

# 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:\*

**The European Association of Chemical Distributors (Fecc) is the voice of the chemical distribution industry in Europe. With a growing membership of companies and national associations, Fecc represents around 1,700 companies of which many are small and medium sized enterprises (SMEs). Members service a very wide range of industries and meet the manufacturing requirements of sectors as diverse as paints and textiles to cosmetics and pharmaceuticals, each with their own diverse demands and purchase volumes.**

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

**European Association of Chemical Distributors (Fecc)**

Please indicate your contact details\*

**Joel D'Silva, T: +32 26790262; Rue du Luxembourg 16B, Brussels 1000**

Please indicate your email address\*

**jds@fecc.org**

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:

The commercial agent's directive plays an important role in creating a level playing field and offering to an extent, legal certainty and predictability for commercial agents especially when dealing with principals within the EU Single Market or internationally. From a distributor's perspective the directive has a limited to partial effect. Distributors acting as agents see benefits in particular from provisions pertaining to termination and compensation (see Article 17). However, in general the directive does not aid distributors who are seen as not equal to commercial agents especially in terms of compensation and indemnity. In cases, where Distributor contracts have replaced Commercial agent's agreements, distributors have been left with little to no protection as originally offered under the Commercial agent's directive. There is also a lack of clarification in general when a company acts as an Agent while at the same time is also a distributor or wholesaler. Hence a point of consideration should be that benefits and protections afforded by the Commercial Agents directive should be extended to distributors as well.

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

The Commercial agent's directive has benefits for Agents and Principals as it helps create a more predictable business environment for both. It aims to guarantee a minimum level of protection (indemnity and compensation) for commercial agents in case of contract termination while offering principals cost efficient and low risk solutions to enter a market with appropriate market intelligence provided by commercial agents.

Distributors generally have far greater costs than 'commercial agents' as distributors are expected to hold stocks (provide warehousing) invoice customers (greater admin people etc, these all mean that the distributor has greater closure/exit costs if the relationship breaks down/ceases yet the distributor has less/no rights to compensation as provided under this directive.

Hence, distributors in general see very little benefit from the directive. Also the application and effectiveness of the protection across Europe varies leading to a degree of uncertainty.

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?

The effects are fairly neutral in the case of a distributor. Distributors acting as agents however, see benefits under the directive.

Do you know about any existing studies in this context?

No

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:

For distributors acting as agents it has a positive effect as it offers certainty and legal protection i.e. compensation/indemnity (Article 17).

However, another effect the directive has had is that Commercial Agents agreements have been moved to Distributor agreements giving much less protection to distributors.

## 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain:

The Directive is positive and clearly simplifies many aspects of cross-border relationships, but should go further, particularly in the interests of distributor companies.

Regulation/protection of distributor agreements needs to be addressed to rebalance the effects of this regulation.

Differences in application of the Directive between the Member States has led to on-going distortions of the internal market

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

EU Legislation is required to guarantee uniform rules and application. This helps in creating a stable business environment, However, EU legislation has to be consistently applied and enforced on the national level as well.

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

Withdrawing the Directive would lead to a lack of an acceptable minimum standard and pave the way to further fragmentation on the national level. This would only lead to legal uncertainty and create a more complex business environment especially for SME's.

## 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?

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

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

*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?

**This market has seen growth over the past years, as principals look to distributors and agents to add more value to their supply chains.**

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

**As stated in responses above**

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)?

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)?

**For our sector typical trade is B2B**

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)?

*Individual principals*

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

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

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

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

*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)?


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

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)?

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

### 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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