

# Public consultation on the Evaluation of the Commercial Agents Directive

Fields marked with \* are mandatory.

## Introduction

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Commercial agents are self-employed intermediaries authorised on a permanent basis to negotiate the sale or purchase of goods in the name and on behalf of another person (the principal). The objective of the Commercial Agents Directive was to move towards a single market for commercial representation and improve the conditions of competition by facilitating the conclusion and operation of commercial representation contracts across borders through harmonised rules.

For this purpose, the Directive defines the commercial agents falling under its scope and harmonises the rights and obligations of commercial agents and their principals, and defines rules for the remuneration of the commercial agent, the conclusion and the termination of the contract and the restraint of trade after the termination of the contract.

The purpose of the consultation is to get more in-depth information on the functioning of the directive, including from stakeholders representing commercial agents, principals or consumers. The responses to the consultation will support the evaluation of the Directive.

The consultation questionnaire contains questions about (i) the impact of the Directive since its entering into force, in particular regarding its significance for SMEs and cross-border activities, (ii) the relevant market of commercial agents and principals and (iii) stakeholder views on the future of the Directive.

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#)  [de](#) [en](#) [fr](#)

## 1. Information about the respondent

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Are you replying as:\*

- ☐ a commercial agent or an organisation representing commercial agents
- ☐ a company (principal) using the services of commercial agents or an organisation representing principals
- ☐ a private individual
- ☒ other

Please specify:\*

**Law firm that regularly acts on commercial agency matters**

Please indicate your full name (name of the organisation/authority/company as applicable)\*

**Fox Williams LLP**

Please indicate your contact details\*

**020 7614 2539**

Please indicate your email address\*

**vbergau@foxwilliams.com**

Please specify your country of residence or establishment. If responding on behalf of an organisation/association, please indicate the countries represented by your membership.\*

- ☐ All Member States of the European Union
- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovakia
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ The Netherlands
- ☒ United Kingdom

## 2. Questionnaire

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### 2.1 General Questions on the Commercial Agents Directive

Does the legislation help to facilitate cross-border activities of commercial representation?

- ☐ No effect
- ☐ Very limited effect
- ☒ Partial effect
- ☐ Significant effect
- ☐ Don't know

Please explain:

What are the main costs and benefits of the Directive for (i) commercial agents and (ii) principals?

2. Commercial agents - benefit from the protection of post-termination payments (Indemnity or Compensation - Article 17), minimum periods of notice (Article 15) and post-termination commission (Article 8). The Directive also provides a minimum standard of duties to be owed to agents by principals (Article 4). Many agency agreements are not reduced to writing, therefore, the automatic application of the Directive protects agents.

Principals - potential exposure to post-termination claims from agents. However, this can be limited by proper management of agents and ensuring that contracts (in the UK) include an indemnity provision. The harmonisation of laws on agency across Europe is of benefit to principals as at a general level their entitlements are similar. This means that a principal engaging an agent in a member state outside of its home member state will have a basic understanding of the exposure it may have to that agent rather than very different systems applying in each individual member state.

Benefit from a minimum level of duties being owed by a commercial agent even where the contract has not been reduced to writing.

What effects does the Directive have on SMEs (i) as commercial agents and (ii) as principals?

- ☐ Negative effect
- ☐ Neutral
- ☒ Positive effect
- ☐ Don't know

Can you describe the effects, if any?

3. Commercial agents - given that many commercial agents are not substantial corporate entities, the Directive protects the short to medium term income stream of the commercial agent. To the extent that the agent is terminated (subject to the circumstances) then it will be entitled to a payment for the loss of the agency.

Principals - exposure to claims for post-termination payments where this has not been planned for. This can be particularly difficult where a principal has an older agent base, as the principal has little scope for opposing payment. However, the majority of principals are now aware of the potential liability for payment.

Do you know about any existing studies in this context?

n/a

At overall market level, does the benefits of the Directive outweigh its costs?

- ☐ Costs much higher
- ☐ Costs slightly higher
- ☐ Neutral
- ☒ Benefits slightly higher
- ☐ Benefits much higher
- ☐ Don't know

Please explain:

4. Benefits slightly higher. Within the UK without the implementation of the Directive agents would not be entitled to post-termination payments under national law. However, this is not understood to be the position across Europe. Given that the EU is an important market for UK businesses, the broad harmonisation of laws and, therefore, exposure and entitlements across the EU allows principals to understand the general impact of engaging agents in other member states.

## 2.2 Views on the future of the Directive

Is the Directive still fit for purpose in meeting its objectives?

Please rate the Directive on a scale from 1 (not at all fit for purpose) to 10 (perfectly fit for purpose).

	1 (not at all fit for purpose)	2	3	4	5	6	7	8	9	10 (perfectly fit for purpose)
Please rate the Directive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain:

The disputes arising from the Directive are generally linked to the factual matters rather than the wording of the Directive and its implementing legislation.

What is the added value of EU legislation in this field?

general consistency in laws and approach across the EU. Basic level of protection and rights for both agents and principals.

What would be the effects if the Directive were to be withdrawn and Member States were free to adjust their national regulatory frameworks?

In the event that the Directive was withdrawn, the UK government may repeal its national law. This could result in agents in the UK benefitting from a lower standard of protection than other agents in other member states, for example, it is understood that German law provided protection to agents prior to the introduction of the Directive.

## 2.3 Information on the market of commercial representation (if available)

### *Individual commercial agents*

What is the size of your undertaking in terms of staff?

n/a

Are you primarily active in business-to-business (B2B) or business-to-consumer (B2C) transactions?

n/a

How many of your activities take place across borders (approx. share of domestic / cross-border intra-EU / cross-border outside EU relationships)?

n/a

*Commercial agents or their representatives (associations / federations)*

How has the overall market of commercial agents affected by the Directive developed, in particular in terms of number of undertakings and overall turnover?

While the rights granted and payments provided for under the Directive might be expected to deter businesses from engaging commercial agents, this has not been our experience. Agents still remain a highly cost effective way for a business to increase sales and venture into new markets. The strength of agents will always be that their remuneration is directly linked to the sales generated for the principal. Equally, experienced and successful agents will have contacts within the market that can be highly beneficial for principals.

In your opinion to what extent has the Commercial Agent Directive affected these developments?

As stated at point 8 above, giving the motivations for engaging agents the Directive is unlikely to have deterred principals from commercial agents. The Directive, however, is likely to have encouraged individuals who are commercial agents.

What is the typical size of the commercial agents' undertakings in your country (approx. share of stand-alone / SMEs / large enterprises in the total commercial agent population)?

In our experience, commercial agents in the UK are mostly individuals, trading either through a private limited company structure or as an unlisted sole trader. The commission turnover of a commercial agent varies widely depending on the territory of the agency (size and geographical location) and the industry sector. Some commercial agents can turnover as little as GBP 20,000 per annum, while others can turn over GBP 250,000 to 300,000. In our experience, many agents will carry several complementary brands in order to share costs across a number of different agencies.

Are commercial agents typically involved in B2B or B2C transactions (approx. share of overall turnover with businesses / consumers in the total turnover of commercial agents)?

Commercial agents will generally be involved in B2B transactions mostly selling products to independent retailers and small chains of retailers. In light of the role of a commercial agent, it is unusual for them to engage directly with the end consumer.

To which degree does commercial representation take place across borders (approx. share of domestic / cross-border intra-EU / cross-border outside EU relationships in the total turnover of commercial agents)?

Principals based outside of the UK (EU or outside of the EU) will frequently engage agents based within the UK to represent them within the UK. This is due to commercial agents market knowledge.

### *Individual principals*

What is the size of your undertaking in terms of staff?

n/a

In which economic sector are you active and using the services of commercial agents?

n/a

Are you using services of commercial agents across borders (approx. share of domestic / cross-border intra-EU / cross-border outside EU relationships)?

n/a

What are the main reasons for you to use the services of commercial agents?

n/a



### *Principals or their representatives (associations / federations)*

What is the typical size of the undertakings (principals) using the services of commercial agents in your country (approx. share of SMEs / large enterprises in the total population of principals using commercial representation)?

13. Brandowners will often use commercial agents when their brand is new and/or in the medium term. This is due to the low input cost of agents compared to employees and/or setting up a retail footprint and the ability to benefit from agents sectoral knowledge and contacts. As a brand grows, becomes more well-known and its market matures, it may consider that the commission paid to an agent needs to be reduced due to pricing pressures. Ultimately, once a brand is mature then it may consider that the involvement of a commercial agent has become unnecessary. Therefore, a higher proportion of SMEs are likely to use agents within the UK.

Which are the main economic sectors that rely on services of commercial agents?

Fashion

To which degree are commercial representation services used across borders (approx. share of domestic / cross-border intra-EU / cross-border outside EU relationships in the total turnover of principals using commercial representation)?


In our experience, principals based within the UK will frequently use agents in the EU.

What are the main reasons for principals to use the services of commercial agents?

As stated above, commercial agents have low input costs, local knowledge and the ability to interact face-to-face with customers in the local language. In addition, commercial agents are lower risk for principals than distributors as the agent does not directly purchase stock. Therefore, principals are less exposed to unpaid invoices for product supplied. Further, principals have access to information about the operation of agents as they receive the orders directly rather than a distributor holding a customer list.

## 3. Before submitting your contribution

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Please note that contributions received are generally intended for publication on the Commission's website ([see specific privacy statement](#)  de en fr).

## Contact

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