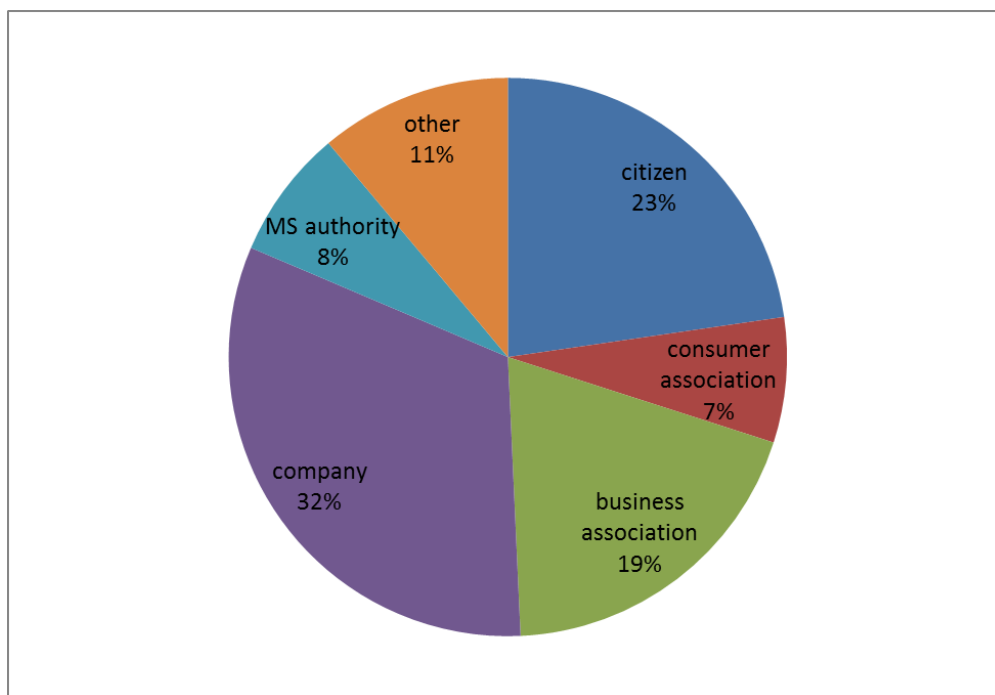




Brussels, 06/02/2017

Summary¹ of the main results from the public consultation on the targeted revision of EU consumer law directives

The public consultation ran from 30 June to 8 October 2017. There were 414 responses received via the online questionnaire on EUsurvey:² 94 from individual **citizens**, 133 from **companies**, 80 from **business associations** (EU-level and national), 30 from **consumer associations** (EU-level and national), 31 from **Member State (MS) authorities**³ (national consumer enforcement authorities, European Consumer Centres, government authorities/ministries in charge of consumer policy, national public enforcement authorities in a specific area) and 46 from other public bodies/institutions, professional consultancies/law firms, regional associations etc. A number of respondents also submitted position papers.⁴



¹ This summary has been prepared by the services of the European Commission on the basis of the responses to the public consultation. It does not necessarily reflect the official position of the Commission, and the Commission cannot be held responsible for any use which may be made of the information contained therein. The results of the consultation will feed into the final Impact assessment report on the New Deal for Consumers.

² In addition, three email submissions were received within the consultation period from a company, a national consumer association and a Member State authority, outside the EUsurvey tool. Some stakeholders submitted their positions by email, outside the consultation period and outside EUsurvey tool. The positions expressed in these submissions were reviewed but were not taken into account in the statistical analysis of the closed questions of the EUsurvey questionnaire.

³ It includes one reply from a consumer enforcement authority in Norway.

⁴ 61 of the 91 position papers were an identical paper by the association UNITI, see more information at the end of this summary under "Other topics". Other position papers came from different stakeholders: businesses, business associations, MS authorities.

Responses were received from 26 EU Member States (no response received from Ireland and Lithuania); five responses were received from Norway and USA.

The highest number of responses (165) came from Germany. 103 of the 133 responding companies are established in Germany. The second highest number of responses came from Belgium (46, most of which from EU-level associations), followed by UK (40).

Out of the 133 companies, 5% are self-employed, 35% are micro companies (1-9 employees), 26% are small companies (10-49 employees), 11% are medium-sized (50-249 employees) and 23% are large companies (more than 249 employees).

The questionnaire consisted of two parts: (1) a short questionnaire collected views on problems that stakeholders face today in the areas under assessment. At the end of the short questionnaire, respondents could choose to continue to a (2) full questionnaire with more detailed questions, including on possible options for the interventions and their costs and benefits.

244 respondents continued to the full questionnaire: 35 individual citizens, 20 consumer associations, 94 companies, 56 business associations, 22 MS authorities and 17 other respondents. However, many respondents did not answer all the questions and "sub-questions", e.g. out of 94 companies that continued to the full questionnaire, only 15-20 gave actual responses (including "do not know") to most of the subsequent questions. Furthermore, across all topics, the level of replies on the quantification of (both current and potential future) costs and benefits was very low.

Transparency on online marketplaces: More than half of citizens indicated having been in a situation where they were not sure whether they bought from the online marketplace itself or from someone else (55 out of 90). Also more than half reported having been in a situation where they were not sure whether EU consumer rules applied or not, as it was not clear if the seller was a trader or a consumer (48 out of 89). Around one third reported experiencing harm due to this lack of clarity: 43% did not know to whom to direct their claim, 24% were denied their right to withdraw from a purchase and 22% were denied repair or replacement of a faulty product. Also according to majority of consumer associations and MS authorities, consumers experience harm due to these problems. On the other hand, business associations and companies were divided in their views: while acknowledging situations of lack of transparency, most either did not think this would result in consumer harm or indicated not knowing.

Stakeholders largely agreed that consumers buying on online marketplaces throughout the EU should be informed about the identity and status of the seller and whether EU consumer rights apply so that, in case of a problem, they would know whom to contact, who is responsible for the performance of the contract and whether consumer protection rules apply. There was a general agreement that such transparency would increase consumer trust. As for views on business costs: three out of five online marketplaces indicated that due to diverging national transparency requirements they incur compliance costs to some extent. According to two out of four online marketplaces, these current costs are not reasonable. On the other hand, two out of four online marketplaces found that the costs of complying with possible new information requirements would be reasonable, one did not consider them reasonable and one did not know.

"Free" digital services (e.g. cloud storage, webmail, social media): extension of 1) the right to pre-contractual information and 2) the right of withdrawal (RoW) from distance and off-premises contracts under the Consumer Rights Directive (CRD): According to most consumer associations, most citizens and many MS authorities, consumers suffer harm, in particular when using "free" digital services cross-border, due to the lack of

rights to pre-contractual information and to cancel the service, and this discourages them to a certain extent from using these services. More than half of business associations did not think that consumers suffer harm cross-border, and companies expressed mixed views with similar shares agreeing and disagreeing.⁵ The majority of stakeholders agreed that the lack of these rights disrupts the level playing field for businesses; however companies and business associations were divided in their views on this.

The majority of stakeholders supported extending these rights to "free" digital services. However, traders are sceptical regarding the right of withdrawal: seven of 18 companies and 11 of 44 business associations are in favour of this. As for views on business costs: ten out of 17 business associations stated that companies incur costs due to diverging national rules on rights to pre-contractual information and rights of withdrawal for "free" digital services. For seven out of ten business associations these costs are not reasonable. As for future costs due to the possible extension of these rights, nine out of 12 business associations do not consider them reasonable.

Right to individual remedies for consumers that are harmed by unfair commercial practices under the Unfair Commercial Practices Directive (UCPD): Most stakeholders agreed that differences between national rules on UCPD remedies cause costs for traders engaging in cross-border trade and harm to consumers. There is general support for introducing an EU-wide right to remedies. A majority also agreed that such a right would increase consumer trust, lead to better compliance and a more level playing field for compliant traders. However, most business associations disagreed with these views and only 39% of them said that traders face costs due to diverging national rules on UCPD remedies (46% disagreed). On the other hand, 67% of companies agreed that differences between national rules cause costs for traders and half of them confirmed that this also causes consumer harm. A majority of companies also agreed that an EU-wide right to remedies would have positive impacts on compliance and competition. They expressed mixed or sceptical views, however, on some of the other points: 38% of companies supported introducing EU-wide rights to remedies (42% disagreed) and 48% thought that it would increase consumer trust (29% disagreed).

As for the type of UCPD remedies to be introduced, overall 52% (65) of respondents said that it should be decided at EU level which remedies should be made available. 38% (48) said that the choice of remedies should be left to Member States. Amongst consumer associations, 13 supported defining UCPD remedies on EU level, while 3 said it should be left to the Member States; 7 MS authorities would prefer the EU to define the types of remedies and 8 MS authorities would leave this to the Member States (2 did not know). 6 business associations supported harmonising the type of remedies on EU level; while 20 business associations supported leaving this to the national level (7 did not know). The right to terminate the contract and get a refund was chosen by 73% (83) of respondents as an EU-wide right that should be introduced, followed by the right to receive compensation for damage, which was selected by 65% (74) of respondents.

Most MS authorities stated that costs of administrative and judicial enforcement would increase to some extent due to possible new EU-wide rights to UCPD remedies. As for business costs, 10 out of 12 cross-border traders reported facing costs to significant or some extent due to a need to adapt to current diverging national rules on UCPD remedies. 18 of 34

⁵ Business associations: 32 of 62 disagreed regarding cross-border harm due to lack of pre-contractual information and 32 of 57 disagreed regarding right of withdrawal. Companies on cross-border harm due to lack of pre-contractual information: 16 agreed, 18 disagreed, 20 do not know; companies on cross-border consumer harm due to lack of right to withdraw: 17 agreed, 18 disagreed, 18 did not know.

business associations also indicated that companies face such costs to some or significant extent. Furthermore, eight of 19 companies said that these costs are a reason for them not to sell to other Member States (six said this is not the case and five did not know). More than half of companies and 40% of business associations considered that compliance costs due to a possible new EU-wide right to remedies would not be reasonable.

Penalties for breaches of consumer law: According to most respondents, differences between national laws regarding the nature of penalties, the level of maximum fines and the way of calculating fines cause insufficient enforcement, insufficient compliance, unfair advantages for non-compliant traders and lack of level playing field between traders operating in Member States where fines are relatively low and those operating in MS with higher fines. Most business associations did not share these views, whilst amongst companies between 43-66% of SMEs and 31-56% of large companies agreed that such differences between national laws cause these problems.

13 of 17 MS authorities and all 16 consumer organisations supported the idea that fines should be available as penalties for breaches of consumer law in all Member States and that there should be common criteria in all Member States for imposing fines. Amongst business organisations, these ideas were supported, respectively, by 15 (31%) and 20 (44%) respondents. Furthermore, 8 of 15 SMEs as well as four of six large companies supported introducing common criteria and five of the 15 SMEs and three of the six large companies also agreed that fines should be available as penalties in all Member States.

14 of 16 consumer associations were in favour of turnover-based fines and seven of 15 MS authorities favoured setting maximum fines as a percentage of the trader's turnover or as an absolute amount or a percentage of the trader's turnover, whichever is higher. A majority of consumer associations and MS authorities agreed that stronger EU rules on penalties would lead to greater consumer trust and more effective enforcement of consumer protection rules. Most business associations did not share these views.

Reducing unjustified burden for businesses regarding the right of withdrawal from distance and off-premises contracts: Around 35% of online companies reported significant problems due to current CRD requirements to (1) accept that consumers can also return goods which they have used more than necessary to test them subject to compensating their diminished value; and (2) reimburse consumers on the sole basis of the proof of dispatch of the returned goods even before receiving them back.⁶ Over 90%⁷ of business associations replied that traders face disproportionate/unnecessary burden due to these obligations. On the other hand, a majority of stakeholders other than business associations and companies regarded these consumer rights as important. However, 7 of 16 consumer associations and 10 of 16 MS authorities also acknowledged that traders may face burden due to these rights.

As for the concrete problems, a clear majority of both online companies and of business associations indicated that traders face costs and practical difficulties with the following: determining the diminished value, recovering this diminished value from the consumer, reselling the goods as second-hand goods and disposing these goods as waste. Most of them

⁶ 1) Obligation to accept the return of goods which consumers have used more than necessary to test them: 34 (36,1%) reported having experienced significant problems at least once. 2) Obligation to reimburse the consumer without having the possibility to inspect the returned goods as soon as the consumer has supplied evidence of having sent them back: 31 (34,1%) reported having experienced significant problems at least once.

⁷ 33 (91,7%) replied that traders face unnecessary/disproportionate burden to a significant or some extent due to the obligation described under 1) and 32 (91,4%) replied that traders face unnecessary/disproportionate burden to a significant or some extent due to the obligation described under 2).

also said that charging the costs for diminished value is difficult also from a customer relations' viewpoint.⁸

Amending information requirements: A majority of citizens and consumer associations considered information about the trader's geographical address and complaint handling mechanisms to be necessary already at the advertising stage, even though consumers receive the same information again at the pre-contractual stage of the transaction. Most MS authorities agreed that information about the geographical address of the trader was necessary at the advertising stage but not the information about complaint handling. Companies were divided in their views regarding the trader's geographical address but did not consider information regarding complaint handling to be necessary at the advertising stage. Most business associations agreed that these two information elements are not necessary at the advertising stage and considered that the removal of these requirements at the advertising stage would result in some or significant savings for companies.

Modernisation of rules on the means of communication with the consumer: Email and web-based means of communication were regarded as relevant by most respondents (126 and 93 respectively). 44 respondents considered social media account as relevant and 15 respondents (companies, citizens, consumer associations, government authorities) considered fax as relevant.

Off-premises selling, such as doorstep selling: Overall 46% of the 302 respondents agreed and 40% disagreed that Member States should have the possibility to ban doorstep selling. Support for the possibility of national bans was strongest amongst consumer associations (74% of 27 agreed) and MS authorities (64% of 28 agreed), whereas 32 of the 34 business associations whose members are engaged in doorstep selling are against it.⁹ Regarding potential impacts on cross-border trade, 5 of the 11 business associations whose members are engaged in doorstep selling replied that it is difficult to trade cross-border because of national bans or restrictions on doorstep selling or other sales events outside a trader's business premises.¹⁰ 9 of 12 these business associations reported that they incur costs or economic losses because of national bans or restrictions on off-premises selling.¹¹

Other topics: Some businesses and business associations advocated for further reduction of burdens for businesses related to off-premises contracts and to the right of withdrawal under the CRD from contracts concluded on online auction platforms, contracts for e-vignettes and architecture contracts. A campaign involving around 70 respondents could be identified: UNITI, a German association representing small and medium-sized heating oil retailers, appears to have called on its members to participate in the consultation with some responses raising concerns regarding the application of the right of withdrawal under the CRD to distance contracts for heating oil.

⁸ For each of these five difficulties, at least 70% and mostly over 80% of the 18 online companies and of the 33 business associations whose members sell online agreed.

⁹ As well as six of the eight doorstep selling companies replying to this question.

¹⁰ In addition, three of the four companies engaged in doorstep selling replied also that it is sometimes difficult to trade cross-border due to national bans/restrictions.

¹¹ Two of the four companies engaged in doorstep selling reported such costs as well.