

Targeted consultation: Study to support the Fitness Check of EU

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		Operating system	Windows 10

Section 1: Respondent profile information

1 What type of stakeholder are you? (Please tick one option)

Business association

2 Please specify the name of your organisation:

"Bitkom e.V."

5 Which country are you responding from?

Germany

6 Please specify the levels at which your organisation operates: Please select all that apply

At the EU level (including trading intra-EU)

Germany

7 Does your enterprise (or for associations, enterprises belonging to your association) trade on a cross-border basis? Please select one option

Trade on a cross-border basis in the EU and internationally

8 Please specify the fields / economic sectors of activity on which your organisation focuses:

"ICT & transforming economic sectors (e.g. finance, health, agriculture, energym and others)"

9 Can the feedback in your responses be analysed in a way that identifies your organisation or would you prefer this is analysed confidentially – aggregated with other feedback of the relevant type of stakeholder, without being attributed to your organisation? Please note that, given sensitivities, all costs data will be kept confidential and anonymised.

Our feedback can be analysed in a way that attributes it to our organisation

Section 2: Review of digital fairness in EU consumer law and the application of the Modernisation Directive

Please note: References to the "EU consumer law Directives" in this survey relate to the three Directives within the Fitness Check's scope: (1) the Unfair Commercial Practices Directive 2005/29/EC (UCPD) (2) the Unfair Contract Terms Directive 93/13/EEC (UCTD) and (3) the Consumer Rights Directive 2011/83/EU (CRD). These were recently amended through the Modernisation Directive (EU) 2019/2161.

Section 2.1 – Effectiveness

Effectiveness considers the extent of progress towards achieving the objectives of the EU's consumer legislation, and whether the overall regulatory framework is delivering for consumers and traders.

2.1.1 General questions

10 To what extent have the EU consumer law Directives contributed towards achieving the following objectives?

a Improved functioning of the EU digital single market.

To a moderate extent (1 - 5)

b Facilitating e-commerce through uniform rules on information requirements in distance contracts.

To a moderate extent (1 - 5)

- c Facilitating e-commerce through uniform rules on unfair commercial practices.
To a moderate extent (1 - 5)
- d Facilitating e-commerce through uniform rules on the right to cancel online purchases within 14 days.
To a great extent (1 - 5)
- e Striking the right balance between ensuring high levels of consumer protection and facilitating e-commerce.
To a small extent (1 - 5)
- f Strengthening consumer protection and trust in purchasing online.
To a moderate extent (1 - 5)
- g Ensuring that consumers are well-informed before they make online purchases.
To a small extent (1 - 5)
- h Ensuring the transparency and fairness of subscription contracts for digital content and services (including their cancellation).
To a moderate extent (1 - 5)
- i Preventing deceptive practices (dark patterns) in website/app design.
To a moderate extent (1 - 5)
- j Preventing misleading or aggressive marketing online.
To a moderate extent (1 - 5)
- k Preventing the unfair online targeting of consumer vulnerabilities for commercial purposes.
To a moderate extent (1 - 5)
- l Preventing unfair standard contract terms in online contracts.
To a moderate extent (1 - 5)
- m Protecting consumer rights when using 'free' services (involving commercial use of the consumers' personal data).
To a moderate extent (1 - 5)
- n Ensuring the transparency and fairness of personalisation practices (e.g. personalised advertising, pricing, offers, ranking, recommendations).
To a moderate extent (1 - 5)
- o Ensuring transparency and fairness in the marketing of virtual items (including loot boxes) and virtual intermediate currencies.
To a moderate extent (1 - 5)
- p Providing clear rules on the burden of proof / provision of evidence regarding the fairness of commercial practices.
To a moderate extent (1 - 5)

11 Do you have any comments on the impact of the following developments on the application of the EU consumer law framework in the digital environment?

Development of relevant case law of the Court of Justice of the European Union: **Development of case law is important to enhance legal certainty in the application of the various new sets of EU legislation covering consumer law and consumer protection. It is therefore equally important to let legislation be developed over time instead of changing and adding new rules in short time frames. Businesses and consumers as well as the courts need time to develop implementation strategies and functioning practices.**

Development of interpretative guidance (e.g. Commission's Guidance on UCPD, CRD, UCTD): **Guidance can be helpful but should be introduced in a timely manner and also not include requirements that are not covered by the respective legislation.**

Application of new legislation in the digital area (e.g. the Digital Services Act, Digital Markets Act, General Data Protection Regulation, proposals for a Artificial Intelligence Act, Data Act): **All the mentioned legislation include consumer protection provisions. This fact should always be included in impact assessments of future legislation and when assessing if new legislation is necessary and should be introduced.**

12 Overall, to what extent have the EU consumer law Directives provided regulatory certainty in the digital environment?

- a Regulatory certainty for businesses when trading online in their Member State
To a small extent (1 - 5)
- b Regulatory certainty for businesses when trading online cross-border/in another Member State
To a small extent (1 - 5)
- c Regulatory certainty for consumers when purchasing goods, digital content or services online in their Member State

To a moderate extent (1 - 5)

- d Regulatory certainty for consumers when purchasing goods, digital content or services online cross-border/in another Member State

To a moderate extent (1 - 5)

13 To what extent have the EU consumer law Directives provided regulatory certainty about the applicable rules in the following specific areas?

- a Online sale of physical products and services

To a moderate extent (1 - 5)

- b Online sale of digital content and services

To a moderate extent (1 - 5)

- c Provision of "free" digital services (in exchange for consumers' data)

To a moderate extent (1 - 5)

- d Online advertising (including influencer marketing and personalised advertising)

To a moderate extent (1 - 5)

- e Use of AI systems in the context of B2C commercial practices (including AI chatbots)

To a moderate extent (1 - 5)

- f Personalised pricing

To a great extent (1 - 5)

- g Other personalisation practices (ranking, offers, recommendations etc.)

To a moderate extent (1 - 5)

- h Fairness requirements concerning the design of online interfaces (websites, apps)

To a great extent (1 - 5)

- i Virtual items (including loot boxes) and virtual intermediate currencies in digital services, such as video games

To a moderate extent (1 - 5)

- j Standard contract terms

To a great extent (1 - 5)

- k Subscription contracts for digital content and services

To a moderate extent (1 - 5)

- l Rules on burden of proof in disputes/enforcement of fairness requirements

To a moderate extent (1 - 5)

- m Use of dropshipping (i.e. shop does not hold those products in stock)

To a great extent (1 - 5)

- n Use of scalping (i.e. purchasing of products in high demand using automated tools with a view to resell them at higher price)

To a great extent (1 - 5)

14 Do you perceive that there are any outstanding legal gaps?

No

2.1.2 Questions about problematic practices

Whilst recognising that many traders spend resources ensuring that they invest in compliance with EU consumer law, some studies undertaken for the European Commission and wider research point to a range of practices by traders considered to be potentially problematic. This section seeks feedback on the extent to which such practices are prevalent, how far stakeholders agree there is a problem, and considers possible solutions. Some practices are already prohibited and/or addressed in EU law, raising questions around compliance levels and enforcement, whereas others may be pointing at regulatory gaps or uncertainty.

16 To what extent do you agree or disagree that the following practices are problematic?

- a Presence of deceptive practices (dark patterns) in website/app design.

Strongly disagree (1 - 5)

- b Absence of transparency concerning paid promotions in social media.
Strongly disagree (1 - 5)
- c Problems concerning personalised advertising / commercial communications.
Strongly disagree (1 - 5)
- d Problems concerning personalised pricing.
Strongly disagree (1 - 5)
- e Problems concerning other personalisation practices (ranking, offers, recommendation etc.)
Strongly disagree (1 - 5)
- f Problems concerning the addictive use of digital products and services (e.g. social media, video games).
Strongly disagree (1 - 5)
- g Problems concerning the cancellation of subscriptions.
Strongly disagree (1 - 5)
- h Problems with price hikes in subscriptions, following initial promotional deals.
Strongly disagree (1 - 5)
- i Problems due to automatic conversion of free trials into paid subscriptions contracts.
Strongly disagree (1 - 5)
- j Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).
Strongly disagree (1 - 5)
- k Use of loot boxes and addiction-inducing design features (in digital services such as video games).
Strongly disagree (1 - 5)
- l Scalping of products using automated software (except event tickets).
Strongly disagree (1 - 5)
- m Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).
Strongly disagree (1 - 5)
- n Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.
Strongly disagree (1 - 5)
- o Absence of a clear and intelligible presentation of contractual information.
Strongly disagree (1 - 5)
- p Problems in communicating with traders due to the use of AI chatbots.
Strongly disagree (1 - 5)
- q Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).
Strongly disagree (1 - 5)

17 In the past five years, how far have the following potentially problematic B2C digital practices increased or decreased in frequency?

- a Presence of deceptive practices (dark patterns) in website/app design.
Decrease (1 - 6)
- b Absence of transparency concerning paid promotions in social media.
Significant decrease (1 - 6)
- c Problems concerning personalised advertising / commercial communications.
Significant decrease (1 - 6)
- d Problems concerning personalised pricing.
Significant decrease (1 - 6)
- e Problems concerning other personalisation practices (ranking, offers, recommendation etc.)
Significant decrease (1 - 6)

- f Problems concerning the addictive use of digital products and services (e.g. social media, video games).
Significant decrease (1 - 6)
- g Problems concerning the cancellation of subscriptions.
Significant decrease (1 - 6)
- h Problems with price hikes in subscriptions, following initial promotional deals.
Significant decrease (1 - 6)
- i Problems due to automatic conversion of free trials into paid subscriptions contracts.
Significant decrease (1 - 6)
- j Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).
Significant decrease (1 - 6)
- k Use of loot boxes and addiction-inducing design features (in digital services such as video games).
Decrease (1 - 6)
- l Scalping of products using automated software (except event tickets).
Decrease (1 - 6)
- m Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).
Significant decrease (1 - 6)
- n Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.
Decrease (1 - 6)
- o Absence of a clear and intelligible presentation of contractual information.
Significant decrease (1 - 6)
- p Problems in communicating with traders due to the use of AI chatbots.
Significant decrease (1 - 6)
- q Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).
Decrease (1 - 6)

18 Do you have any follow-up comments regarding the problematic practices and how prevalent they are?
"We do not regard the practices mentioned above as problematic as they have been comprehensively addressed by EU Regulations in the past 10 years. Online contracting, website design, cancellations, subscriptions, data use and the use of technologies are already covered extensively (or will be soon by the AI Act and the Data Act). Furthermore, if such problematic practices would still be occurring in the EU, it would not be because of regulatory gaps or missing regulation but because of missing harmonization and legal uncertainty with regard to implementation of rules."

- 19 To what extent have the three core EU consumer law Directives been effective in tackling perceived problematic digital B2C practices?
- a Presence of deceptive practices (dark patterns) in website/app design.
Quite effective (1 - 5)
 - b Absence of transparency concerning paid promotions in social media.
Quite effective (1 - 5)
 - c Problems concerning personalised advertising / commercial communications.
Quite effective (1 - 5)
 - d Problems concerning personalised pricing.
Quite effective (1 - 5)
 - e Problems concerning other personalisation practices (ranking, offers, recommendation etc.)
Quite effective (1 - 5)
 - f Problems concerning the addictive use of digital products and services (e.g. social media, video games).
Quite effective (1 - 5)
 - g Problems concerning the cancellation of subscriptions.
Quite effective (1 - 5)

- h Problems due to price hikes in subscriptions, following initial promotion deals.
Quite effective (1 - 5)
- i Problems due to Automatic conversion of free trials into paid subscriptions contracts.
Quite effective (1 - 5)
- j Problems due to lack of transparency about the actual value of virtual items offered in exchange for virtual intermediate currencies (in digital services such as video games).
Quite effective (1 - 5)
- k Use of loot boxes and addiction-inducing design features (in digital services such as video games).
Quite effective (1 - 5)
- l Scalping of products using automated software (except event tickets).
Quite effective (1 - 5)
- m Use of consumers' data that exploits specific vulnerabilities for commercial purposes (e.g. data indicating a gambling addiction).
Quite effective (1 - 5)
- n Use of AI systems that deploy subliminal techniques beyond a person's consciousness for commercial purposes.
Quite effective (1 - 5)
- o Absence of a clear and intelligible presentation of contractual information.
Quite effective (1 - 5)
- p Problems in communicating with traders due to the use of AI chatbots.
Quite effective (1 - 5)
- q Absence of transparency concerning the "dropshipping" business model (i.e. the fact that the shop does not hold those products in stock).
Quite effective (1 - 5)

- 20 If you consider certain problematic practices to be already covered by EU consumer law, do you have any additional comments on the application of the laws in practice (e.g. are there specific regulatory gaps, a need for more regulatory clarity, guidance and/or more effective enforcement).
"The above mentioned practices/problems have been comprehensively addressed by EU Regulations in the past two decades. Online contracting, website design, cancellations, subscriptions, data use and the use of technologies are already covered extensively (or will be soon by the AI Act and the Data Act). Furthermore, if such problematic practices would still be occurring in the EU, it would not be because of regulatory gaps or missing regulation but because of missing harmonization and legal uncertainty with regard to implementation of rules. To truly enable the European Digital Single Market harmonization and a common understanding and interpretation of the rules is of the utmost importance."

2.1.3 The Modernisation Directive and its likely impacts on effectiveness and relevance of EU consumer law.

The Modernisation Directive (EU) 2019/2161 had to be applied from May 28th 2022, although several Member States were late in their transposition. It amends EU consumer law with additional rules regarding the digital environment, among other areas, and strengthens the overall enforcement of the existing rules through stronger requirements regarding penalties in case of infringements and providing rights for individual remedies for consumers harmed by unfair commercial practices.

- 21 To what extent, in your opinion, has the Modernisation Directive strengthened consumer protection in the following areas it covers?
- a More transparency in online search results (disclosure of ranking criteria and paid placements) when consumers search for products offered by different traders.
To a moderate extent (1 - 5)
 - b More transparency about whether the third party offering products through online marketplaces is a trader or consumer.
To a great extent (1 - 5)
 - c More transparency regarding the processing and verification of consumer reviews that traders collect and make available.
To a great extent (1 - 5)
 - d Better access to event tickets as a result of the prohibition of scalping by automated software.
Don't know (1 - 5)
 - e More transparency concerning price reduction announcements.
To a great extent (1 - 5)
 - f Better consumer information about "free" digital content and services (provided in exchange for commercial use of personal data).

To a great extent (1 - 5)

- g More transparency when the price is personalised as a result of automated decision-making.

To a great extent (1 - 5)

- h Easier communication with the trader through the e-mail address and telephone number.

To a moderate extent (1 - 5)

- i More deterrence against infringements through stronger penalties.

To a great extent (1 - 5)

- j Preventing the misleading presentation of goods (especially food) as being identical to those marketed in other EU countries when there are significant differences ('dual quality' of goods).

To a great extent (1 - 5)

- k More deterrence against infringements through better redress for victims of unfair commercial practices.

To a great extent (1 - 5)

-
- 22 Do you consider that consumers suffer detriment due to unfair commercial practices (i.e. pressure selling, misleading information) in the context of the following selling techniques taking place outside the seller's regular business premises:

- a Doorstep selling (sellers' visits to consumer's home).

Not at all (1 - 6)

- b Commercial excursions (leisure activities organised by a seller involving sale of products).

Not at all (1 - 6)

- c Organised selling events at places like private homes, hotels, restaurants to which consumers are invited.

Not at all (1 - 6)

-
- 24 Do you consider that consumers suffer detriment due to traders' practices of marketing goods (through their branding and presentation) as being identical to those goods in other EU countries notwithstanding their differences in composition and characteristics ('dual quality')?

Not at all

-
- 25 Please explain your response to the above question should you wish to do so:

"Branding, presentation and marketing as well as transparency requirements are extensively covered by existing regulation. According to the UCPD, goods of the same brand and having the same or similar packaging may differ as to their composition depending on the place of manufacture and the destination market. Differentiation according to the destination market is an important instrument to address specific local needs and preferences. The existing rules allow for a case-by-case assessment whether such differentiation would be considered unfair to consumers. Consumers are therefore protected while also enjoying a wide range of products throughout the EU."

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- 29 Were there any unforeseen or unexpected consequences of the Modernisation Directive's amendments in the UCPD, CRD, UCTD and PID? For example, more use by traders of other methods to promote price advantages instead of the - now regulated - price reductions (such as price comparisons, loyalty programmes, personalised discounts etc.)

Don't know

2.1.4 Enforcement and regulatory compliance

- 31 How effective is the enforcement of EU consumer law in the digital environment? Please provide your overall perception concerning the enforcement of the Consumer Rights Directive, Unfair Commercial Practices Directive and Unfair Contract Terms Directive respectively in the digital area.

- a Public enforcement by administrative authorities.

Very effective (1 - 6)

- b Private enforcement by qualified entities, such as consumer or business organisations.

Very effective (1 - 6)

- c Resolution of disputes between consumers and traders through court action.

Very effective (1 - 6)

- d Resolution of disputes between consumers and traders through out-of-court dispute resolution mechanisms.

Very effective (1 - 6)

- e Development of soft law measures (e.g. guidance; compliance sweeps by the CPC Network; voluntary pledges).

Very effective (1 - 6)

- f Ensuring consumer redress, such as compensation, price reduction, ending the contract.

Very effective (1 - 6)

-
- 33 To what extent do you agree with the following statements concerning the functioning of the EU consumer law Directives in the digital environment?

- a There are divergences in national interpretation of EU consumer law across different Member States.

To a great extent (1 - 5)

- b There are divergences in national interpretation of EU consumer law by different competent bodies in the same Member State.

To a great extent (1 - 5)

- c Traders are able to bypass certain obligations in EU consumer law using contractual, technical or behavioural measures.

Not at all (1 - 5)

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- 34 If you responded 'to a great extent' or 'to a moderate extent', please explain your answer below, provide any specific examples, and mention what impact this has had:

Impacts of divergence in application (e.g. on single market):: **The Directives do not yet lead to full harmonization of the law as they allow for national rules and include opening clauses. Interpretation differs due to national enforcement and divergence of interpretation of the rules by authorities and courts. European guidance would therefore be beneficial.**

-
- 35 What are your perceptions regarding the level of compliance among traders in relation to the following main requirements of the EU consumer law Directives?

- a Avoiding misleading or aggressive commercial practices (Unfair Commercial Practices Directive)

High compliance levels (1 - 4)

- b Providing precontractual information (Consumer Rights Directive)

High compliance levels (1 - 4)

- c Adhering to the 14-day right of withdrawal (Consumer Rights Directive)

High compliance levels (1 - 4)

- d Avoiding non-transparent and unfair standard contract terms (Unfair Contract Terms Directive)

High compliance levels (1 - 4)

- e Adhering to requirements concerning price reductions (Price Indication Directive as amended by the Modernisation Directive).

High compliance levels (1 - 4)

-
- 36 To what extent has compliance with EU consumer law requirements in the digital environment resulted in any additional types of general compliance costs for your business? Please answer in respect of the following:

- a Familiarisation with consumer protection rules for online sales (e.g. developing compliance strategies, allocating compliance responsibilities, reviewing guidance documents on digital sales)

To a great extent (1 - 5)

- b Checking compliance with legal requirements to ensure that digital commercial practices (and contract terms) are not unfair or misleading (e.g. checking that website design is not unfair)

To a small extent (1 - 5)

- c Adjusting business practices (e.g. changing a website design where deceptive practices are identified, using different standard contract terms if considered unfair, etc.)

To a moderate extent (1 - 5)

- d Cost of external services (e.g. consultants / lawyers hired to support compliance process).

To a great extent (1 - 5)

-
- 37 If costs have increased to a great extent or to a moderate extent, please comment on how significant these additional costs were:

- a

Familiarisation with consumer protection rules for online sales (e.g. developing compliance strategies, allocating compliance responsibilities, reviewing guidance documents on digital sales)

Significant costs (>20%) (1 - 6)

- b Checking compliance with legal requirements to ensure that digital commercial practices (and contract terms) are not unfair or misleading (e.g. checking that website design is not unfair)

Low costs (5-9.9%) (1 - 6)

- c Adjusting business practices (e.g. changing a website design where deceptive practices are identified, using different standard contract terms if considered unfair, etc.)

Moderate costs (10-20%) (1 - 6)

- d Cost of external services (e.g. consultants / lawyers hired to support compliance process).

Significant costs (>20%) (1 - 6)

38 To what extent has compliance with EU consumer law requirements in the digital area resulted in the following additional types of costs relating to information obligations for your business?

- a Pre-contractual information requirements about the products you sell

To a great extent (1 - 5)

- b Disclosure requirements for platforms on aspects such as search rankings and the processing of consumer reviews.

To a great extent (1 - 5)

- c Cost of complying with the right of withdrawal (products, services)

To a great extent (1 - 5)

40 Please provide any details or supporting information about relevant costs below:

"Costs are driven up mainly because of the numerous new regulations and the ever changing landscape due to court cases, differing guidelines by local authorities etc. Another main driver is the need to involve numerous teams and experts in the companies for implementation: Legals, product designers, UX, privacy professionals, customer service support, engineers for automated processes, localisation requirements for content and processes (translations etc)."

41 In recent years, how frequently have you checked that you still comply with EU legislation (as transposed into national legislation)? Please tick one option

Once a month or more often

42 Please identify examples of the different costs stemming from the EU consumer law provisions related to the digital environment:

Please provide any examples of different types of costs (qualitative):: **Costs are driven up mainly because of the numerous new regulations and the ever changing landscape due to court cases, differing guidelines by local authorities etc. Another main driver is the need to involve numerous teams and experts in the companies for implementation: Legals, product designers, UX, privacy professionals, customer service support, engineers for automated processes, localisation requirements for content and processes (translations etc).**

43 Does your firm (or your industry association members) also trade cross-border?

Yes

44 When you entered another EU country's market, did you incur any additional costs to check compliance with the legal requirements of the other Member State regarding precontractual information, advertising/marketing and standard contract terms?

Yes

45 To what extent when trading cross-border has compliance with consumer law requirements resulted in the following additional types of costs for your business in the digital area due to differences in national transposition and interpretation?

- a Familiarisation with national specific consumer protection rules for online sales and initial compliance planning (e.g. developing compliance strategies, allocating compliance responsibilities)

To a great extent (1 - 5)

- b Checking compliance with additional national legal requirements for online sales regarding commercial practices and contract terms (e.g. check website is not unfair by design; ensure that a contract cancellation button exists, if specifically required by national law)

To a great extent (1 - 5)

- c Information obligations for online sales (e.g. additional national pre-contractual and other information requirements).

To a great extent (1 - 5)

- d Adjusting business practices (e.g. changing a website design where unfair, deceptive practices are identified, using different standard contract terms if considered unfair, etc.)

To a great extent (1 - 5)

- e Cost of external services (e.g. consultants / lawyers hired to support compliance process).

To a great extent (1 - 5)

-
- 47 Are there any indirect costs of compliance due to EU consumer law? For instance, are there any opportunity costs or negative impacts on market functioning (e.g. reduced competition or market access)?

"There are lost opportunity costs, because products/services cannot (or can no longer) be offered. Another negative impact can be seen in the restrictions on innovation, because a lot of resources have to be invested in the implementation of regulation (which in some cases does not effectively improve consumer protection). The regulatory quality can also be considered as having negative impacts (e.g. overlapping provisions in different legislations, definitions differ and overly descriptive provisions). Difficulties in terms of market access also arise due to the still existing regulatory fragmentation."

-
- 48 To what extent have the regulatory amendments stemming from the Modernisation Directive's adoption resulted in new or increased costs in the following areas?

- a Familiarisation with the new rules (e.g. developing compliance strategies, allocating compliance responsibilities)

To a moderate extent (1 - 5)

- b Complying with the new information obligations (for platforms)

To a moderate extent (1 - 5)

- c Costs of external services (e.g., consultants / lawyers hired to support compliance, website redesign).

To a moderate extent (1 - 5)

-
- 49 If you responded that compliance costs have either increased to a 'great or moderate' extent due to the Modernisation Directive, please provide an indication of the scale of increase in different types of costs in respect of the following new requirements:

- a Disclosure of ranking criteria and paid placements/advertisements when offering consumers the online facility to search for products offered by different traders.

Moderate costs (10-20%) (1 - 6)

- b Informing consumers about the processing and verification of consumer reviews

Moderate costs (10-20%) (1 - 6)

- c Enabling consumers to communicate with the trader via e-mail address and telephone number

Moderate costs (10-20%) (1 - 6)

- d Indicating 'prior' price in price reduction announcements.

Moderate costs (10-20%) (1 - 6)

- e Informing consumers when the offered price is personalised as a result of automated decision-making.

Don't know (1 - 6)

- f Adjusting the presentation (branding/packaging) of goods or aligning their composition/characteristics in different Member States, in view of the new provisions concerning "dual quality".

Moderate costs (10-20%) (1 - 6)

- g Strengthening of the rules applicable to "free" digital services provided against commercial processing of the consumer's personal data (as regards information obligations, the right of withdrawal)

Moderate costs (10-20%) (1 - 6)

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- 51 Please identify and explain the nature and magnitude of the different costs of the Modernisation Directive's provisions related to the digital environment:

Please provide any examples of different types of costs (qualitative):: **Costs for implementation and compliance is generally higher for directives, due to national transposition, national law changes, language differences, etc.**

-
- 52 To what extent do the costs of regulatory compliance with the three core EU consumer law Directives (i.e. CRD, UCTD, UCPD) in the digital area differ between SMEs and large businesses? (tick one only)

Regulatory compliance is more costly for SMEs than large traders

Regulatory simplification & burden reduction

- 57 To what extent are there opportunities to simplify the legislation or reduce unnecessary regulatory costs without undermining the objectives of the three EU consumer law Directives (i.e. CRD, UCTD, UCPD) in the digital area?

To a moderate extent

- 58 Please explain if you see any opportunities to simplify the legal framework for traders or burden reduction for enforcement authorities? If yes, which? (if you don't know or prefer to skip, please click next)

Simplification measures for reducing compliance costs for traders:: **Introducing Regulations instead of Directives without any material changes on the EU level to limit national implementation costs and national laws that differ from the EU legislation.**

Burden reduction for enforcement authorities:: **see above - same rules and implementation would significantly decrease burden on the national authorities due to similar rules throughout the EU.**

Section 2.2.2 – The benefits of EU consumer law

- 59 To what extent does your company (or for industry associations, your member companies) agree that the harmonisation of consumer protection rules at EU level has led to the following benefits in the digital area?

- a Improved regulatory certainty for businesses.

Agree (1 - 5)

- b Creating a level playing field across the EU for businesses through prohibition of unfair commercial practices.

Agree (1 - 5)

- c Creating a level playing field by ensuring that standard contract terms are fair.

Agree (1 - 5)

- d Single market benefits (harmonised legislation making it easier to sell cross-border to consumers in other EU countries).

Agree (1 - 5)

- e Ensuring fairness for consumers in the digital environment.

Strongly agree (1 - 5)

- f Improved consumer trust due to better information for consumers in making purchases of goods, services or digital content online.

Don't know (1 - 5)

- g Striking the right balance between consumer protection, whilst not overburdening traders.

Strongly disagree (1 - 5)

- 60 Please identify the benefits from the harmonisation of EU consumer law in the digital area and, where possible, explain their nature and scale.

Benefits (qualitative):: **EU Regulation generally preferable to national regulations; regulations generally preferable to directives and thus more advantageous because no transposition has to take place. Reduces effort and legal fragmentation.**

Overarching efficiency assessment

- 62 At the societal level, to what extent do the provisions of the three EU consumer law Directives (i.e. CRD, UCTD, UCPD) achieve an adequate balance between regulatory costs for traders and benefits for consumers and other stakeholders? (tick one only)

Regulatory compliance costs outweigh the benefits

Section 2.3 - Relevance and fitness for purpose

Relevance considers the extent to which the three Directives are fit for purpose, considering how the legislation and its application has evolved over time (e.g. through case law, interpretative guidance). The ongoing relevance of the legislation in addressing new technologies and changes in digital markets, as well as in tackling problematic practices is also considered.

- 63 Overall, to what extent do the provisions of the three EU consumer law Directives adequately address digital market trends?

To a great extent

- 64 To what extent do the three EU consumer law Directives keep up with the following specific evolving developments in digital markets and new technologies?

- a Changes in digital services and markets (e.g. the increased role of marketplaces and platforms, subscription service models).

To a great extent (1 - 5)

- b Development of technologies to facilitate transactions by consumers (e.g. smart contracts).

To a great extent (1 - 5)

- c Increased use of connected products (e.g. Internet of Things) to make purchases and carry out everyday tasks (e.g. personal assistants).

To a great extent (1 - 5)

- d Increased use of Artificial Intelligence (AI), including in profiling and personalisation practices.

To a great extent (1 - 5)

- e Increased use of automation (e.g. in consumer services – AI chatbots; businesses using scalping bots).

To a great extent (1 - 5)

- f Growing role of data/Internet of Behaviours (including data held by platforms) in personalisation practices (advertising / marketing and pricing).

To a great extent (1 - 5)

- g Growing use of “free” digital services involving commercial processing of users’ personal data.

To a great extent (1 - 5)

- h Changes in how consumers purchase goods and services (e.g. buying via mobile phone and social media platforms).

To a great extent (1 - 5)

- i New virtual/augmented reality environments (metaverse/immersive technologies).

To a great extent (1 - 5)

- j Increased use of blockchain technology.

To a great extent (1 - 5)

-
- 66 How far has the application of the Modernisation Directive strengthened the ‘fitness for purpose’ and relevance of the underlying EU consumer law Directives concerned with addressing problematic practices?

Some positive difference

-
- 67 To what extent do you agree with the following statements regarding the extent to which vulnerable consumers are appropriately addressed in the three EU consumer law Directives (i.e. CRD, UCTD, UCPD):*Note - ‘Situational vulnerability’ is a situation whereby consumers may be vulnerable only in particular circumstances, even if they do not fall under any classic vulnerability category – all consumers could be vulnerable online.

- a The concept of an ‘average consumer’ is adequate in the digital area.

Strongly agree (1 - 6)

- b The concept of ‘vulnerability’ is sufficiently broad to cover all relevant vulnerable groups in the digital area, including situational vulnerability.

Strongly agree (1 - 6)

- c The Directives place sufficient focus on accessibility issues for certain types of users (e.g. people without basic digital skills, people with disabilities, partially sighted users).

Strongly agree (1 - 6)

The burden of proof

-
- 69 To what extent do you agree or disagree with the following statements:

- a It is proportionate to keep the burden of proof on consumers to provide evidence of an infringement.

Strongly agree (1 - 6)

- b The burden of proof of compliance with legal requirements should be shifted to the business in certain circumstances (e.g. if there is reasonable suspicion of an infringement)

Strongly disagree (1 - 6)

- c The burden of proof should be reversed and put on traders to demonstrate fairness in cases of major digital asymmetries (e.g. algorithms that consumers cannot understand)

Strongly disagree (1 - 6)

-
- 70 If there were adaptations to the current rules on burden of proof, what would be the specific challenges? Do you have suggestions on how these might be overcome? Could there be any unintended consequences?

"The current distribution of the burden of proof is working and is balanced for both sides; extending or reversing the burden of proof to traders/companies is not necessary in any case and would result in even more (than already) exploitation of such regulations."

- 71 What would be the most likely consequences if there is no further strengthening of the Directives with respect to consumer protection in the digital environment? Indicate the extent to which you agree or disagree.
- a No consequences, as the current state of consumer protection is adequate.
Neither agree nor disagree (1 - 6)
 - b Limited consequences, as the legislation is already updated directly and indirectly (e.g. through the Modernisation Directive, other digital legislation) and it is sufficiently technology neutral
Agree (1 - 6)
 - c Risk of adverse consequences, as there would remain legal gaps or legal uncertainty, which cannot be overcome by enforcement or soft measures.
Disagree (1 - 6)

Section 2.4 - Coherence

Coherence considers the internal clarity of the three Directives concerned and also their interaction with other relevant EU legislation concerning digital markets and services, data protection law, product safety law etc.

Internal coherence

- 72 To what extent are there internal inconsistencies, overlaps or gaps between the provisions of the three EU consumer law Directives in the digital environment?
To a small extent

External coherence

- 74 To what extent is there coherence between the provisions of key EU consumer legislation (i.e. CRD, UCTD, UCPD) and the following existing and proposed EU legislation as regards regulating consumer protection in the digital environment?
- a Digital Services Act – Regulation (EU) 2022/2065
Some coherence (1 - 4)
 - b Digital Markets Act – Regulation (EU) 2022/1925
Some coherence (1 - 4)
 - c Digital Content & Services Directive (EU) 2019/770
Some coherence (1 - 4)
 - d Audiovisual Media Services Directive 2010/13/EU
Some coherence (1 - 4)
 - e Proposal for an Artificial Intelligence Act
Some coherence (1 - 4)
 - f GDPR – General Data Protection Regulation (EU) 2016/679
Some coherence (1 - 4)
 - g Proposal for a Data Act
Some coherence (1 - 4)
 - h ePrivacy Directive / future ePrivacy Regulation
Some coherence (1 - 4)
 - i General Product Safety Regulation (GPSR)
Some coherence (1 - 4)
 - j Accessibility Act / Web Accessibility Directive
Some coherence (1 - 4)
 - k Competition law
Some coherence (1 - 4)

Section 2.5 - EU Added Value

EU added value considers how much value an EU-wide legal regime has had and what would be the situation were there to be no such legislation in place.

- 77 To what extent has the EU consumer law framework achieved better outcomes than could have been achieved by Member States regulating these areas themselves?
- a High levels of consumer trust and empowerment in the digital environment.
Significantly better outcomes through EU action (1 - 5)
 - b Effective functioning of the (digital) single market through harmonised rules/ avoidance of fragmentation.
Significantly better outcomes through EU action (1 - 5)
 - c Addressing problematic cross-border commercial practices.
Significantly better outcomes through EU action (1 - 5)
 - d Addressing problematic cross-border standard contract terms.
Significantly better outcomes through EU action (1 - 5)
 - e Facilitating e-commerce through clear rules on distance contracts.
Significantly better outcomes through EU action (1 - 5)
 - f Facilitating cross-border e-commerce.
Significantly better outcomes through EU action (1 - 5)

Section 3: Possible strengthening of the consumer law framework

Whilst this study is not an impact assessment, some previous research has pointed to potential legal gaps or uncertainties in addressing problematic practices in the digital environment. This section seeks views as to whether any further improvements are needed and if yes, whether this should be through regulatory changes, soft law mechanisms or other approaches.

- 78 How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges through soft law mechanisms, such as guidance? Please indicate the extent to which you agree or disagree with the following statements:
- a No changes are necessary.
Neither agree nor disagree (1 - 6)
 - b Update guidance documents periodically.
Disagree (1 - 6)
 - c Clarify any implications of new digital practices, developments / trends in digital markets and services through guidance to reduce legal uncertainty.
Agree (1 - 6)
 - d Industry initiatives and self-regulation (e.g. codes of conduct, incorporating good business practices into website design, time-outs to prevent over-use / digital addiction).
Strongly agree (1 - 6)
- 79 How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges through legal mechanisms? Please indicate the extent to which you agree or disagree with the following statements:
- a Introduce new legal provisions to address specific gaps and uncertainties (see follow-up question with examples).
Disagree (1 - 6)
 - b More Court of Justice rulings and national case law to clarify the law over time.
Neither agree nor disagree (1 - 6)
- 80 How far do you agree that the EU consumer law framework and its application should be strengthened to address existing and/or anticipated future challenges in the area of enforcement? Please indicate the extent to which you agree or disagree with the following statements:
- a More harmonised enforcement across the EU-27 (including through coordinated actions and penalties).
Agree (1 - 6)

- b More 'soft' enforcement e.g. to raise awareness about existing rules and new rules, working together with traders to address non-compliance.

Strongly agree (1 - 6)

81 Do you have any specific comments regarding the measures referred to above? If yes, enter below, if no, go to next question.

Enforcement:: New laws must be given time to 'work in practice' - i.e. time must be given to develop best practices, interpret the laws and also increase legal certainty through court decisions.

82 What are your views on specific possible changes to the existing EU legal framework which could be considered to strengthen consumer protection and to address problematic practices and/ or legal gaps?

- a Introduce additional transparency obligations about personalised commercial practices at the moment they are deployed.

Don't support at all (1 - 6)

- b Require additional transparency about the dropshipping business model (i.e. the fact that the shop does not hold those products in stock).

Don't support at all (1 - 6)

- c Prohibit the exploitation of consumer vulnerabilities for commercial purposes (e.g. using psychographic profiling to target commercial messages to specific groups of consumers).

Don't support at all (1 - 6)

- d Prohibit the deployment of subliminal techniques beyond a person's consciousness for commercial purposes (e.g. AI system that distorts consumer decisions and causes economic harm).

Don't support at all (1 - 6)

- e Prohibit traders from using contractual, technical or behavioural measures to bypass obligations in consumer law.

Don't support at all (1 - 6)

- f Introduce specific rules concerning the length of B2C contracts in the digital environment.

Don't support at all (1 - 6)

- g Introduce specific rules to mitigate the negative effects on consumers of addiction-inducing commercial practices in digital products and services (e.g. social media, video games).

Don't support at all (1 - 6)

- h Change the indicative nature of the Annex to the UCTD (defining a number of standard contract terms likely to be unfair) and adopt a harmonised approach (a list of standard contract terms that are always unfair or a list of terms that are presumed to be unfair).

Don't support at all (1 - 6)

- i Address in the UCTD the imbalances detrimental to consumers resulting from contract terms based on data-driven personalisation practices by traders.

Don't support at all (1 - 6)

- j Increase the fairness of the online interface for making consumer complaints, claiming remedies, and enforcing other consumer rights.

Don't support at all (1 - 6)

- k Protect consumers against price hikes in subscription contracts following the end of the initial promotional or free subscription period.

Don't support at all (1 - 6)

- l Protect consumers against unwanted automatic renewal of subscriptions.

Don't support at all (1 - 6)

- m Limit registration/account creation requirement when consumers want to make a purchase.

Don't support at all (1 - 6)

- n Require indication of the real price (e.g. EUR) of virtual items in digital products (e.g. social media, video games) when offered against intermediate currency that the user must purchase in the first step.

Don't support at all (1 - 6)

83 Do you have any specific comments on the suggestions in the previous question? How far is further regulation likely to be effective, and are there any alternatives?

"There are no regulatory gaps that new legislation needs to close. The one change that should be assessed is changing the existing Directives (without material amendments) into Regulations and limit the overlaps."

84 Are there any national consumer laws that have emerged to tackle problematic digital practices?

Yes

85 Please provide examples of relevant national consumer laws that aim to tackle problematic digital practices:

"German legislation that introduced the cancellation button."

86 If you identified any examples of national legislation, how far would EU level regulatory action help to establish a level playing field? Note – to ensure clarity in the analysis, please answer in respect of the specific national legislation you identified in the previous question.

"The examples of the cancellation button regulations from Germany and France show that regulation should not be overly prescriptive but rather principle based. It should be possible to adhere to rules with different practical tools and mechanisms in order to better reflect practical cases. In any case, national special rules do not make sense and hinder the digital single market. If EU regulation is planned in this regard, no leeway for implementation should be granted at national level."

Section 4: Closing remarks

88 Would you be willing to be contacted again to discuss your responses?

Yes

If you respond 'No' to this question, you will exit the survey.

89 Please provide contact details:

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