

Public consultation on the Evaluation of the Commercial Agents Directive

Fields marked with * are mandatory.

Introduction

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

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 EDL (Association of European Distribution Lawyers) is a European association of rights of sale and anti-trust law specialized lawyers from 19 European countries with 22 members. The members are occupied with rights of sale, and consequently any cartel law questions that arise in connection with it, particularly in the auto industry area, and other areas such as agricultural machinery, construction machines, medical-technical machines, optical machines, electronic machines etc.

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

Association of European Distribution Lawyers

Please indicate your contact details*

EDL, Agrippinawerft 24 | Im Rheinauhafen D-50678 Köln

Please indicate your email address*

christian.genzow@fgvw.de

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

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:

unified legal situation

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

Agents: no invests and clear margin

Principal: no further investments and easy withdrawal in case of failure.

With agents you can easily access new markets

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?

- 1. reasons as mentioned above**
- 2. explicit and reliable legal regulations**
- 3. applicable by analogy for distributors**

Do you know about any existing studies in this context?

Study Group on a European Civil Code: Commercial Agency, Franchise and Distribution
Contracts
CFR Workshops, Brussels, 16 March 2005

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:

Cost for exploration of a market a very low compared to other means of entry a market (such as establishing own marketing outlets or a dealer network).
Explicit and reliable legal regulations valid for all European countries.

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

Please explain:

Directive not only important for agents but also for dealer systems as agents law is applicable to dealers (depending on the country)

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

See for instance "Tamoil" decision of EuGH (EuZW 2009, 304) which proves that the directive avoids a deviating national law and jurisdiction

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

- Fragmentation of the markets
- difficulties for SME (is a contradiction to "think small first" of EU-Commission)
- different legal frameworks all over Europe again as it has been before 1986

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?

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

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)?

agents stand alone Ø 3 -4 persons = 60 %
SME's: 30 - 50 persons = 20 %
large enterprises = 20 %

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)?

- Involved B2B and B2C
- share of overall turnover depends to the product

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)?

Depends on the product; in some brands only cross border (one agent per country)

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)?

**It depends on the product:
from 1 in every European country to 100 in one country**

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

- **durable consumer good**
- **industrial machines**
- **pharmacy, chemistry, cosmetics**
- **insurance and finance**


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)?

**within EU: depends on the product, mostly europwide
cross border eu: depends on the product, ca. 40 % 95 %**

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

low costs, easy controlled, access to the clientele, direct contact to the buyer for future business

3. Before submitting your contribution

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

Contact

✉ markt-retail@ec.europa.eu
