

**Public consultation on the review of the doorstep selling directive
85/577/EEC**

Q1: The **definitions** should be seen in the wider scope of the Green Paper. Nevertheless some situations might need to be clarified:

In order to decide whether a **consumer** has acted as one, should we focus on the knowledge a consumer has about a particular item or service he purchases, on his motives or the destination of the product or service or on the external impression he made on the trader? Should we consider new businesses already as traders, what if a company wishes to extend their activities to another sector? In our opinion, these persons shouldn't be considered as consumers but case law across Europe shows that this is not always interpreted unanimously by the different jurisdictions.

When it comes to **traders** selling on the doorstep, it should be made very clear that is considered as such a trader every person acting on behalf or in the name of a company, whether the company is aware of all the details or not. Should also be liable, the company who knows that someone is using their name for doorstep selling, but doesn't do anything to stop this person.

Q2, 3 and 7: The **list of article 3 should be revised** in order to protect consumers from new practices in this area. The notion of direct link or first contact could be considered more precisely. Should be expressly (and not only via interpretation or case law) included indeed contracts signed in

- public places (streets, beaches...),
- fairs if they are not usually places in which such products and services are offered to the general public (so not consumer fairs),
- excursions (the famous "Kaffeefahrten"),
- home parties
- the home of a third person,
- the home or work place of the consumer,
- offers made via the phone or email (distance selling or doorstep selling?),

and this even

- if he has invited the trader, if the trader is selling him something that hasn't been part of the project the consumer invited him for (direct connection),
- if the contract is finally signed in the business premises even though the first contact or sometimes the entire negotiations have taken place in the consumers house, etc.

Should also be addresses the question of individual or general advertising, e.g. a company invites a consumer to come to the business premise in order to win a price. Once on site, they are talked into signing a contract for an item (e.g. furniture) which had nothing to do with the price initially promised (e.g.

coffee machine). A contrario, if the price already foresaw the items offered for sale (500 € discount on a new sofa), this shouldn't be considered doorstep selling; the consumer knew why he went to the shop.

Q4: We have problems when it comes to defining when exactly we are in a situation of doorstep selling if the consumer gets invited to the business premises of a trader via an advertising promising a gain or price rebate. In some Member states this might be considered doorstep selling, in others it wouldn't. Especially when it comes to the protection of elderly people, this might be of importance ("abus de faiblesse" in French law).

Q5 and 6: We don't think there should be any value limitation. This kind of limitation could keep a consumer from complaining about an irregular doorstep situation. Unserious companies might use these limitations in order to abuse costumers.

Also if we have a situation of a magazine/periodical or any other kind of subscription etc., which should be the value of reference? Especially if they might be prolongable.

Q7 and 8: In some countries doorstep selling is a very common and appreciated form of business (i.e. Bofrost, Avon, Tupperware),so it shouldn't be overregulated.

Consumers shouldn't be overprotected either, if we wish to make them an active part of this internal market by making reasonable and enlightened choices and decisions. **Therefore the directive shouldn't be extended to all solicited visits.** But the criteria need to be very clear when we are or are not talking of a doorstep selling situation. Therefore the idea of a direct connection and the definition of who is a consumer are crucial.

Q9 and 10: The doorstep selling directive needs to be articulated in the light of other directives and need to clarify the application or non application to several specific contracts: financial services, credits and loans (common cooling of period?), insurances, real estate, timeshare. The directive on unfair commercial practices shouldn't be forgotten either in this context.

Q11 and 12: The French idea of a form the trader has to provide to the consumer to be able to withdraw easily seems a good approach; the consumer being free to either use this form or choose any other document.

This form has to give important information on the rights of the consumer. If the trader doesn't give this form to the consumer, the contract is void.

Maybe the form should state that the consumer should express his withdrawal by registered letter or any other way making the proof easy.

The consequences of the withdrawal need to be addressed as well. Once the withdrawal expressed, does this mean that the contract was valid but isn't anymore? Or does this mean that the validity was pending? Once the withdrawal expressed, should the consumer pay any compensation for the use of the item if he received it before the end of this period? In this context

the idea of a total ban of reciprocates is interesting.

It should be made very clear, that during the withdrawal period, there can be no reciprocates. The consumer shouldn't pay anything; the trader should wait with the delivery.

In this contact the notion of transfer of possession and ownership as well as risks need to be considered. If ever the trader delivers before the end of the withdrawal period, who will be responsible if something happens to the item; it is destroyed, deteriorated, etc. The different legal systems of the member states need to be looked at closely, as the civil laws provide different systems in this sector.

Q13 and 14: yes, if we consider for instance that a first contact via phone at the consumers' home can be the beginning of a doorstep selling contract. In some legislation, in this kind of situation, the trader then needs to send a written confirmation of his offer to the consumer. The consumer has to sign the document for the contract to become valid. Would this be considered then as a distance selling contract? Or are we still in the doorstep selling? This might be interesting if the withdrawal period and the way of counting the days isn't the same. Therefore we think that the same period and the same way of counting in both situations (doorstep and distance selling) would make life easier for consumers and businesses.

Q15: Yes. We also think that this should be put in the context with cold calling and the UCP-directive.

Q16: Yes. With this ban, consumers are in our opinion better protected. Even though unserious businesses might operate in this field, they are less numerous as most of them can't gain immediate money.

Most of the time, elderly people respond to doorstep selling. A ban on payments etc. gives them time to think the offer over, to get some information from other people or organisations before really deciding if they wish to accept the offer.

It has also a huge psychological importance. If there are no reciprocates, the consumer might freely overthink the offer. Once the money paid or the product/service delivered, he will be more inclined to respect the contract.

Q17: Doorstep selling is often used by companies from other member states which have no business premises in the other country. This might also attract rogue traders as it is more difficult to get a grip on them. Therefore the consumer organisations, especially ECCs should work closely together with the CPC-Network.