

# European contract law in consumer transactions

## Summary

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This document does not represent the point of view of the European Commission. The interpretations and opinions contained in it are solely those of the authors.

Flash EB Series #321

# European contract law in consumer transactions

Conducted by  
The Gallup Organization, Hungary  
upon the request of the DG JLS-A-2: Civil law  
and contract law



Coordinated by Directorate-General  
Communication

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**THE GALLUP ORGANIZATION**

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## Introduction

The exchange of goods and services is governed by contract law. Problems in relation to using, agreeing, interpreting and applying contracts in cross-border transactions may therefore affect the smooth functioning of the internal market. The present survey (Flash Eurobarometer #321 about business attitudes towards cross-border transactions with final consumers and the usefulness of a European contract law) has been designed in order to obtain first-hand feedback on problems affecting businesses involved in cross-border sales to consumers. Another survey, conducted in parallel to this study, looked at the same issues in business-to-business transactions (Flash Eurobarometer #320: *Business attitudes towards cross-border business-to-business transactions and the usefulness of a European contract law*).

This present survey covered the following themes:

- Background information on the surveyed businesses
- Their involvement in cross-border consumer transactions
- The importance of various barriers to cross-border sales to final consumers
- Assessment of how the contract law is applied in current cross-border contracts with consumers
- An assessment of the European contract law initiative, the preferred model and the anticipated effect on cross-border transactions with consumers.

*In this Flash Eurobarometer survey (No. 321), a total of 6,465 managers (senior executives or, where available, legal officers) in the 27 EU Member States were interviewed by telephone, between 17 and 25 January, 2011. The survey included only enterprises that were either currently conducting cross-border business-to-consumer transactions (sales/purchase of goods or services as defined by the sectors covered, see below) or were planning to do this in the future. The survey adopted a broader definition of cross-border transactions and included on-premises sales to citizens of other countries as well. For the sake of readability, the report refers to these enterprises as “surveyed enterprises”.*

The sample was randomly selected in each country within certain activity sectors (NACE Rev 2.0):

- C: Manufacturing
- G: Wholesale and retail trade: repair of motor vehicles, motorcycles and personal and household goods
- I: Accommodation and food service activities
- J: Information and communication
- K: Financial and insurance activities.

The targeted number of interviews varied dependent on the size of the country. In most EU countries, the targeted sample size was 250. However, in Cyprus, Luxembourg and Malta, the sample size was reduced to 150.

## Main findings

### *Main barriers to cross-border transactions*

- According to managers of the surveyed enterprises, issues related to the diverse contract law environment were besides tax regulations among the most troubling ones. Difficulties in finding out about the provisions of a foreign contract law, and the need to adapt to the diverse consumer protection regulation contract laws of foreign contract laws were most frequently mentioned as obstacles impacting cross-border retail.
- The top obstacle for 40% of the surveyed enterprises was obtaining information about a foreign contract law, followed by problems related to tax regulations (impacting 39%), and the need to adapt to different consumer contract laws across the EU (an issue for 38%).

### *Contract law as a barrier to trading cross-border*

- Among other potential obstacles, the survey specifically enquired about the extent (if any) to which various consumer contract law-related barriers had impacted their cross-border business-to-consumer trade. These were related to the difficulties faced in:
  - the need to adapt and comply with different consumer protection rules in the foreign contract laws;
  - finding out about the provisions of a foreign contract law;
  - resolving cross-border conflicts, including costs of litigation abroad, and
  - obtaining legal advice on foreign contract law.
- **Over half, 55% of the surveyed enterprises in the EU indicated that at least one of these four items had at least some – even if minimal – impact on their cross-border retail activity.**
- Focusing on retailers that reported facing one or more of the consumer contract law-related barriers to cross-border sales within the EU, about six in ten (57%) indicated that such problems at least occasionally deterred them from conducting cross-border business.

### *European Consumer Contract Law*

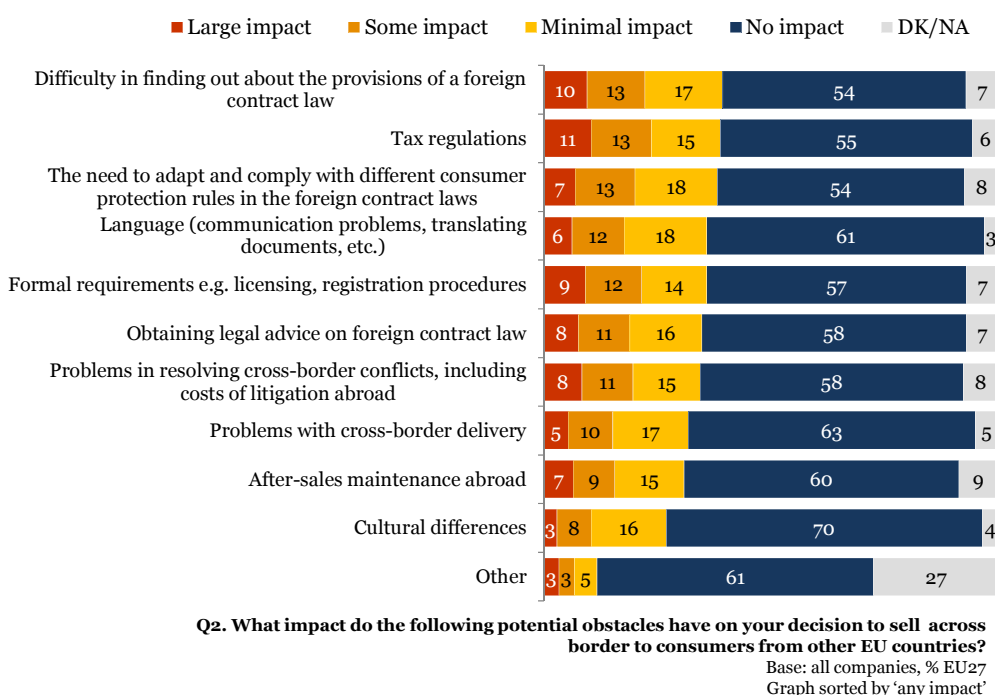
- **The proposition to adopt a single EU consumer contract law that could replace or supplement national contract laws in cross-border transactions was strongly favoured by the surveyed enterprises.** At the EU level, 7 in 10 cross-border retailers would choose the jurisdiction of an EU consumer contract law if it existed (31% were “very likely”, and 40% “likely”, to use it). Overall, 20% indicated that they would not be likely to choose the aforementioned single European consumer contract law to govern their transactions (12% were “unlikely” and 8% “very unlikely”); 9% offered no opinion on the matter.
- **Most respondents (frequently the vast majority) in each Member State favoured a single European consumer contract law**, indicating that they would be “likely” or “very likely” to use it rather than national regulations in their in cross-border transactions.

- **More than half (53%) of the surveyed enterprises preferred that across the EU, such a single European consumer contract law would completely replace the contract laws applicable to domestic transactions. 35% of those surveyed were in favour of an *optional* instrument:**
- **40% of the surveyed enterprises tended to expect that the adoption of a single European consumer contract law would facilitate their cross-border activities.** 1 in 10 such companies (10%) at the EU level said that the availability of a single European consumer contract law would increase their cross-border sales “a lot” and an additional 30% anticipated that this would increase those sales “a little”.
- The main beneficiaries of such an EU consumer contract law would be those companies that were only considering becoming involved in cross-border retail: 52% of those companies felt that their cross-border activities would increase as a result of such legislation. A similar number (55%) of those companies that felt the diversity of national consumer contract law regulations was a great barrier to their operations thought that a single European consumer contract law would boost their cross-border trading activity, at least to some extent.

## Barriers to cross-border trade

Enterprises face various barriers that impede their ability to sell their products and services cross-border, to final consumers in another country, even within the EU's single market. These barriers range from practical issues (such as language or means of delivery) to legal ones, e.g. related to the consumer contract law applied in such transactions.

### Impact of potential obstacles on companies' decision to sell cross-border to final consumers



In fact, the first and the third most often reported obstacles as having had an impact on the cross-border activity of enterprises were consumer contract law-related: besides tax regulations (impacting the cross-border business of 39%), difficulties in finding out about the provisions of a foreign consumer contract law (40%), and the need to adapt to the diverse consumer contract laws across the EU (38%) were most frequently mentioned.

At least *one in three* surveyed enterprises felt that the following obstacles negatively interfered with their ability to conduct cross-border activities: *language problems* (a concern for 36%), issues with *formal requirements of entering a foreign market* (35%), *obtaining legal advice regarding foreign contract law* (which troubled 35%), *resolving cross-border conflicts* (that posed a burden for 34%) and finally, the two practical concerns of cross-border sales (*problems with delivery* and *after-sales maintenance*) affected 32% and 31% respectively.

*Cultural differences* within the EU were considered to be the least troublesome; only 3% felt that these had a big impact on their operations, while 70% felt that these were not an obstacle at all.

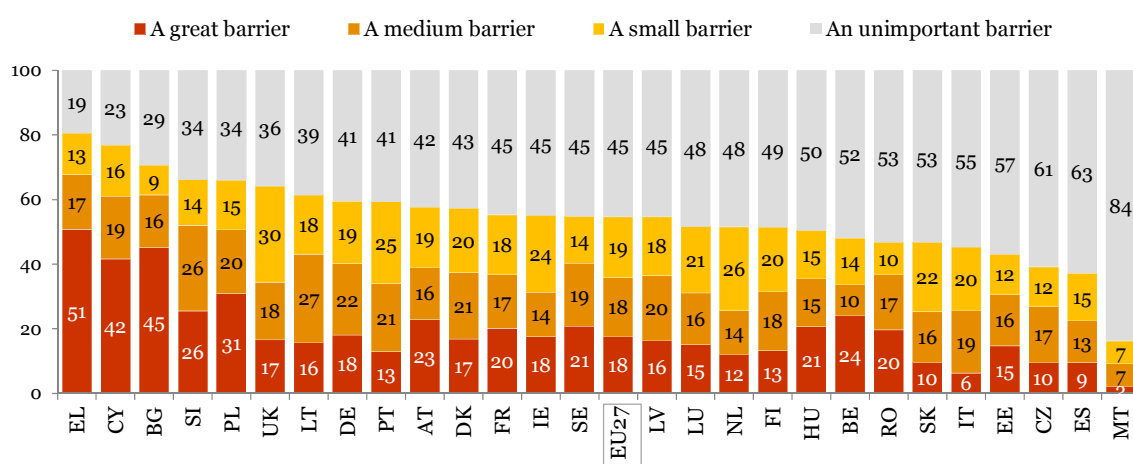
Among potential obstacles to cross-border sales, the survey specifically enquired about the extent (if any) to which each of the following consumer contract law-related barriers had impacted their cross-border sales:

- The need to adapt and comply with different consumer protection rules in the foreign contract laws;
- Difficulty in finding out about the provisions of a foreign contract law;
- Problems in resolving cross-border conflicts, including costs of litigation abroad, and
- Obtaining legal advice on foreign contract law.

Over half, 55% of the surveyed enterprises in the EU indicated that at least one of these four items had at least some – even if minimal – impact on their cross-border retail activity.

About one in six of the surveyed enterprises (18%) indicated that at least one of the factors was having a big impact, another 18% felt at least some impact and 19% confirmed at least a minimal impact of one of the consumer contract law-related problems tested. Forty-five percent claimed that none of these obstacles had any impact on their operations.

### Consumer contract law in cross-border sales to final consumers



#### Q2. What impact do the following potential obstacles have on your decision to sell across border to consumers from other EU countries?

Categories were created on the basis of the following obstacles: 'The need to adapt and comply with different consumer protection rules in the foreign contract laws' and 'Difficulty in finding out about the provisions of a foreign contract law' and 'Problems in resolving cross-border conflicts, including costs of litigation abroad' and 'Obtaining legal advice on foreign contract law'

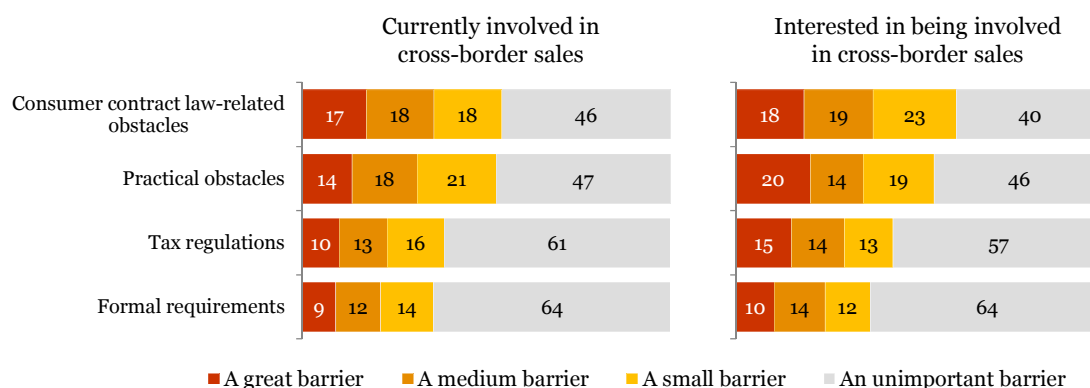
Base: all companies, % by country

Graph sorted by 'a great barrier' + 'a medium barrier' + 'a small barrier' responses

Consumer contract law-related issues posed a barrier more or less equivalent to practical difficulties of selling to final consumers cross-border (the latter being language problems, issues with cross-border delivery and after-sales maintenance). The surveyed enterprises felt that the two types of obstacles were problematic to similar degrees, however concerns related to consumer contract law were slightly more often mentioned than those related to practicalities (54% vs. 53% among those who were currently trading indicated that these had an impact, respectively).



## Barriers to cross-border sales



**Q2. What impact do the following potential obstacles have on your decision to sell across border to consumers from other EU countries?**  
 Base: all companies, % EU27

Those *who were only considering involvement in such transactions* were somewhat more likely than those who were currently trading to say that these potential barriers had at least a minimal impact on their decision to sell to final consumers across borders, with the exception of the need to comply with formal requirements where the two groups were equally concerned. Generally more enterprises confirmed that *consumer contract law problems* impacted their ability to sell cross-border (60%) than *practical difficulties* (54%), however among those not yet selling cross-border, *heavy concerns* related to practical problems exceeded those related to consumer contract law-related obstacles (great barrier: 20% vs. 18% respectively),

Compared to consumer contract law-related and practical difficulties, tax regulations and the need to comply with formal requirements were less significant barriers to being involved in cross-border retail. This was true regardless of whether the company was already trading or was only planning on it.

Focusing on enterprises that reported facing one or more of the consumer contract law-related barriers to *cross-border sales within the EU*, about six in ten (57%) indicated that such problems at least occasionally stopped them conducting cross-border business. A mere 2% of those companies said that these problems completely deterred them from selling to consumers in another Member State (“always”). About one in seven of the surveyed enterprises (14%) indicated that consumer contract law-related problems significantly decreased – but did not completely prevent – their cross-border sales (i.e. they were “often” deterred from serving customers in other EU countries). About equal proportions of the surveyed enterprises said that such problems were not preventing them *at all* from engaging in cross-border transactions (39%) and that such barriers occasionally (i.e. “not very often”) deterred them from doing such business (41%).

In most of the countries, more than half of the surveyed enterprises indicated that such problems at least occasionally stopped them from conducting cross-border business.

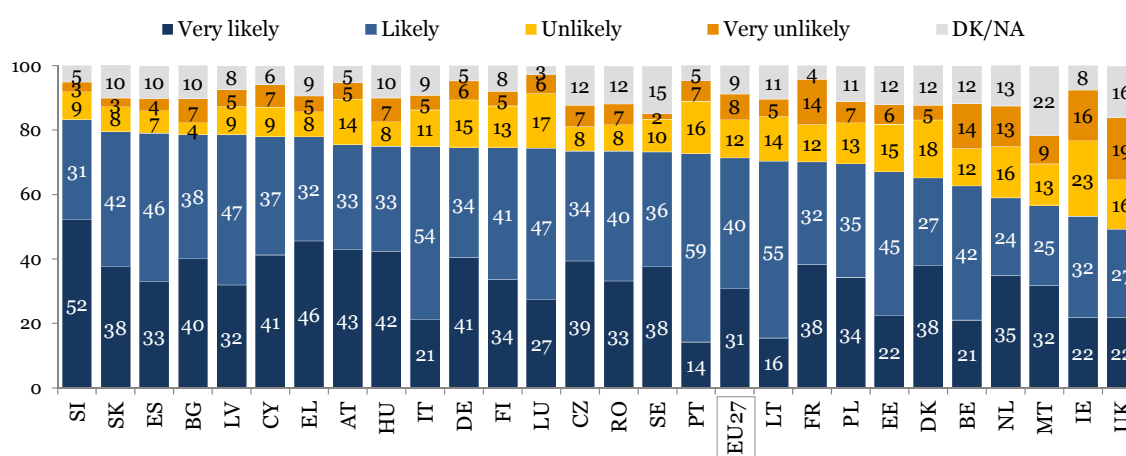
## European consumer contract law

Enterprises – unless they sell to foreign consumers *in their own country* – may currently be subject to the national consumer contract law regulations of the foreign country where the consumer is resident..

Hence, the idea of adopting a single EU consumer contract law that could replace or supplement national consumer contract laws in cross-border transactions was strongly favoured by the surveyed enterprises. At the EU level, 7 out of 10 surveyed enterprises would choose the jurisdiction of an EU consumer contract law if it existed (31% were “very likely”, and 40% “likely”, to use it). Overall, 20% indicated that they would not be likely to choose the aforementioned single European consumer contract law to govern their transactions (12% were “unlikely” and 8% “very unlikely”); 9% had no opinion on the matter.

**Most respondents (frequently the vast majority) in each Member State favoured a single European consumer contract law, indicating that they would be “likely” or “very likely” to use it rather than national regulations in their cross-border transactions.**

### Likelihood of using the European consumer contract law for EU cross-border sales to consumers



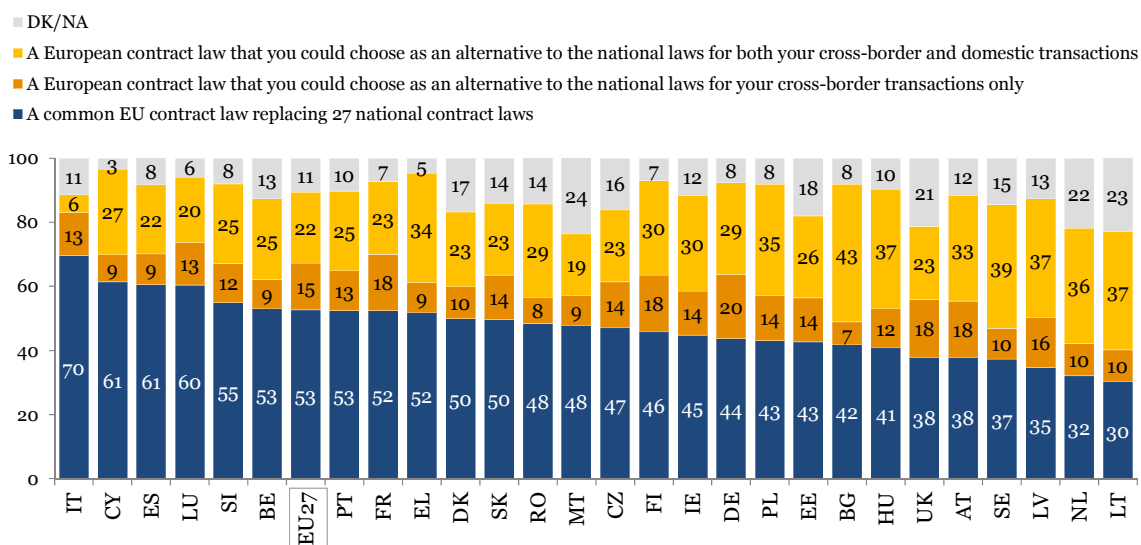
Q5. If you were able to choose, for ALL your cross-border sales to consumers from other EU countries one single European contract law, how likely would it be that you would use it?

Base: all companies. % by country

Graph sorted by 'very likely' + 'likely' responses

Smaller enterprises were more likely to indicate that they would be likely *or* very likely to use a single EU consumer contract law (71%-72% in the smaller segments) compared to 66% for medium to large enterprises.

## Preferred contract law for B2C transactions if a European consumer contract law was developed



Q8. If a European contract law was developed, what would you prefer for your business-to-consumer transactions?

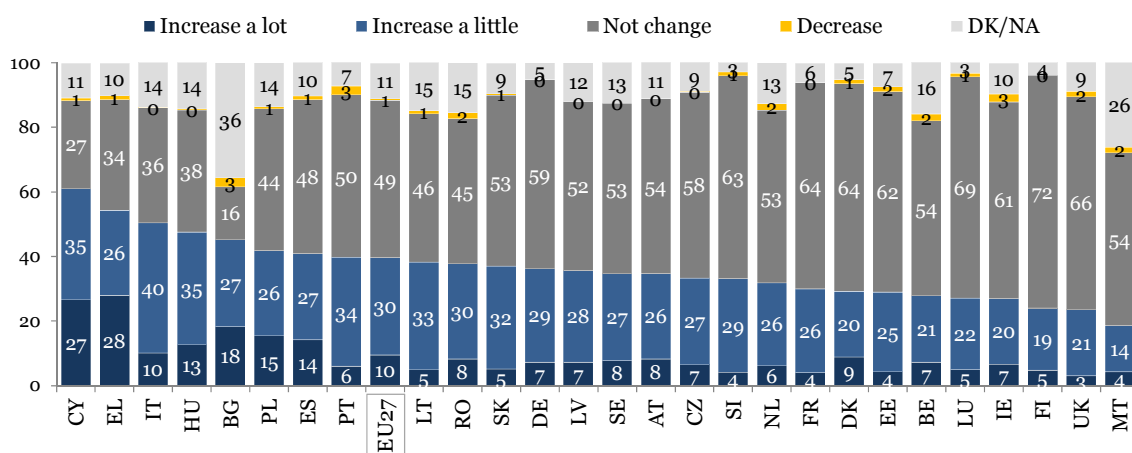
Base: all companies, % by country

More than half (53%) of the surveyed enterprises preferred that such a single European consumer contract law would also completely replace the contract laws applicable to domestic transactions.

Overall, 37% were in favour of an optional instrument: 15% of companies thought that such a law should be available (but not mandatory) as an option only for cross-border sales transactions, while 22% favoured an optional EU consumer contract law that was equally applicable in domestic and cross-border transactions. About 1 in 10 (11%) could not or would not answer this question.

Despite the fact that many surveyed enterprises would not expect significant effects, the general anticipation regarding the volume of cross-border activity was clearly positive. Many surveyed enterprises (40%) tended to expect that the adoption of a single European consumer contract law would facilitate their cross-border activities. One in 10 such companies (10%) at the EU level said that the availability of a single European consumer contract law would increase their cross-border sales “a lot” and an additional 30% anticipated that this would increase those sales “a little”. Most enterprises, however, thought that even if there was a single European consumer contract law for their international transactions, the volume of their cross-border activities would remain at the current level (49%).

### If companies were able to choose one single European consumer contract law in all transaction with consumers from other EU countries, would their cross-border operations ...?



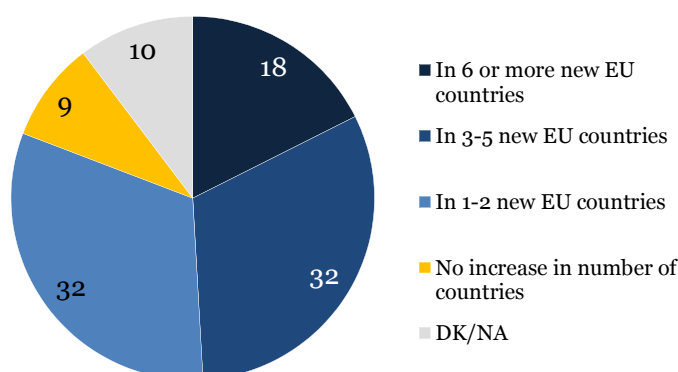
Q6. If you were able to choose one single European contract law in ALL your transaction with consumers from other EU countries, would your cross-border operations ...?

Base: all companies, % by country

Graph sorted by 'increase a lot' + 'increase a little' responses

The main beneficiaries of such an EU consumer contract law would be those companies that were considering becoming involved in cross-border retail: 52% of those companies felt that their cross-border activities would increase as a result of such legislation. A similar number (55%) of those companies that felt the diversity of national consumer contract law regulations was a great barrier to their operations thought that a single European consumer contract law would boost their cross-border trading activity, at least to some extent. Those most frequently stating that their cross-border activity would not change were companies currently trading with businesses in many other Member States (more than four : 55%) and those who felt that the current legal environment only posed a minimal, if any, barrier to their cross-border business (55%).

### If companies were able to choose one single European consumer contract law, in how many additional EU countries do they estimate they would sell to final consumers?



Q7. If you were able to choose one single European contract law, in how many additional EU countries do you estimate you would sell to final consumers?

Base: companies' EU cross-border operations would increase if they were able to choose one single European contract law, % EU27

Those companies who indicated that their cross-border activities would increase if a single European consumer contract law was available were asked if they would anticipate trading with consumers from more Member States (or simply increase the volume of transactions with the Member States that they were currently trading with).

Most retailers (82%) expected an increase in the number of countries they were selling to. About a third anticipated they would make cross-border transactions with businesses in 1-2 further countries (32%) and the same proportion felt that they would

trade with an additional 3-5 Member States (32%). Almost one in five (18%) indicated that a single EU consumer contract law would enable them to start selling cross-border to consumers in at least six new countries and 10% could not or would not answer this question. Less than 1 in 10 (9%) of those companies with optimistic expectations anticipated that the transaction volume would increase but they would continue to trade in the same number of countries