# 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

Is your organisation included in the 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 the consultation)*

Citizens have a right to expect that European institutions' interaction with citizens' associations, NGOs, businesses, trade and professional organisations, trade unions, think tanks, etc. is transparent and takes place in compliance with the law as well as in due respect of ethical principles, avoiding undue pressure, illegitimate or privileged access to information or to decision makers. The Transparency Register exists to provide citizens with direct and single access to information about who is engaged in activities aiming at influencing the EU decision-making process, which interests are being pursued and what level of resources are invested in these activities. Please help us enhancing transparency by registering!

- ◉ Yes
- ○ No

If so, please indicate your Register ID number:*

**9435658947-27**

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

**Direct Selling Europe (DSE)**

Please indicate your contact details*

**Oscar ARIAS, T: +32 2 503 18 56**

Please indicate your email address*

**oa@directsellingeurope.eu**

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
- [x] Austria
- [x] Belgium
- [ ] Bulgaria
- [ ] Croatia
- [ ] Cyprus
- [x] Czech Republic
- [ ] Denmark
- [ ] Estonia
- [ ] Finland
- [x] France
- [x] Germany
- [ ] Greece
- [ ] Hungary
- [ ] Ireland
- [x] Italy
- [ ] Latvia
- [ ] Lithuania
- [x] Luxembourg
- [ ] Malta
- [x] Poland
- [ ] Portugal
- [ ] Romania
- [x] Slovakia
- [ ] Slovenia
- [ ] Spain
- [x] Sweden
- [x] 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:

**Commercial agents negotiate the sale or purchase of goods for and on behalf of the principal and do not buy stock. They act as facilitators between a principal and a customer. Throughout the EU, the commercial agents directive gives common rights and obligations in particular with regard to contracts and commissions. The directive plays an important role in creating a level playing field and offering legal certainty and predictability for commercial agents especially when dealing with principals within the EU Single Market or internationally. By creating a common level playing field across Europe, the commercial agents directive helps self-employed intermediaries promote new business and facilitates access to new markets by foreign players, especially SMEs. Manufacturers often resort to commercial agency agreements in order to gain a foothold in different markets and overcome obstacles inherent in approaching new markets. This is an attractive and cost-effective solution especially for small and medium sized enterprises who gain direct access to a range of customers in other EU Member States without large capital expenditure. Commercial agents act as real market partners (with their up-to-date market knowledge) and contribute to reducing costs and building up more efficient and competitive supply chains. Today about half of commercial agents have a cross border activity. The number of commercial agents working internationally has steadily increased since the directive has entered into force. As an illustration: - A study conducted by the MARKET-Institute in Austria (2014), shows that the number of agents working, covering markets outside Austria rose from 12% in 2000 to 39% in 2014. Moreover, during the same period, the number of manufacturers represented with a seat abroad doubled ( from 30% in 2000 to 64% in 2014). - The same study also highlights that in Austria, about one third of the represented companies have less than 20 employees and one third less than 100 employees. This shows the importance of agents especially in giving SMEs an access to other markets (EU and outside EU). - The percentage of German Commercial Agencies involved in B2B that have entered into agreements with European manufacturers has more than doubled from 1984 - before the entry into force of the Directive - to 2014. According to statistics from the German association representing commercial agents (CDH) in 1984 only 26.5% of German agents represented European principals. The share of German agencies that are internationally active has risen since then to 68 % in 2014. In Germany, the share of commercial representation services that are used across borders represent approximately 90% of intra-EU business and 10% of business relationships outside the EU.**

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

By establishing common standards for agency contracts, the commercial agents directive:

- Removes obstacles to intra-EU trade.
- Creates a more predictable environment for both the commercial agent and the principal when both operators are established in different Member States.
- Has forced new Member States to transpose the directive and create conditions for fair competition through the various EU enlargement processes.
- Guarantees a minimum level of protection and safeguards (indemnity and compensation) to protect commercial agents in case of contract termination.
- Establishes mandatory rules that cannot be overridden through the choice of law of a third country / non-EU Member States (in cases where the agent carries his activity in an EU Member State and the principal is established in a non-EU country and the contract is governed by the law of that country). This makes it easier to negotiate agency contracts between principals and commercial agents. It reduces the need for external support ( legal, consultancy and translation costs). The Directive also provides harmonised legal definitions in 23 languages which simplify the negotiation process.
- Offers principals cost efficient and low risk solutions to enter a market with appropriate market intelligence provided by commercial agents. SME manufacturers therefore limit risks to sell their products in other EU countries, this gives them incentives to expand in the EU/internationally.
- Is a practical tool, which contains balanced provisions on all essential components of a commercial agency contract and does not over-regulate self-evident matters. Nearly 30 years after entry into force, the directive is still of high quality, highly practical and compatible with the body of EU laws. This reflects the fact that over those years, no need to review the directive has emerged.

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 regime established by the Directive has helped create jobs and growth. Today there are over 740,000 estimated commercial agents operating in the business to business (B2B) sector and in the business-to-consumer (B2C) sector across the EU. Overall, the sector has steadily developed over the past decade across Europe, including after the crisis. As an illustration, in the business-to-business sector, there were 523,000 commercial agents in 2003 and this number has steadily increased over the last decade to reach 590,000 in 2011 (Eurostat).

Commercial agents negotiate the sale or purchase of goods for and on behalf of the principal and do not buy stock. Commercial agency contracts is one way among different options by which companies can enter a new market (e.g. direct exports, wholesale, opening a subsidiary, etc.). Commercial agency enables a business to ensure a permanent presence on a given market without high capital investment.

This Directive opens up the possibility of agency agreements both for principals and commercial agents at reasonable cost and with certain protection guarantees for commercial agents. The regime it establishes creates common rights and obligations for operators that can be established in different Member States. As a result, it facilitates intra-EU transactions, and helps SMEs access foreign markets with limited risks and costs and better benefit from the Single Market. It also helps SMEs mitigate the impact of the crisis by offering them a cost effective solution to enter a market.

Do you know about any existing studies in this context?

- A study conducted by the MARKET-Institute in Austria (2014), shows that the number of agents working, covering markets outside Austria rose from 12% in 2000 to 39% in 2014. Moreover, during the same period, the number of manufacturers represented with a seat abroad doubled ( from 30% in 2000 to 64% in 2014).

- The same study also highlights that in Austria, about one third of the represented companies have less than 20 employees and one third less than 100 employees. This shows the importance of agents especially in giving SMEs an access to other markets (EU and outside EU).

- Data collected by the Internationally United Commercial Agents and Brokers (IUCAB)

- Survey conducted by the organisation “agent 321” entitled “classification of European commercial agents according to market sectors”. The survey was conducted on the basis of a questionnaire sent to 400,000 commercial agents across Europe.

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:

Commercial agency is one way of doing business among various options (e.g. direct sale to a wholesaler or to a business, establishing a subsidiary, etc.). Over the past thirty years, we have experienced a steady increase in the number of commercial agents across Europe, which means that the commercial agency relations and the rules applying to it are fit for purpose. If the instrument had been too costly or burdensome, businesses would have turned to other more cost-efficient options.

Today, there are over 740,000 estimated commercial agents (both B2B and B2C). As an illustration, the number of commercial agents in the B2B sector increased from 523,000 to 590,000 in less than a decade (2003-2011). The effect of enlargement has been relatively weak as the status of commercial agents is not widely used in the Central and Eastern European Countries (CEECs). Those figures do not account for the B2C sector where the commercial agent status is also being used and which is not captured by Eurostat statistics.

If the Directive were to be repealed, national regimes could be amended, paving the way for legal uncertainty, legal fragmentation, less agency contracts and evasion of mandatory rules.

## 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** | ○ | ○ | ○ | ○ | ○ | ○ | ○ | ○ | ○ | ◉ |

Please explain:

The Directive offers a common status for commercial agents across the EU and legal certainty from which both commercial agents and principals benefit. Beyond the uniformed status, this Directive contains balanced provisions on all essential components of a commercial agency agreement. This type of agreement is also specifically designed to define the relation of reciprocity between the commercial agent and his/her principal. Commercial agents negotiate the sale or purchase of goods for and on behalf of the principal and do not buy stock. The distribution of costs and benefits of the transaction is defined by the contract between the agent and the principal. Furthermore, this Directive does not apply to services and in particular does not cover tied agents for financial services, insurance intermediaries, and distributors and franchisees which are all covered by specific legislation. Therefore, the Directive in its current form is still accurate, highly practical and is compatible with the full body of European laws.

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

Commercial agents act as international intermediaries between principals and customers. The commercial agents directive play an important role in creating a level playing field and offering legal certainty and predictability for commercial agents especially when dealing with principals within the EU Single Market or internationally. EU legislation is therefore necessary to guarantee uniform rules – especially in cases where an agent builds up a customer base and faces the risks of contract termination once the business is firmly established and expanding – and to create a more predictable legal environment for the industry and to protect commercial agents.

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 enable Member States to amend their national regimes. A lack of common and minimum standard across Europe would therefore pave the way for a fragmentation of the single market. National laws could be reviewed and there would be no more guarantee that Member States implement mandatory rules like the right to indemnity by a third country in case of international contracts (issue of choice of law).

## 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?

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Not applicable to DSE.
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Are you primarily active in business-to-business (B2B) or business-to-consumer (B2C) transactions?

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Not applicable to DSE.
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How many of your activities take place across borders (approx. share of domestic / cross-border intra-EU / cross-border outside EU relationships)?

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Not applicable to DSE.
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## *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?

Commercial agents represent a significant occupation in the European Union. In 2011, Eurostat estimated that there were 590,000 B2B commercial agents in the EU28 generating a combined turnover of €260 billion (about 3 % of total commerce turnover) and providing employment to over 1 million persons. The number of commercial agents has steadily increased over the last decade from about 523,000 in 2003 (EU27) generating a turnover of nearly €200 billion and providing employment to nearly 900,000 Europeans.

This is only a partial overview of the importance of the sector as these figures do not capture B2C transactions. We estimate the total number of commercial agents (both B2B and B2C) to represent no less than 740,000 commercial agents. According to the Internationally United Commercial Agents and Brokers (IUCAB), an international network representing commercial agents, 519,000 commercial agents are spread across 14 European countries. According to the same survey, most of these (46%) work internationally (both inside and outside the EU).

These figures tend to show that the sector can be expected to continue to grow in the forthcoming years. According to a study conducted in Austria and figures from the German association representing commercial agents (CDH), over the past decade, the number of commercial agents with a cross border activity has steadily increased as follows:

- A study conducted by the MARKET-Institute in Austria (2014), shows that the number of agents working covering markets outside Austria rose from 12% in 2000 to 39% in 2014. During the same period, the number of manufacturers represented with a seat abroad doubled ( from 30% in 2000 to 64% in 2014).
- The percentage of German Commercial Agencies involved in B2B that have entered into agreements with European manufacturers has more than doubled from 1984 - before the entry into force of the Directive - to 2014. According to statistics from the German association representing commercial agents (CDH) in 1984 only 26.5% of German agents represented European principals. The share of German agencies that are internationally active has risen since then to 68 % in 2014. In Germany, the share of commercial representation services that are used across borders represent approximately 90% of intra-EU business and 10% of business relationships outside the EU.

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

**The Commercial agents directive has facilitated the development of commercial agency to a large extend. It offers a high level of legal certainty, a minimum level of protection and offers safeguard to limit distortion of competition. The directive has created the conditions for the sector to continue to grow over the years. Those figures speak for themselves and the development of agency contracts can be seen as a positive effect of the Directive.**

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)?

**Commercial agents are often independent entrepreneurs or very small businesses (according to IUCAB figures - on average less than 3-4 employees). This may hide wide disparities depending on the level of development of commercial agency contracts across countries. Moreover, on average, a commercial agent works for 3-5 principals.**

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 are involved in both B2B and B2C and in all sectors of the economy (industry, services, food, building and construction, furniture, etc.). According to a survey of 400,000 commercial agents, the organization "agent 321" concludes that on average, a commercial agent works for 2.54 sectors.**

**The number of commercial agents in B2C transactions is difficult to estimate as no Eurostat statistics are provided for this sector. One sub-sector has reported their companies have agreements with 140,000 B2C commercial agents.**

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)?

Cross border activity is a significant share of commercial agents' business. On average across 14 countries, IUCAB estimates that 46% of agents work internationally. In countries like Cyprus, Greece, Holland, Sweden UK and Ireland, all commercial agents in the B2B sector work internationally. Some other markets showcase a high percentage: 70% in Austria; 68% in Germany; 60% in Spain, 50% in Belgium, and 40% in France. In Italy, according to AGENT321, 13,55% commercial agents work internationally. But if we apply this percentage (that seems low) we obtain anyway a number of Commercial Agents & a number of European Principals bigger than in any other country.

Data from Austria and Germany show that the number of agents working internationally has increased over the past decade as follows:

- A study conducted by the MARKET-Institute in Austria (2014), shows that the number of agents working covering markets outside Austria rose from 12% in 2000 to 39% in 2014. During the same period, the number of manufacturers represented with a seat abroad doubled ( from 30% in 2000 to 64% in 2014).
- The same study highlights that on average an Austrian commercial agent cooperates with 1.60 principals seated in Austria; 2.27 principals seated in the EU; 0.38 principals seated in Europe but not in the EU, and 0.67 principals seated outside Europe (mostly USA/Canada). Austrian agents have greater relations with principals from Italy and Germany followed by Holland, France, Spain, then Belgium, England, Switzerland.
- The percentage of German Commercial Agencies involved in B2B that have entered into agreements with European manufacturers has more than doubled from 1984 – before the entry into force of the Directive – to 2014. According to statistics from the German association representing commercial agents (CDH) in 1984 only 26.5% of German agents represented European principals. The share of German agencies that are internationally active has risen since then to 68 % in 2014. In Germany, the share of commercial representation services that are used across borders represents approximately 90% of intra-EU business and 10% of business relationships outside the EU.

## *Individual principals*

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

Not applicable to DSE.

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

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Not applicable to DSE.
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Are you using services of commercial agents across borders (approx. share of domestic / cross-border intra-EU / cross-border outside EU relationships)?

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Not applicable to DSE.
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What are the main reasons for you to use the services of commercial agents?

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Not applicable to DSE.
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## *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)?

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In a survey of 14 EU member states, IUCAB reports just over 1.721.500
principals (B2B transactions) generating a turnover of €539 billion.
Moreover,  88% of these principals are SMEs.
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Which are the main economic sectors that rely on services of commercial agents?

**Commercial agents are involved in both B2B and B2C and in all sectors of the economy**

**Based on Eurostat, the following sub-sectors were identified: G4611 (agricultural raw materials, live animals, textile raw materials & semi-finished goods; G4612 (fuels, ores, metals & industry chemicals) ; G4613 (timber and building materials) ; G4614 (machinery, industrial equipment, ships and aircraft) ; G4615 (furniture, household goods, hardware & ironmongery) ; G4616 (textiles, clothing, fur, footwear & leather goods) ; G4617 (food, beverages and tobacco) ; G4618 (other particular products) ; G4619 (a variety of goods).**

**According to a survey of 400,000 commercial agents, the organization "agent 321", the international bureau of commercial agents, brokers and distributors, concludes that on average, a commercial agent works for 2.54 sectors. The key sectors are the following: Industry (14%), Food (12%), Services (11%), building and construction (7.5%), furniture and furnishing (7%), electronics (7%), gifts and accessories (6.5%), etc.**

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)?

**As outlined previously, commercial agency is a cost efficient way to enter a new market directly without a substantial initial investment and ensure a permanent presence (e.g. for after sales service, maintenance, etc.). This is particularly interesting for SMEs manufacturers when wishing to expand abroad.**

**A study conducted by the MARKET-Institute in Austria (2014), shows that on average an Austrian commercial agent cooperates with 1.60 principals seated in Austria; 2.27 principals seated in the EU; 0.38 principals seated in Europe but not in the EU; and 0.67 principals seated outside Europe (mostly USA/Canada). Relations are more developed with principals from Italy and Germany followed by Holland, France, Spain, then Belgium, England, Switzerland.**

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

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Commercial agency offers principals a cost-effective solution to enter a
new market directly without a substantial initial investment (e.g. no
need to establish a subsidiary). It also makes it possible to ensure a
permanent presence on a given market (eg. for after sales service,
maintenance, etc.). The principal benefits from the knowledge and
expertise from his agent(s) (market conditions, language, legal
requirements, etc.). This is particularly interesting for SMEs
manufacturers when wishing to expand abroad in the EU and/or
internationally.
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## 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**

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