellation would therefore not strengthen his position above what he is already allowed to do: withdraw from the contract. The introduction of a cancellation right for such contracts would rather complicate the contracting process, burden the trader or service provider with additional information requirements in the pre-contractual and contractual stage and would most likely confuse the consumer. Given the fact that consumers are used to having a cancellation right when buying goods or services online (or door-to-door selling), getting information about a cancellation right could lead to the misunderstanding that the consumer has to pay for the (actually) free services. This additional right could therefore have a detrimental effect for both consumers and service providers/traders. Furthermore, the user can withdraw the permission to use his or her private data if the permission was a precondition for the services. The majority of providers of free services already inform their users about compatibility etc., as it is in their interest to describe the product to engage the user. But implementing a corresponding legal requirement would burden such providers of free services, as the provisions are often not simple enough to be implemented without legal advice, legal requirements would lead to possible claims and procedures, and could consequently lead to the service

provider refraining from offering his service free of charge, as he cannot implement and offer his services any longer without payments.

39 Based on your professional experience, would consumers use "free" online services more often if they had **the right to be informed** (before acquiring the service) about the main features of the service (e. g. on functionality and interoperability with hardware and software)?

- Yes
- No
- Do not know

40 In your view, is it problematic that consumers do not have the **right to cancel** "free" online services within 14 days?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
No, it is not a major issue	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it creates harm for consumers including when they use services cross-border	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Yes, it discourages consumers from acquiring such online services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Yes, it disrupts level playing field between digital traders offering services with and without payment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

41 Please explain your reply.

Having no cancellation right for free services is not problematic, as the cancellation right would not provide the consumer with more rights than under the current regulation. Contracts involving only free services can already be cancelled at any time. Furthermore, Recital 37 of the Directive on Consumer Rights (2011/83/EU) shows what consequences are intended when a contract is cancelled by the consumer: Withdrawal from the contract should terminate the obligation of the contracting parties to perform the contract. When a contract for a free service is concluded, the obligations of the contracting consumer do not include payment for this service. His contractual obligations are therefore often minimal and limited to secondary obligations, not performance obligations. Hence, the consumer bears no risks regarding such a contract and is therefore not in a position where he should be granted additional rights, especially when such an additional right does not introduce any additional value for the consumer, but instead introduces several additional obligations for the trader.

Providers of free services grant the consumer the right to cancel the contract



at any time, hence, giving him the opportunity to disengage from the contract as he wishes. An additional right of cancellation would therefore not strengthen his position above what he is already allowed to do: withdraw from the contract. The introduction of a cancellation right for such contracts would rather complicate the contracting process, burden the trader or service provider with additional information requirements in the pre-contractual and contractual stage and would most likely confuse the consumer. Given the fact that consumers are used to having a cancellation right when buying goods or services online (or door-to-door selling), getting information about a cancellation right could lead to the misunderstanding that the consumer has to pay for the (actually) free services. This additional right could therefore have a detrimental effect for both consumers and service providers/traders. Furthermore, the user can withdraw the permission to use his or her private data if the permission was a precondition for the services. The majority of providers of free services already inform their users about compatibility etc., as it is in their interest to describe the product to engage the user. But implementing a corresponding legal requirement would burden such providers of free services, as the provisions are often not simple enough to be implemented without legal advice, legal requirements would lead to possible claims and procedures, and could consequently lead to the service provider refraining from offering his service free of charge, as he cannot implement and offer his services any longer without payments.

43 Based on your professional experience, would consumers use "free" online services more often if they had the right to **cancel the service** within 14 days after acquiring it?

- Yes
- No
- Do not know

## 1.2 Better enforcement and redress opportunities for consumers

### 1.2.1 Individual redress/remedies for harm suffered from unfair commercial practices

"Redress/remedies" in the following questions refers to what consumers can get to remedy the situation when their consumer rights have been breached (e.g. terminating contract, getting their money back).

"Green claims" in the following questions refers to marketing that creates an impression that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services. For example, a misleading green claim would be if a car manufacturer in advertisements would mislead consumers on the environmental performance of its cars.

Currently, EU rules do not give consumers who have suffered harm from [unfair commercial practices](#), such as misleading advertising, any individual rights to remedy their situation. Furthermore, the consumer's right to remedies/redress for harm caused by unfair commercial practices are not always sufficiently guaranteed under national law. Different and ineffective national rules on remedies/redress may lead to costs for traders engaging in cross-border trade and detriment for consumers resulting from continued existence of many breaches on national and cross-border level. These problems lead to lack of consumer trust in purchasing, particularly cross-border, and thus to reduced frequency and volume of trade for both consumers and traders.

46 In your professional experience, do consumers experience problems with getting redress from traders when they have been victims of unfair commercial practices?

- Yes, often
- Yes, a few times
- Yes, once
- No
- Do not know

47 Please explain your reply, ideally referring to concrete cases.

48 Do you agree that differences between national rules on remedies for unfair commercial practices cause the following problems?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Harm to consumers as they cannot remedy the consequences resulting from unfair commercial practices on the national and cross-border level	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for traders engaging in cross-border trade due to need to adapt to different national rules on remedies	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

49 Please explain your reply.

There is no harm to consumers as the law already protects them against unfair commercial practices in the EU. The UCPD, introducing a well-developed and very complex and balanced three-step mechanism, prohibits unfair commercial practices throughout the Member States and enables enforcement of these rules. And while the provisions in the UCPD regarding remedies and enforcement are focused on collective enforcement, the consumer has enough means regarding individual remedies, as consumers can turn to national contract law provisions when they need redress against a contract that was concluded as a consequence of an unfair commercial practice. Many Member States, furthermore, already implemented new contract law rules or adapted the existing ones to achieve

parallelisms regarding the UCPD provisions on misleading and aggressive practices and contractual provisions regarding consent defects. The UCPD, while not stipulating a duty for the Member States to adapt contract law, changed the contractual provisions in most of them. Moreover, the means for individual redress were also strengthened by the various Directives on consumer contract law. Hence, the consumer can remedy the consequences resulting from unfair commercial practices on the national and cross-border level. For traders, however, the implementation of the different contractual rules can cause problems and higher costs as they have to adapt to different national regulatory systems.

## 1.2.2 Penalties for breaches of consumer rules

"Penalties" in the following questions refer to a punishment imposed or to be imposed for a violation of consumer protection rules.

"Fines" in the following questions refer to monetary penalties.

Penalties for lack of compliance with consumer law, as foreseen under national law, are not always effective, proportionate and dissuasive enough to prevent lack of compliance by traders, which leads to consumer detriment. Penalties represent an important part of national enforcement systems, as they have an impact on the degree of deterrence provided by public enforcement. Today, fines for breaches of consumer law vary significantly between Member States, both as regards the way in which they are calculated and their maximum level.

50 Do you agree that the following differences between the national legislation of EU Member States on penalties cause insufficient enforcement of EU consumer protection rules across the EU?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
<p>Differences regarding the nature of penalties</p> <p>For example in some Member States traders using standard unfair terms in contracts with consumers (e.g. a standard term which denies the consumer right to a remedy where the good is defective) cannot be penalised with a fine whereas in other Member States the use of such terms may be penalised by a fine up to 50 000 EUR.</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Differences regarding the level of maximum fines</p> <p>For example fines for unfair commercial practices such as a misleading green claim</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

may go up to 32 000 EUR in one Member State, whereas in another Member State up to 5 million EUR.					
Differences regarding the way of calculating fines For example breaches of the Consumer Rights Directive (e.g. not providing to consumers a mandatory information on their rights) may be fined up to a lump sum of 1 500 EUR in one Member State, whereas in another Member State up to 10% of a trader's turnover.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

51 Please explain your reply, preferably by providing examples of concrete cases. In addition, if possible please include a description of any other situation where differences in penalties and in fines in EU Member States cause insufficient enforcement of the EU consumer protection rules.

Differences regarding the nature, level, or way of calculating fines do not lead to an overall insufficient enforcement of EU consumer protection rules. Nature and level of fines should be appropriate in the respective legal system of the Member State. A uniform penalty system would most likely be seen as a negative development by both consumers and traders, as trust of consumers and contentment of traders relies on understanding and accepting the legal system they are working in. This acceptance and understanding, however, is most likely better achieved by measures such as self-regulation and awareness raising methods, not with the implementation of EU-wide standard penalties.

52 Do you agree with the following statements regarding fines for breaches of EU consumer protection rules?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
When imposing a fine on a trader, national authorities do not always take into account that consumers of several Member States may be affected.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The low level of maximum fines in some Member States is not likely to reflect the gravity of a breach and possible profits stemming from it, in particular where a	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

breach affected a large number of consumers in several other Member States.

53 Please explain your reply, preferably by providing examples of concrete cases.

54 Do you agree that differences in the nature and level of penalties for the same or similar breaches of EU consumer laws have the following consequences across the EU?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Insufficient compliance with EU consumer law	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient enforcement of EU consumer law in case of breaches that took place in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient deterrence especially for breaches that took place in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Unfair advantage for non-compliant traders	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of level playing field between traders operating in Member States where fines are relatively low and traders operating in Member States where fines are relatively high	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

55 Please explain your response, including any "other consequences" that you wish to describe.

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## 1.4 Doorstep selling

"Doorstep selling" refers to situations where the trader makes an offer to the consumer or concludes a contract with the consumer in a place which is not the business premises of the trader, in particular transactions taking place at a consumer's home without prior agreement or during excursions organised by the trader.

While doorstep selling is not prohibited as such under the [Unfair Commercial Practices Directive](#) (UCPD), the specific commercial practice of "ignoring the consumer's request to leave or not to return when conducting personal visits to the consumer's home" is always prohibited. However, the Commission has become aware of the fact that there are rules in some Member States that appear to ban or come very close to banning doorstep selling as a sales channel in general. The Commission would like to take this opportunity to seek stakeholders' views on this issue.

62 Under current EU law, doorstep selling is a legitimate sales channel in Europe, except for certain specific exceptions under the UCPD. Do you agree that Member States' authorities should be allowed to introduce a general ban on doorstep selling, as explained above?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

63 Please explain your reply.

Doorstep selling is a legitimate way to conduct business and a valuable sales channel. Doorstep selling can often reach customers who would not buy in store or online and is therefore convenient for the consumers and valuable for the traders. All traders must already comply with the CRD and the UCPD when they conduct their business at the home of their customers. Especially for providers of services or goods that are new on the market, doorstep selling can be a valuable way to advertise the products, show its functionality etc. Prohibiting doorstep selling would effectively terminate an entire sales channel and would make the fulfilment of the market demand in that sector impossible. Regulation regarding doorstep sales are furthermore already very advanced and are balancing out the different interests of the traders and the consumers. The Doorstep Selling Directive (85/577/EEC) was indeed one of the first EU consumer protection instruments. Provisions aiming at protecting the consumer, who may be in a situation of surprise or will be influenced by the fact that the negotiations takes place in a particular environment, are therefore already advanced and with the introduction of the CRD, consumer rights were strengthened even more. A general ban is therefore not necessary.

64 Would you like to continue the survey by answering further, more detailed questions, which would help us in further mapping the issues consumers and businesses face?

- Yes
-

No

## 2. Full questionnaire

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**Thank you for your commitment to answering some additional questions.**

Several of them indicate that they are targeted at specific respondents, such as businesses or national authorities. However, as a respondent to this survey you may answer any of the following questions, even if the question is not specifically targeted to you.

### 2.1 Clearer consumer rules for the digital economy

#### 2.1.1 Platform transparency

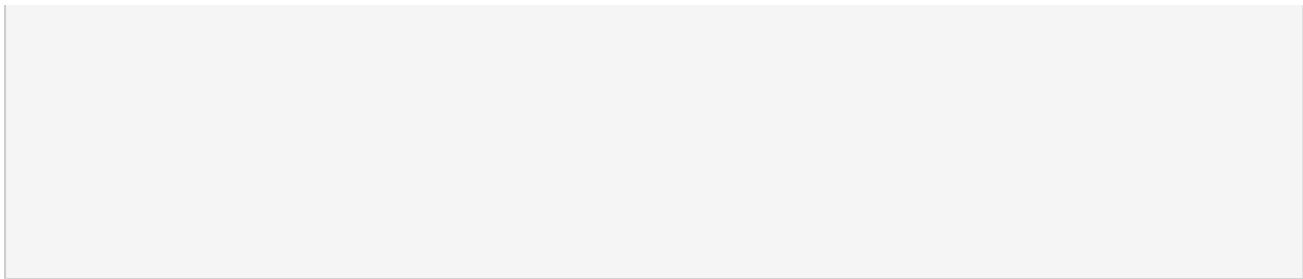
An 'online marketplace', in the following questions, is a service provider which allows consumers and traders to conclude online sales and service contracts on its website.

The [Fitness Check and the evaluation of the Consumer Rights Directive](#) (CRD) showed that some consumers are confused when using online marketplaces. Firstly, it often seems unclear whether consumers buy from the platform itself or from someone else. Secondly, it is often not clear whether the contracting partner acts as trader and is therefore subject to EU consumer law or as a non-trader, against whom EU consumer rights cannot be invoked. For example, in a case leading to a reference for a preliminary ruling at the Court of Justice of the European Union, a consumer buying on a platform was denied the right to withdraw from the contract under the Consumer Rights Directive. Only then did the consumer learn that the seller was claiming not to be a trader (Case C-105/17 Kamenova).

65 Do you agree that throughout the EU, consumers buying on online marketplaces should be informed about the following:

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Whether they buy from the online marketplace itself or from someone else	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Whether the contracting party declares to be a trader or not	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Whether EU consumer rights apply to their transaction	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

66 Please explain your reply.



67 In your view, what would be the benefit to consumers to have such information when using online marketplaces?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
To know whom to contact in case of a problem	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To understand who is responsible for the performance of the contract	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To understand if consumer protection rules apply in case of a problem	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To increase consumer trust	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To compare offers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

68 Please explain your reply, including description of any other reason why such information is important for consumers.

The abovementioned information is necessary to ensure consumer trust and to meet the requirements of the CRD. The Consumer Rights Directive provides that consumers must receive complete and transparent information about key contractual elements, formal requirements for distance and off-premises contracts, a right for consumers to withdraw from distance and off-premises contracts, clear rules on delivery of goods and passing of risk and some specific provisions regarding fees for the use of means of payments, communication by telephone between consumers and traders and rules regarding additional payments. These information requirements are also applicable with regard to online marketplaces. The specific situation with regard to online marketplaces makes the information important for consumers as online marketplaces often only act as an intermediary, not the contractual partner. The consumer should therefore always be informed about who his contractual partner is.

69 **[Companies, business associations]** Do you (or the companies you represent) incur compliance costs when trading cross-border due to different national laws related to information obligations on online marketplaces about the following:

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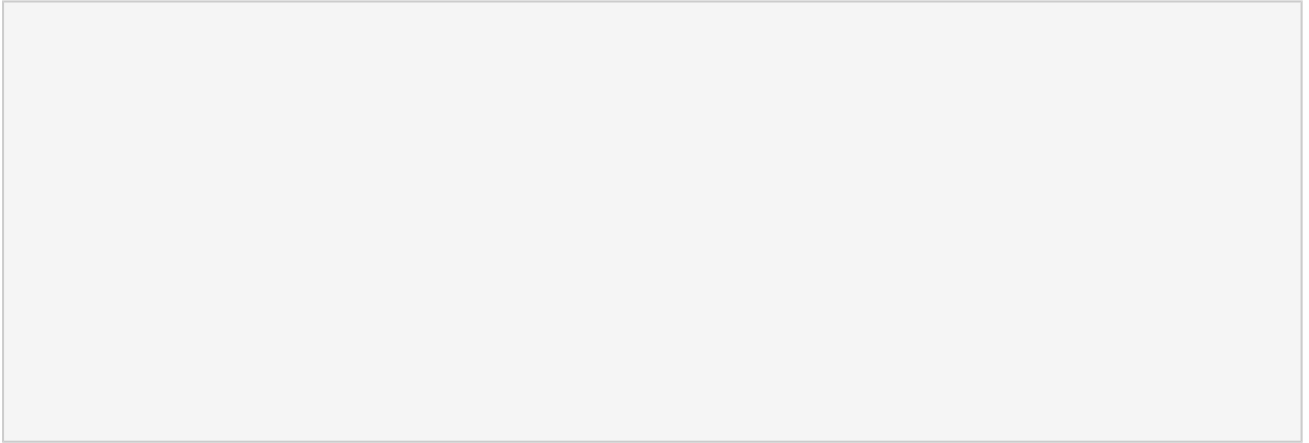
	Yes, to a significant extent	Yes, to some extent	Do not know	Not applicable
Obligation to indicate whether the contract is concluded with the online marketplace or with third party suppliers	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation to indicate whether any third party supplier is acting as a trader or not	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation to indicate the applicability of consumer law to contracts	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

70 Please explain your reply.

71 **[Companies, business associations]** What are your (or the companies' you represent) estimated costs due to a need to adapt to these different national rules ?

	Estimated amount or % of turnover
Absolute one-off costs (in EUR)	
One-off costs as % of turnover	
Absolute annual running costs (in EUR)	
Annual running costs as % of turnover	

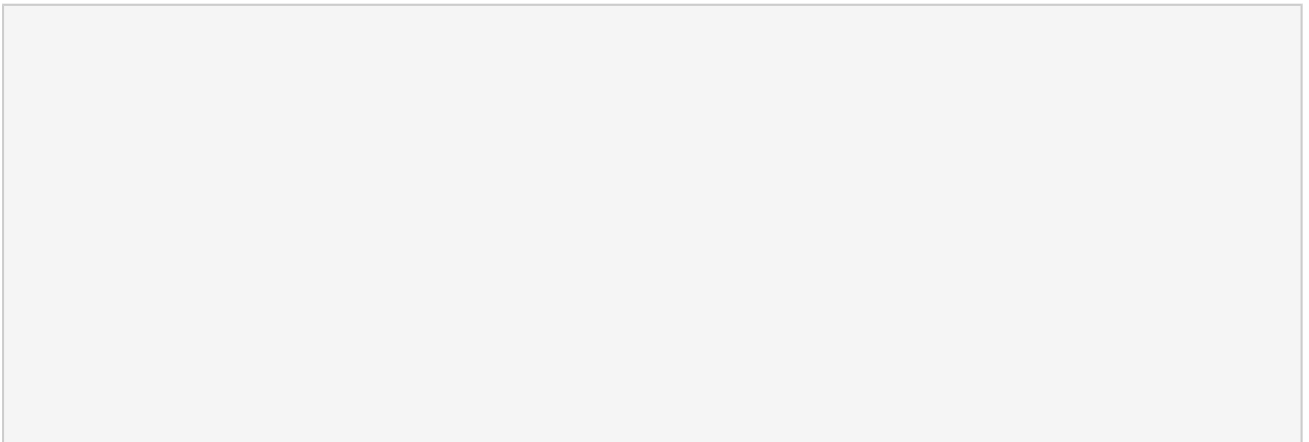
72 Please explain how you have calculated this estimated amount.



73 [**Companies, business associations**] Do you agree that these costs are reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

74 Please explain your reply.



75 **[Online marketplaces]** If a new EU rule was introduced obliging you first to require third party suppliers to declare their status as 'traders' or 'non-traders' to you, and then to pass this information to your users and inform them that EU consumer rights do not apply when the supplier is not acting as a trader, what would be the estimated costs of complying with these obligations for your online marketplace?

	Estimated amount or % of turnover
Absolute one-off costs (in EUR)	
One-off costs as % of turnover	
Absolute annual running costs (in EUR)	
Annual running costs as % of turnover	

76 Please explain how you have calculated this estimated amount.

77 **[Online marketplaces]** In your view, would the costs of complying with the information obligations as set out in the previous question be reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

78 Please explain your reply.

79 If a new EU rule was introduced requiring online marketplaces to inform consumers about who their contracting party is and whether they enjoy EU consumer rights vis-à-vis that person, what should be the consequences if an online marketplace fails to comply with these requirements?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
The online marketplace should become the only one liable for the correct performance of the contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The online marketplace should become jointly liable with the third party supplier for the correct performance of the contract	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Consequences of such non-compliance should be left to national law	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consequences of such non-compliance should be regulated at EU level.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

80 Please explain your reply, indicating also any other solution that you consider relevant.

### 2.1.2 Free online services

"Free" online services in the following questions refer to online services for which consumers do not pay with money but provide data (e.g. cloud storage, e-learning, social network services, when consumers allow the trader to use their pictures).

The rules under the [Consumer Rights Directive](#) (CRD) on pre-contractual information requirements for traders and the 14-days right of withdrawal for consumers apply to all contracts for online provision of digital content (e.g. downloads of software, movies or songs) irrespective of consumer's payment with money. On the other hand, these CRD rules currently only apply to contracts for online services (such as subscription to cloud storage or social networks) for which the consumer pays with money. This calls for discussion as to whether the protection under the CRD should be extended also to contracts for online services for which the consumer provide data and does not pay with money. In this respect, the upcoming EU rules on consumer remedies regarding 'defective' digital products (rules that are currently negotiated by the European Parliament and the Council) may cover online services irrespective of whether the consumer pays with money.

81 In your opinion, should consumers benefit from the rights listed below when using "free" online services?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
The right to pre-contractual information (e.g. about functionality and interoperability of the service with hardware and software)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

The 14-day right of withdrawal (possibility to cancel the contract)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

82 Please explain your reply.

There is no need for consumers to have an additional cancellation right for free services and to be provided with additional information. Providers of free services grant the consumer the right to cancel the contract at any time, hence, giving him the opportunity to disengage from the contract as he wishes. An additional right of cancellation would therefore not strengthen his position above what he is already allowed to do: withdraw from the contract. The introduction of a cancellation right for such contracts would rather complicate the contracting process, burden the trader or service provider with additional information requirements in the pre-contractual and contractual stage and would most likely confuse the consumer. Given the fact that consumers are used to having a cancellation right when buying goods or services online (or door-to-door selling), getting information about a cancellation right could lead to the misunderstanding that the consumer has to pay for the (actually) free services. This additional right could therefore have a detrimental effect for both consumers and service providers/traders. Furthermore, the user can withdraw the permission to use his or her private data if the permission was a precondition for the services.

The majority of providers of free services already inform their users about compatibility etc., as it is in their interest to describe the product to engage the user. But implementing a corresponding legal requirement would burden such providers of free services, as the provisions are often not simple enough to be implemented without legal advice, legal requirements would lead to possible claims and procedures, and could consequently lead to the service provider refraining from offering his service free of charge, as he cannot implement and offer his services any longer without payments.

83 Why would it be important that consumers have a **right to pre-contractual information** for "free" online services?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
To achieve a more level playing field between digital traders using different business models (services provided with or without payment of money)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
To better protect the consumers of services with similar functionalities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

To ensure better synergies between EU consumer protection and the new EU personal data protection rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

84 Please explain your reply.

The additional pre-contractual information are not necessary for consumers with regard to free contracts. Even if the consumers is not provided with some information when concluding a free contract, he is free to withdraw from the contract at any time or the user can withdraw the permission to use his or her private data if the permission was a precondition for the services. He does not bear a financial risk and can often rely on information available online as the providers of free services already usually describe their products and services in detail. But introducing a duty to provide certain information would burden the providers of free content and free contracts and could lead to the fact that many service providers would have to cease offering their services for free.

85 Why would it be important that consumers have a **possibility to withdraw from contracts** for "free" online services?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
To achieve a more level playing field between digital traders using different business models (services provided with or without payment of money)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
To better protect the consumers of services with similar functionalities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
To ensure better synergies between EU consumer protection and the new EU personal data protection rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

86 Please explain your reply.

It is not important for consumers to have an additional cancellation right for free services. Providers of free services grant the consumer the right to cancel the contract at any time, hence, giving him the opportunity to disengage from the contract as he wishes. An additional right of cancellation would therefore not strengthen his position above what he is already allowed to do: withdraw from the contract. Furthermore, the user can withdraw the permission to use his or her private data if the permission was a precondition for the Services. The introduction of a cancellation right for such contracts would



rather complicate the contracting process, burden the trader or service provider with additional information requirements in the pre-contractual and contractual stage and would most likely confuse the consumer. Given the fact that consumers are used to having a cancellation right when buying goods or services online (or door-to-door selling), getting information about a cancellation right could lead to the misunderstanding that the consumer has to pay for the (actually) free services. This additional right could therefore have a detrimental effect for both consumers and service providers/traders.

87 **[Companies, business associations]** Does your company, or companies you represent, provide online services for "free", i.e. services for which consumers do not pay with money but provide data?

- Yes
- No

88 With respect to "free" online services: do you (or the companies you represent) incur costs when trading cross-border due to a need to adapt to current different national laws related to the following?

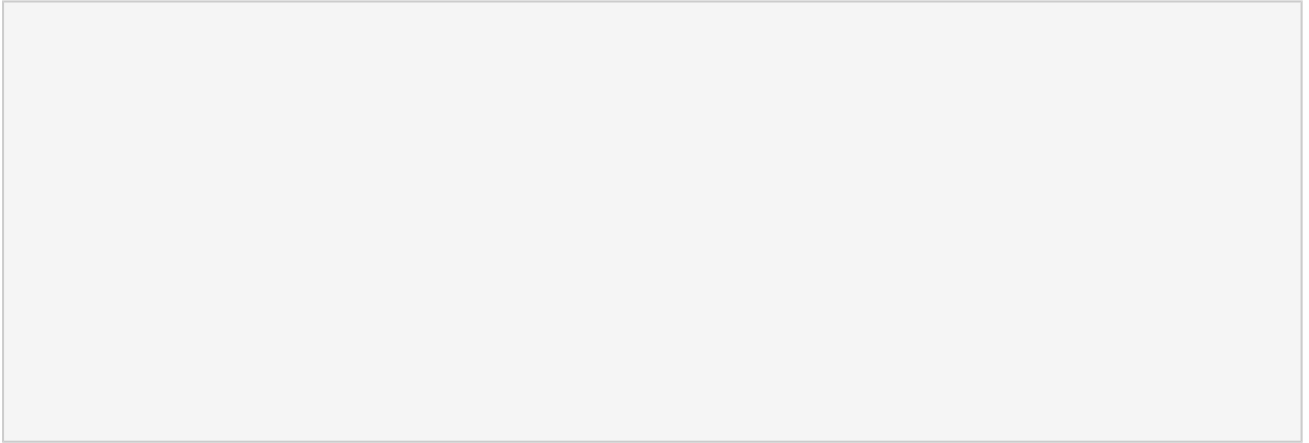
	Yes, to a significant extent	Yes, to some extent	Do not know	Not applicable
Pre-contractual information requirements to consumers about the service (e.g. its functioning and interoperability with hardware and software)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer's right of withdrawal	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

89 Please explain your reply.

90 With respect to "free" online services, what are the estimated costs when trading cross-border due to a need to adapt to current different national rules related to the following ?

	Absolute annual costs (in EUR)	Annual costs as % of turnover of cross-border trade
Pre-contractual information requirements to consumers about the service (e.g. its functioning and interoperability with hardware and software)		
Consumer's right of withdrawal		
Other		

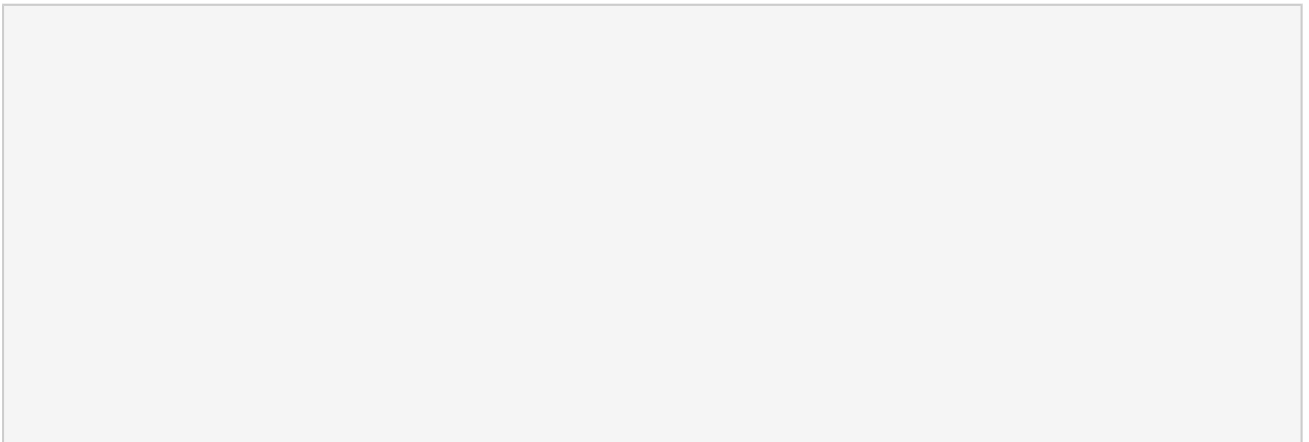
91 Please explain how you have calculated this estimated amount.



92 In your view, are these costs reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

93 Please explain your reply.



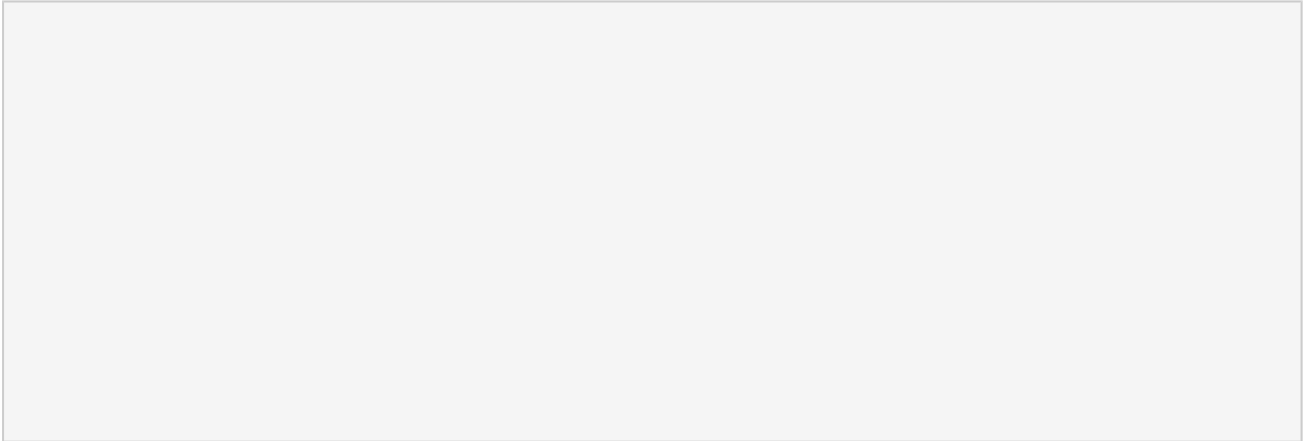
94 Are the above-estimated costs a reason for not offering "free" online services in other countries?

- Yes
- No
- Do not know

95 Would the current EU-wide pre-contractual information requirements be extended also to the provision of "free" online services, what would be the estimated compliance costs?

	Estimated amount or % of turnover
Absolute one-off costs (in EUR)	
One-off costs as % of turnover	
Absolute annual running costs (in EUR)	
Annual running costs as % of turnover	

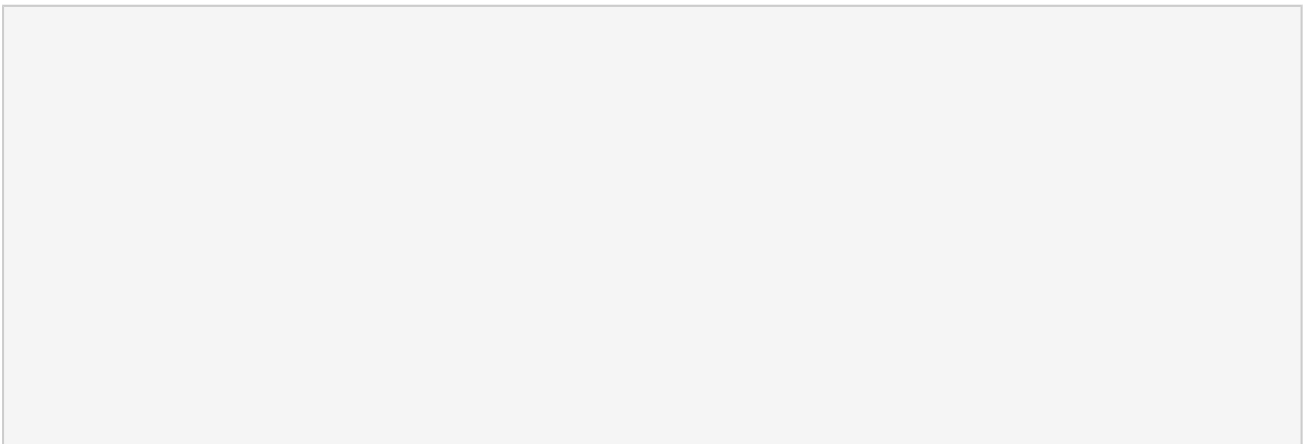
96 Please explain how you have calculated this estimated amount.



97 Would the current EU-wide pre-contractual information requirements be extended also to the provision of "free" online services, do you agree that the estimated compliance costs for your business would be reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

98 Please explain your reply.



99 Would the current EU-wide right of withdrawal be extended also to the provision of "free" online services, what would be the estimated compliance costs?

	Estimated amount or % of turnover
Absolute one-off costs (in EUR)	
One-off costs as % of turnover	
Absolute annual running costs (in EUR)	
Annual running costs as % of turnover	

100 Please explain how you have calculated this estimated amount.

101 Would the current EU-wide right of withdrawal be extended also to the provision of "free" online services, do you agree that the estimated compliance costs for your business would be reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

102 Please explain your reply.

### 2.1.3 Modernising the rules governing the means of communication between traders and consumers

103 Under the [Consumer Rights Directive](#), the fax number and the email address – both if available - are listed as information that must be provided to the consumer before conclusion of the contract ("pre-contractual information obligation"). In view of technological developments, which of the following communication means are for you most relevant when communicating with consumers/traders?

- Email
- Fax
- Web-based contact form
- Social media account
- Other

104 Please explain your reply.

## 2.2 Better enforcement and direct redress/remedies opportunities for consumers

### 2.2.1 Right to individual redress/remedies for victims of unfair commercial practices

"Redress/remedies" refers to what consumers can get to remedy the situation when their consumer rights have been breached (e.g. terminating contract, getting their money back).

"Green claims" refers to marketing that creates an impression that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services.

Current EU rules do not give consumers who have suffered harm from [unfair commercial practices](#), such as misleading advertising, any individual rights to remedy their situation. Furthermore, the consumer's right to remedies/redress for harm caused by unfair commercial practices are not always sufficiently guaranteed under national law. Different and ineffective national rules on remedies/redress lead to costs for traders engaging in cross-border trade and detriment for consumers resulting from continued existence of many breaches on national and cross-border level. These problems lead to lack of consumer trust in purchasing, particularly cross-border, and thus to reduced frequency and volume of trade for both consumers and traders.

105 Based on your private or professional experience, how often do the existing different national rules make it difficult for consumers who are victims of unfair commercial practices to seek redress?

- Often
- Sometimes
- Rarely
- Never
- Do not know

106 Please explain your reply.



107 Do you agree that there should be an EU-wide consumer right to claim remedies from the trader in such situations?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

108 Please explain your reply.

As the regulatory framework already offers a very strong protection to consumers and grants various rights to consumers, self-regulatory measures should be encouraged and strengthened throughout the EU instead of introducing a new EU-wide regime for consumers to claim remedies. Self- and Co-regulatory measures have proven to be effective and more adaptable to the fast changing environmental influences in the digital market. New products can often be included better and faster into an existing self-regulatory standard. Such circumstances lead to a better and innovative-friendly environment without lacking regulatory guidelines for the respective industry.

109 If such an EU-wide consumer right were to be introduced, should it:

- Require Member States to ensure that consumers have a right to remedies, but leave the types of remedies to be defined at national level or
- Define which types of remedies should be available to consumers EU-wide?
- Do not know

110 Which types of EU-wide remedies should be introduced in case a consumer is a victim of an unfair commercial practice (multiple replies possible)?

- Right to terminate the contract and to get a refund of the price paid
- Right to a price reduction
- Right to receive compensation for the damage suffered
- Other

111 Please explain your reply.

Whether and what kind of remedies are available to consumers should always be assessed individually, taking into account the specifics of each case. This assessment should furthermore depend on national law. The introduction of a new, EU-wide, regime is therefore not necessary. If such a right were to be introduced, it should be limited to compensation for the damage suffered.

112 Do you agree that introducing an EU-wide right to individual remedies for victims of unfair commercial practices would bring about benefits, such as:

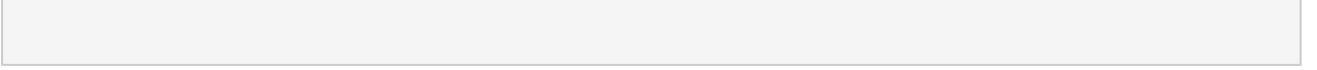
	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Better compliance by businesses with consumer protection rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
More level playing field to the benefit of compliant traders	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater consumer trust	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

113 Please explain your reply, including any other benefits that you wish to describe.

114 **[Companies, business associations]** Does your company (or the companies you represent) face costs when trading cross-border due to a need to adapt to current different national laws related to remedies?

- To a significant extent
- To some extent
- Not applicable
- Do not know

115 Please explain your reply.



116 **[Companies, business associations]** What are your (or the companies' you represent) estimated costs when trading cross-border due to a need to adapt to current different national laws related to remedies?

	Estimated amount or % of turnover
Absolute annual costs (in EUR)	
Annual costs as % of turnover from cross-border trade	
Other	

117 Please explain how you have calculated this estimated amount.

118 **[Companies, business associations]** Do you agree that these costs are reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Not applicable
- Do not know

119 Please explain your reply.

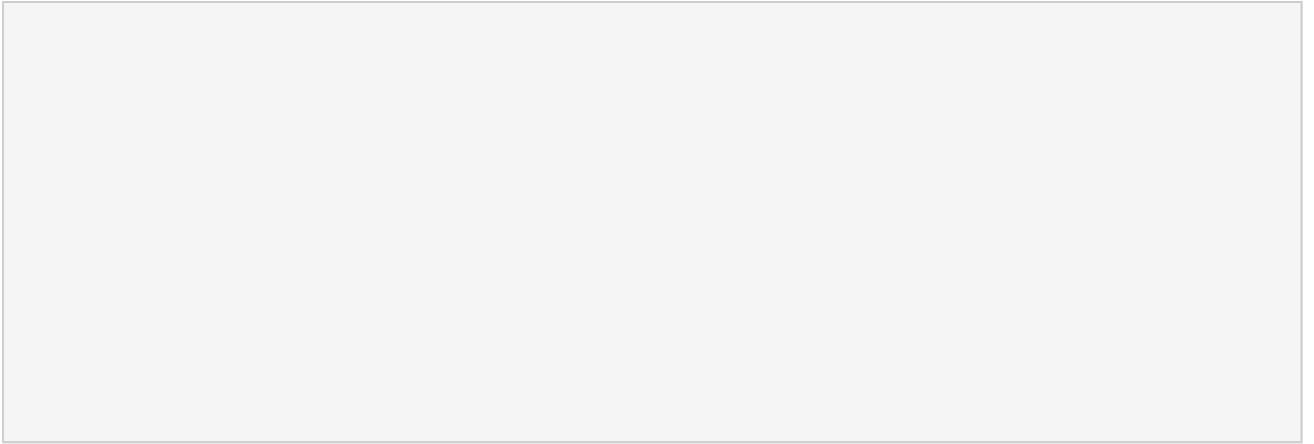
120 **[Companies, business associations]** Are these costs a reason for you (or the companies you represent) not to sell to other Member States?

- Yes
- No
- Do not know

121 **[Companies, business associations]** Would the introduction of an EU-wide right to individual remedies for victims of unfair commercial practices have an impact on the costs of your companies or of the companies represented by your association?

- Yes, costs would go up
- Yes, costs would go down
- No, it would have no impact
- Do not know

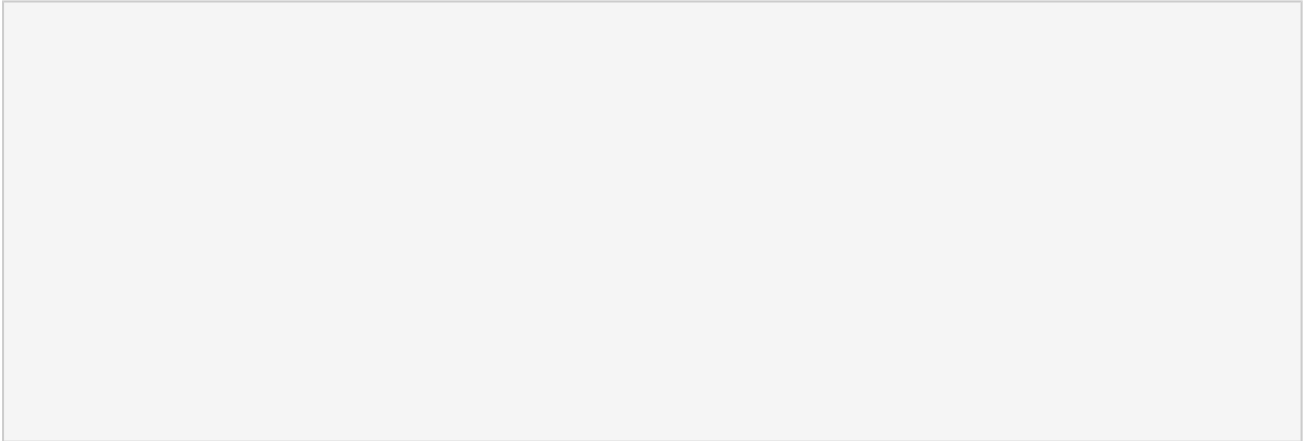
122 Please explain your reply.



123 What would be the estimated additional costs for your business (or the businesses you represent) of introducing an EU-wide right to individual remedies for victims of unfair commercial practices?

	Estimated amount or %
Absolute annual costs (in EUR)	
One-off costs as % of turnover	
Absolute annual running costs (in EUR)	
Annual running costs as % of turnover	
Other	

124 Please explain how you have calculated this estimated amount.



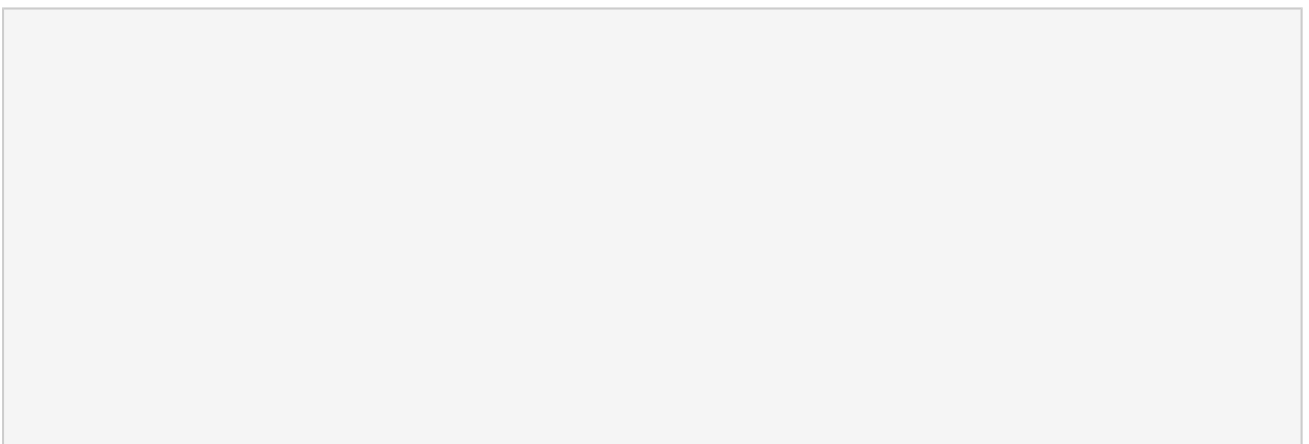
127 **[Companies, business associations]** Would an EU-wide right to individual remedies for victims of unfair commercial practices be introduced, do you agree that the estimated compliance costs would be reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

128 **[Consumer authorities, ministries, courts]** Would an EU-wide right to individual remedies for victims of unfair commercial practices be introduced, would the costs of administrative and judicial enforcement for national authorities or courts increase, in your view?

- To a significant extent
- To some extent
- Not at all
- Do not know

129 Please explain your reply.



## 2.2.2 Strengthening penalties for breaches of consumer rules

"Penalties" refers to a punishment imposed or to be imposed for a violation of consumer protection rules.



"Fines" refers to monetary penalties.

In order to step up the enforcement of EU consumer protection rules the Commission has already taken action, notably through its [2016 proposal for a revision of the Consumer Protection Co-operation Regulation](#) to extend the powers of national consumer authorities and improve their co-operation in dealing with cross-border infringements, including EU-wide infringements. However, traders infringing consumer rules face very different penalties in the different EU Member States. These national penalties are also not always proportionate, effective and dissuasive enough to ensure compliance with the rules. For example, penalties are too low or too high compared to the scale of traders' activity and therefore they are not proportionate; or penalties are too low in view of the gravity of infringements or benefits gained from infringements and therefore they are not effective and dissuasive. In particular, the levels of maximum monetary fines appear, in some cases, very small compared to fines provided, for example, under the forthcoming [EU personal data protection rules](#) or [fines that may be imposed by the European Commission for breaches of EU competition law](#), although breaches of EU consumer law get in the way of the overall economic growth by undermining consumer trust both offline and online.

130 Do you agree that the following measures should be established by EU law regarding penalties for breaches of EU consumer protection rules?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Fines should be available as penalties for breaches of consumer law in all Member States	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
When imposing fines, authorities or courts should always take into account that a breach has affected consumers in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be common criteria in all Member States for imposing fines For example the intentional character and repetition of the breach, the nature of consumer rights affected, the number of consumers affected, the nature and amount of damage suffered by them etc.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be a common maximum level of fines in all Member States for example a common absolute amount or a common maximum % of the trader's turnover	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In all Member States a part of the profits from fines should be dedicated to promote consumer protection, including financing consumer associations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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131 Please explain your response, including any other possible measures that you would like to propose.

132 Do you agree that the following measures should be established by EU law?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
The maximum level of fines should be expressed as an absolute amount	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The maximum level of fines should be expressed as a percentage of the trader's turnover	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The maximum level of fines should be expressed as an absolute amount or a percentage of the trader's turnover whichever is higher (for example, up to 100 000 EUR or up to X% of trader's turnover, whichever is higher)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The maximum level of fines should be expressed as multiplication of the amount of the benefits gained or losses avoided because of the breach (for instance, twice the amount of the benefits gained or losses avoided because of the breach) where those can be determined	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

133 Please explain your response, including any other possible measures that you would like to propose.

Penalties and Fines should be regulated by Member State's Law, not EU law.

134 What would be the best measure to define the maximum level of fines as % of the trader's turnover?

- In terms of percentage of the trader's total worldwide annual turnover of the preceding financial year
- In terms of percentage of the trader's total EU annual turnover of the preceding financial year
- In terms of percentage of the trader's total annual turnover of the preceding financial year in the Member States where the infringement took place
- Other

135 Please explain your response, including any other option that you would like to propose.

136 What would be the best measure to define the maximum level of fines as % of the trader's turnover?

- on the basis of the company's total turnover (in all product markets)
- on the basis of the company's turnover in the specific market concerned by the breach of consumer law
- other

137 Please explain your response, including any other option that you would like to propose.

138 Do you agree that strengthening penalties at the EU level would bring about benefits, such as:

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Better compliance by businesses with consumer protection rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
More level playing field to the benefit of compliant traders	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater consumer trust	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
More effective enforcement of consumer protection rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Improved deterrence by EU consumer protection rules	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

139 Please explain your reply, including any other benefits that you wish to describe.

The provisions regarding penalties and fines are already strong enough to ensure compliance and effective enforcement. A further strengthening would burden companies and lead to higher costs as the new penalties and impending fines would be calculated as possible future costs and therefore would be included in the costs analysis of companies.

140 In your view, what would be the effect of establishing EU common rules on penalties for breaches of EU consumer law on the overall costs of administrative and judicial enforcement?

- There will be no effect on enforcement costs
- Costs will increase
- Costs will decrease
- Do not know

141 Please explain your reply.

142 Do you consider that the possible increase of costs of administrative and judicial enforcement of EU consumer protection rules would be reasonable?

- Yes

- No
- Do not know

143 Please explain your reply.

144 Please give an estimate of the possible additional costs of administrative and judicial enforcement of establishing EU common rules on penalties according to your preferred option in questions 130-137 or other proposed solutions.

	Estimated amount or %
Absolute one-off costs (in EUR)	
One-off costs as % of current annual cost of the enforcement of consumer protection rules	
Absolute annual running costs (in EUR)	
Annual running costs as % of current annual cost of the enforcement of consumer protection rules	
Other	

145 Please explain your reply by indicating the estimated cost related to each of your preferred options.

## 2.3 Simplification of rules

### 2.3.1 Simplification of the rules on the right of withdrawal

In the [evaluation of the Consumer Rights Directive](#) (CRD), some businesses, and especially small and medium-sized enterprises (SMEs), reported specific burdens in complying with the 14-days right of withdrawal (the "cooling-off" period during which consumers may cancel the order and return the product). Specifically, some of them criticise the CRD rule whereby the trader is obliged to refund the consumer as soon as the consumer provides evidence of having returned the goods. As a consequence, the trader may have to refund the consumer even before he is in a position to determine whether the goods have been used more than strictly necessary and therefore have a diminished value.

148 Do you consider that traders face unnecessary and/or disproportionate burden due to the following obligations related to the right of withdrawal?

	Yes, to a significant extent	Yes, to some extent	Not at all	Do not know
Obligation to accept the return of goods bought online which consumers have used more than what they could have done in a brick and mortar shop (thus requiring the trader to calculate the diminished value of the used good, to resell it as second-hand goods and/or to dispose of it as waste)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation to reimburse the consumer without having the possibility to inspect the returned goods as soon as the consumer has supplied evidence of having sent them back.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

149 Please explain your reply.

Customers often use and/or try the goods bought online in an extensive way. The trader only has 14 days to reimburse the consumer (from the day on which he is informed of the consumer's decision to withdraw from the contract). Art. 13 (3) of the CRD furthermore stipulates that, unless the trader has offered to collect the goods himself, with regard to sales contracts, the trader may withhold the

reimbursement until he has received the goods back, or until the consumer has supplied evidence of having sent back the goods, whichever is the earliest. The period for inspecting the returned goods therefore may be considerably shorter than 14 days. Any delay caused by the mail or parcel service disadvantages the trader as the delay will further shorten the period available for inspection. Furthermore, traders are often confronted with a large number of returned goods which can further complicate the inspection periods available for each parcel of returned goods.

150 How important are the following consumer rights related to the 14-day right of withdrawal?

	Very important	Rather important	Rather not important	Not at all important	Do not know
The consumer's right to withdraw from an online sale and return the goods even if he used them more than what he could have done in a brick and mortar shop (thus requiring the trader to accept back the used good and assess its diminished value).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The consumer's right to get refunded as soon as he provides evidence to the trader of having sent the goods back, even before the trader has had the possibility to inspect them.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

151 Please explain your reply.

While not disputing the necessity of a right to withdraw from an online contract, the consumer rights introduced by the CRD go far beyond the rights of consumers in bricks and mortar shops.

According to Art. 14 (2) CRD the consumer shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods. And while Recital 47 provides that in order to establish the nature, characteristics and functioning of the goods, the consumer should only handle and inspect them in the same manner as he would be allowed to do in a shop, the reality often shows that consumers use the goods to an extent that goes beyond what they would be allowed to do in a brick and mortar shop. Therefore, no additional right should be introduced allowing the consumer to return goods that he has used to an extent beyond the handling to establish the nature, characteristics and functioning of the goods. Additionally, the provisions regarding the reimbursement of the consumers burden traders as the reimbursement period is often short and does not allow for the trader to closely and properly inspect the goods the consumer sent back.



152 **[Companies, business associations]** Do traders face the following problems when consumers return goods that they have used more than they could have done in a brick and mortar shop?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Difficulties with determining the 'diminished value' of returned goods	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Practical difficulties with recovering from the consumer the diminished value of returned goods	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Charging costs for diminished value is difficult from the customer relations' viewpoint	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Difficulties with reselling returned goods with diminished value as second-hand goods	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs related to the disposal of the returned goods as waste	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

153 Please explain your reply including any other problem that traders face in these situations.

154 **[Companies, business associations]** Over the last year, in proportion to the total of goods returned to your company (or the companies you represent) as result of the consumer's withdrawal, what is the % of goods used more than allowed?

 %

155 Please explain your reply.

156 **[Companies, business associations]** Over the last year, in proportion to the total of goods returned to your company (or the companies you represent) as result of the consumer's withdrawal, what is the % of goods the total price of which had to be refunded but were either never received back or turned out to have been unduly used once received back?

 %

157 Please explain your reply.

158 **[Companies, business associations]** What are the estimated losses related to returned goods which were used more than allowed?

	Amount or %
Absolute annual losses (in EUR)	
Annual losses as % of turnover	
Other	

159 Please explain your reply.

160 **[Companies, business associations]** What are the estimated losses related to goods the total price of which had to be refunded, but which were either never received back or turned out to have been unduly used once received back?

	Amount or %
Absolute annual losses (in EUR)	
Annual losses as % of turnover	
Other	

161 Please explain your reply.

### 2.3.2 Simplification of information requirements

The Fitness Check investigated whether some of the information requirements that apply at the advertising stage under the [Unfair Commercial Practices Directive](#) (UCPD) could be removed, in view of the fact that traders are required to provide the same and more detailed information at the later pre-contractual stage under the Consumer Rights Directive. The [findings of the Fitness Check](#) show that the current UCPD requirement to provide information about the trader's geographical address and complaint handling policy may not be relevant.

162 Currently, traders are required to provide the following information to consumers at the advertising stage and at the stage before the actual purchase. Do you agree that the following information is necessary already at the advertising stage even though the consumer will also receive this information at a later stage?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Information about the geographical address of the trader	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Information about the complaint handling of the trader	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

163 Please explain your reply.

164 **[Companies, business associations]** Would removal of the requirements to provide information about the trader's geographical address and complaint handling policy at the advertising stage result in savings for your company or the companies you represent?

- To a significant extent
- To some extent
- Not at all
- Do not know

165 Please explain your reply.

166 **[Companies, business associations]** What would be the estimated saving related to such simplifications?

	Estimated amount or % of turnover
Absolute annual savings (in EUR)	
Annual savings as % of turnover	
Other	

167 Please explain your reply.

## 2.4 Doorstep selling

"Doorstep selling" refers to situations where the trader makes an offer to the consumer or concludes a contract with the consumer in a place which is not the business premises of the trader, in particular transactions taking place at a consumer's home without prior agreement or during excursions organised by the trader.

While doorstep selling is not prohibited as such under the [Unfair Commercial Practices Directive](#) (UCPD), the specific commercial practice of "ignoring the consumer's request to leave or not to return when conducting personal visits to the consumer's home" is always prohibited. However, the Commission has become aware of the fact that there are rules in some Member States that appear to ban or come very close to banning doorstep selling as a sales channel in general. The Commission would like to take this opportunity to seek stakeholders' views on this issue.

168 Based on your private or professional experience, is it difficult to purchase or trade cross-border because of national bans or restrictions on doorstep selling or other sales events outside a trader's business premises?

- Very often
- Often
- Sometimes
- Never
- Do not know

169 Please explain your reply.

170 **[Companies, business associations]** Do you or the companies represented by your association incur compliance costs or economic losses because of national bans or restrictions on doorstep selling or other sales events outside a trader's business premises?

- To a significant extent
- To some extent
- Not at all
- Do not know

171 Please explain your reply.

172 **[Companies, business associations]** What are your estimated costs or economic losses because of national bans or restrictions on doorstep selling or other sales events outside a trader's business premises?

	Estimated amount or % of turnover
Absolute annual costs (in EUR)	
Annual costs as % of turnover of cross-border trade	
Other	

173 Please explain how you have calculated this estimated amount.

174 **[Companies, business associations]** In your view, are these costs/losses reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

175 Please explain your reply.

176 You can also upload an additional policy paper here

## Contact

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