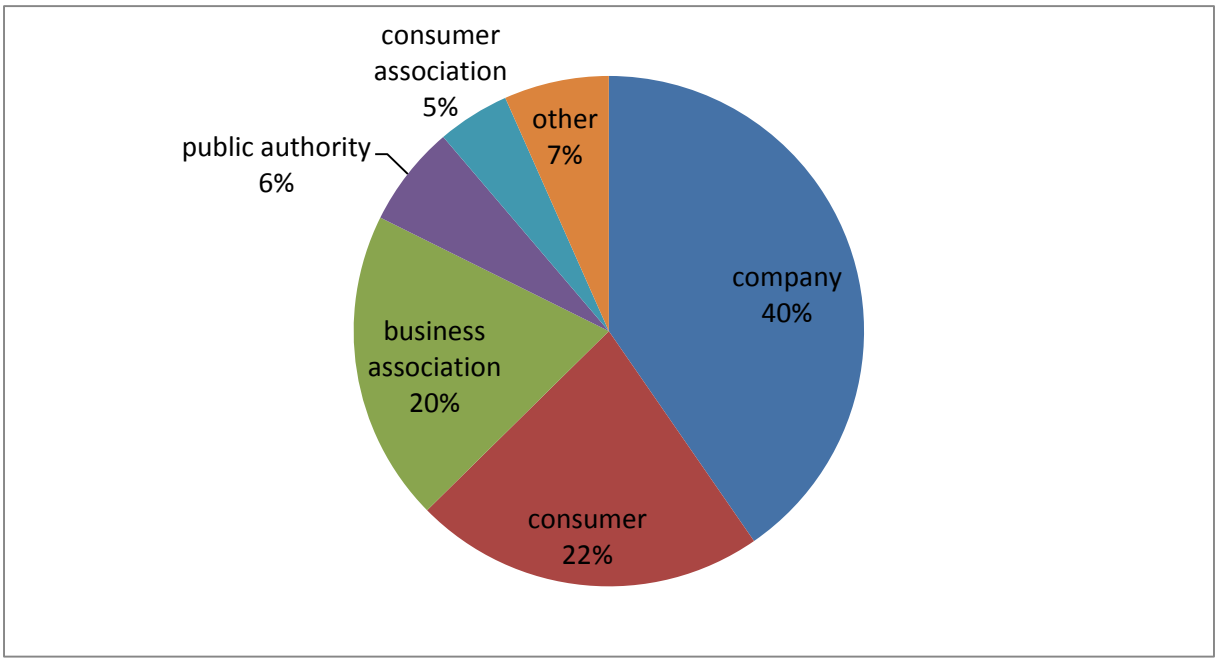
Summary results[1] of the public consultation for the Fitness Check of EU consumer and marketing law

This online public consultation ran from 12 May to 12 September 2016 in all EU languages.

Who replied to the Public consultation?

In total, 436[2] replies were received via the EU survey IT tool. The largest respondent category[3] was companies, followed by consumers and business associations.



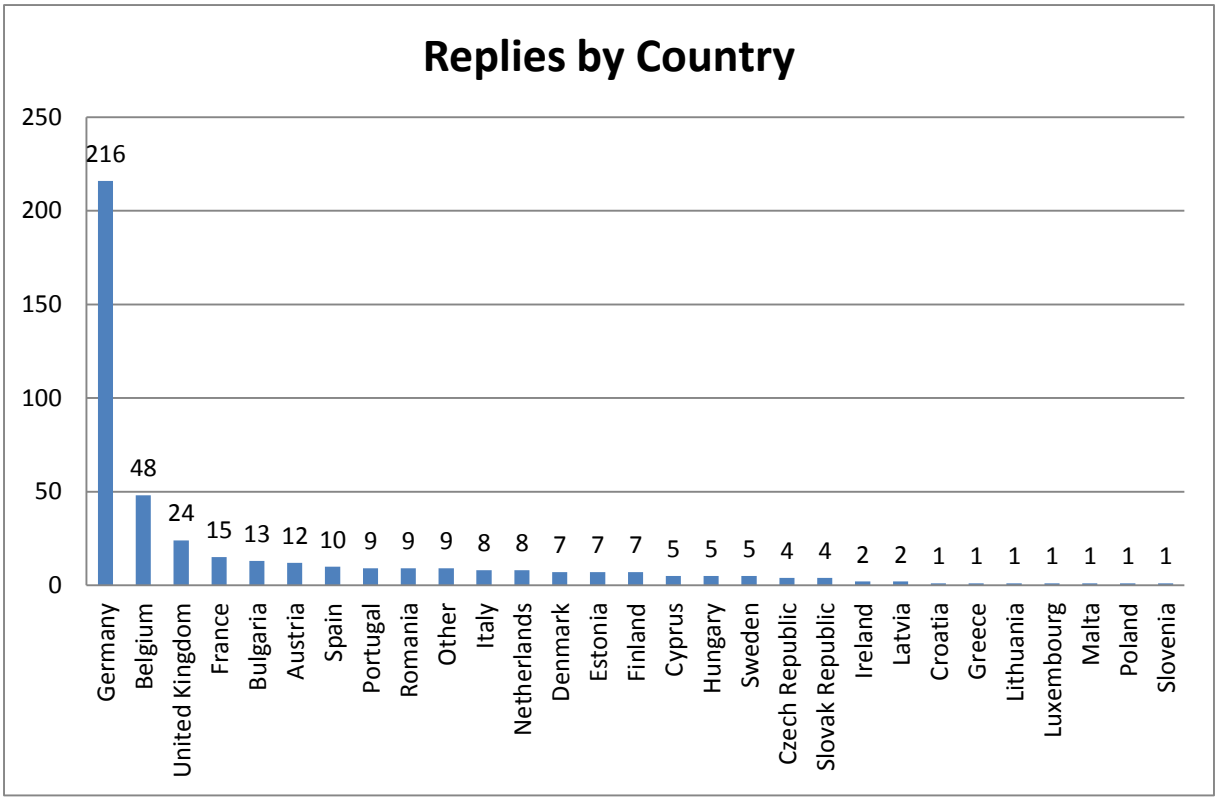
As to the geographical distribution of responses:

- At least one reply from every Member State;
- The biggest number of responses was received from Germany (50%) followed by Belgium (11%) and UK (6%);
- A few replies from non-EU countries.

[1] This consultation also covered the Consumer Rights Directive 2011/83/EU (CRD) which is being evaluated by the European Commission in parallel with the Fitness Check. 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 report presenting the results of the Fitness Check. A more detailed analysis of the results of the public consultation will be provided with the publication of the final Fitness Check report.

[2] In addition, a few replies were submitted outside the EU survey IT tool.

[3] For the purposes of this analysis, the category "consumer association" combines both EU-level and national consumer associations; the category "business association" combines both EU-level and national business associations; and the category "public authority" combines national consumer enforcement authorities, ministries in charge of consumer policy and sector-specific regulatory authorities.



Other includes: Norway, Switzerland, Turkey, USA, "EU-level", "several countries".

The survey questionnaire consisted of short questionnaires for individual consumers and for individual companies and of a more comprehensive 'full' questionnaire for other respondents. The 'full' questionnaire was optional for individual consumers and individual companies. Less than 40% of the consumer respondents and less than 20% of the companies chose to also reply to the full questionnaire.

The survey responses consisted of replies to multiple choice questions and open text comments to specific questions. Around 50 respondents submitted also additional position papers.

Main trends

Experience and views regarding the application of EU consumer protection rules

- Nearly half (47%) of consumer respondents indicated having experienced consumer rights related problems with traders in the last 12 months. The most frequently reported problems were that the trader did not provide key information and that the consumer was misled by a trader's marketing statements and concluded a transaction that was subsequently regretted.
- Majority of consumers who experienced problems reported not having managed to solve their most serious problem at all. 25% managed to solve their problem at least to some extent and 18% managed to solve it fully. The most frequently mentioned reasons for not fully solving the problem was that the trader did not want to comply with consumer rights, followed by too complex/ long/ costly administrative enforcement proceedings.
- Around 40% of consumer respondents felt being well protected by national competent authorities and national courts, but a similar share of respondents

thought that these authorities are not effective in implementing consumer law to protect them.

Benefits of EU consumer protection rules

- Most EU consumer protection rules were regarded as beneficial by the majority of respondents in all categories (such as right to get information about goods and services offered, right to be protected against misleading or aggressive commercial practices and right to fair standard contract terms etc.).
- Large majority of companies and business associations were of the view that the benefits from complying with consumer protection rules are that consumers whose rights are respected come back and bring/attract other consumers whereas consumers whose rights are not respected discourage other consumers (damage to reputation).
- Around 30% of companies agreed that businesses can trade across the EU more easily thanks to the harmonised EU consumer and marketing rules whilst 11% did not agree and 59% had no opinion.

Obstacles to implementation of EU consumer protection rules

- Majority of respondents in all categories thought that the lack of consumer awareness about their rights is an important problem for the application of the rules.
- Majority of consumer associations and of public authorities regarded also the following as important obstacles: complex, long and costly court, injunctions and administrative enforcement proceedings; non-compliance by traders; traders not knowing/understanding consumer protection rules; and national enforcement authorities lacking legal powers/ not being active enough.
- For business associations, the most important obstacles were the complexity of consumer law (63%), lack of awareness by traders (55%) and consumers (53%), followed by significant differences between national consumer protection rules (48%).
- Majority of consumer associations (80%), consumers (66%) and public authorities (57%) considered that the injunctions proceedings should be made more effective, e.g. by allowing their use for more types of infringements and by reducing their costs and length. Also a relative majority of companies supported the idea (46% agree v. 24% disagree) whilst most of business associations were against (13% agree v. 41% disagree).
- Majority of consumer associations (94%), consumers (67%) and public authorities (68%) called for more dissuasive sanctions against non-compliant businesses amounting to a significant % of their yearly turnover. Majority of business associations (6% agree v. 75% disagree) and relative majority of companies (30% agree v. 46% disagree) were against it.

Consumer information

- Majority of respondents in all categories agreed that information requirements currently included in the Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive should be regrouped and streamlined.
- Majority of businesses (65%), business associations (81%) and public authorities (54%) considered that the information given to consumers at the advertising stage should focus on the essentials while more detailed information should be required only at the moment before the contract is concluded. Other stakeholders had divided views.
- Consumer associations (80%) consumers (73%), and public authorities (65%) largely agreed that the obligation to display also the price per unit of the goods should apply to all businesses irrespective of their size; a relative majority of companies (41% agree v. 22% disagree) also agreed. Business associations were the least supportive (25% agree, 25% disagree, 38% no opinion).
- Majority of respondents in all categories (relative majority in the case of business associations) agreed that online platform providers should inform consumers about the criteria used for ranking the information presented to consumers.
- Majority of consumers (58%) and consumer associations (75%) supported the need for a uniform model for better presenting the pre-contractual information; public authorities (47% agree v. 32% disagree) and companies (43% agree v. 41% disagree) were more divided in this regard and business associations were the least supportive (23% agree v. 56% disagree).

Fairness in business-to-consumer (B2C) relations

- Majority of consumers (61%), consumer associations (90%) and public authorities (68%) supported the need for an EU-wide black list of unfair contract terms. Also around half of businesses (49% agree v. 35% disagree) were in favour whilst business associations were mostly against (17% agree v. 61% disagree).
- Majority of consumers (75%), consumer associations (95%) and public authorities (75%) agreed that consumer protection against unfair commercial practices should be strengthened by introducing a right to individual remedies, e.g. compensation and/or invalidity of the contract when the consumer has been misled into signing a disadvantageous contract. Such measure was also supported by relative majority of company respondents (46% agree v. 38% disagree) whilst majority of business associations were against (10% agree v. 64% disagree).
- The need for a model for better presentation of standard contract terms was supported by majority of consumers (61%), public authorities (57%) and half of consumer associations (50%); companies had divided views (41% agree v. 41% disagree) and majority of business associations were against (21% agree v. 57% disagree).

Business-to-business (B2B) relations

- Around 40% of business respondents reported having been confronted with misleading business-to-business (B2B) marketing at least once in the past year.
- Amongst these, 17% stated that they had not managed to solve the problem at all, while 20% said they managed to solve it fully and around 50% solved it at least to some extent. Complex/long/costly court proceedings and lack of administrative

authority dealing with such problems were the most frequently stated reasons for not fully solving the problem.

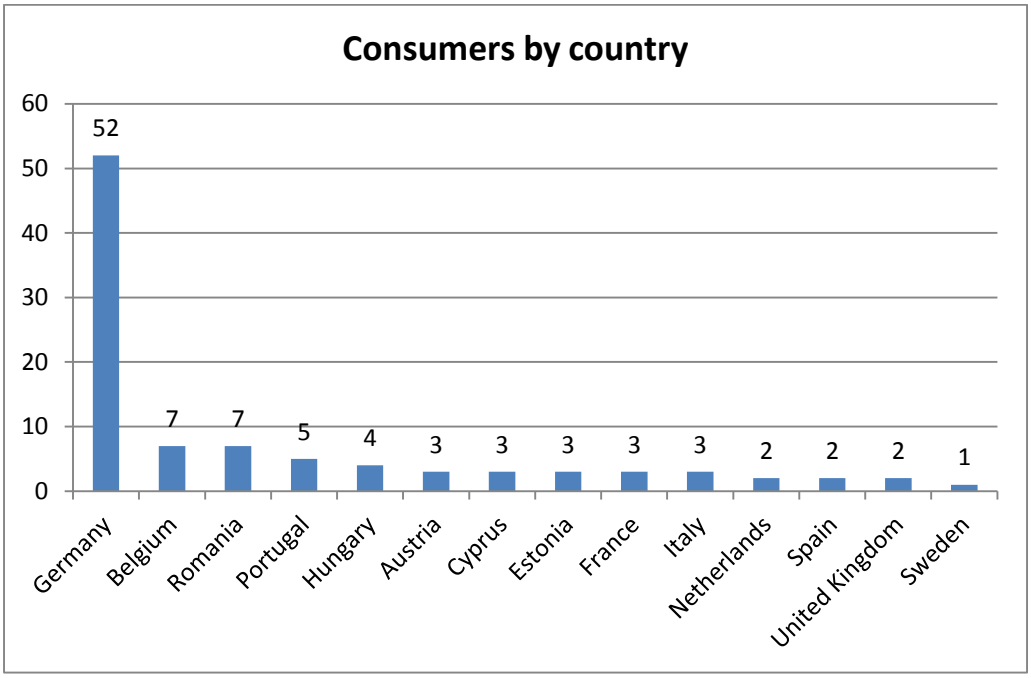
- Over 60% of business respondents were of the opinion that national courts are effective in protecting EU businesses against misleading marketing but only 20% thought that national public authorities do well in this respect.
- Over half of businesses agreed that business protection against unfair contract terms should be strengthened by extending totally or partially the scope of application of the Unfair Contract Terms Directive to B2B contracts[4], whilst business associations mostly disagreed (24% agree v. 38% disagree) and public authorities had divided views (21% agree v. 21% disagree).
- Majority of business respondents (62%) and relative majority of public authorities (35% agree v. 15% disagree) supported introducing a black list of unfair B2B commercial practices; however, relative majority of business associations disagreed (27% agree v. 47% disagree).

[4] This is already the case in a number of Member States, which may have influenced the responses from companies in these countries.

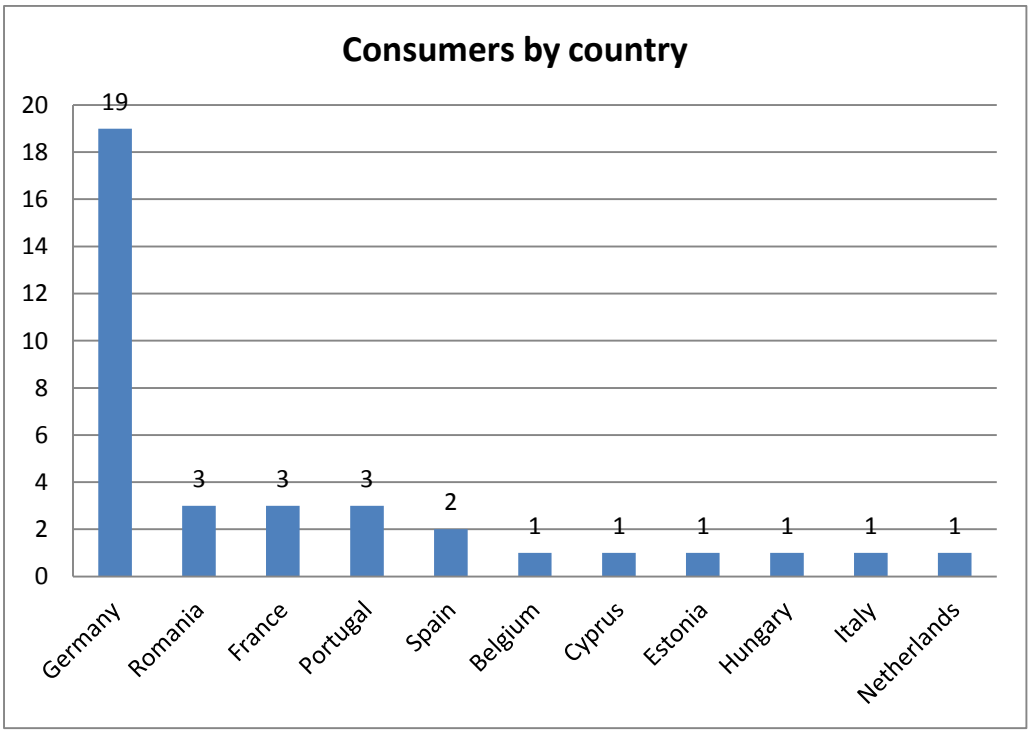
Annex – information tables

1. Respondents

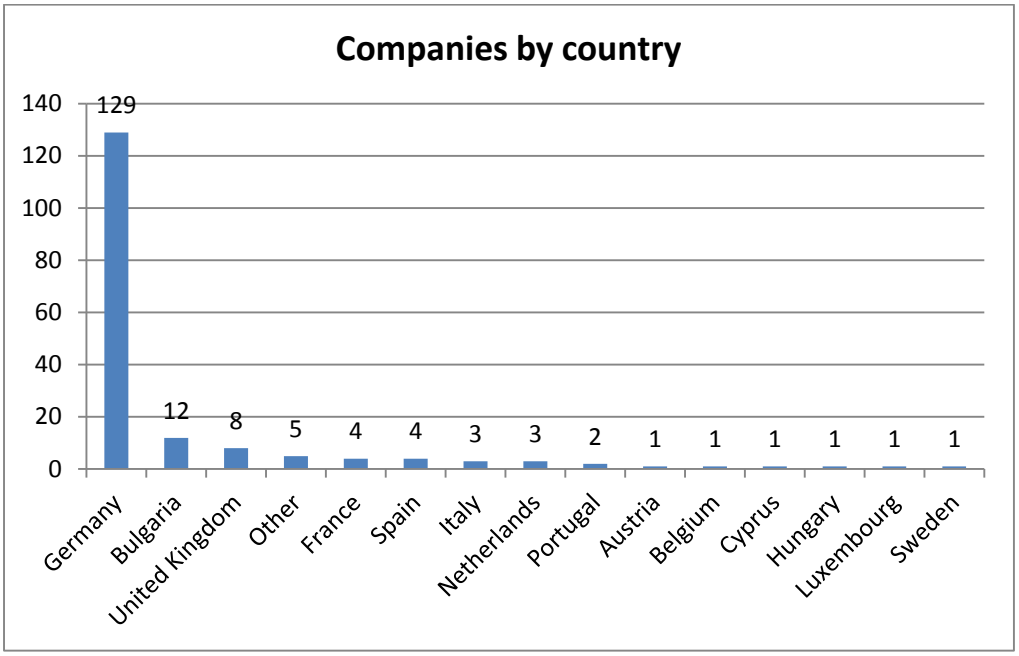
1.1. 97 consumers from 14 Member States answered the **short consumer questionnaire:**



1.2. 36 consumers (out of the 97) answered also the full questionnaire:

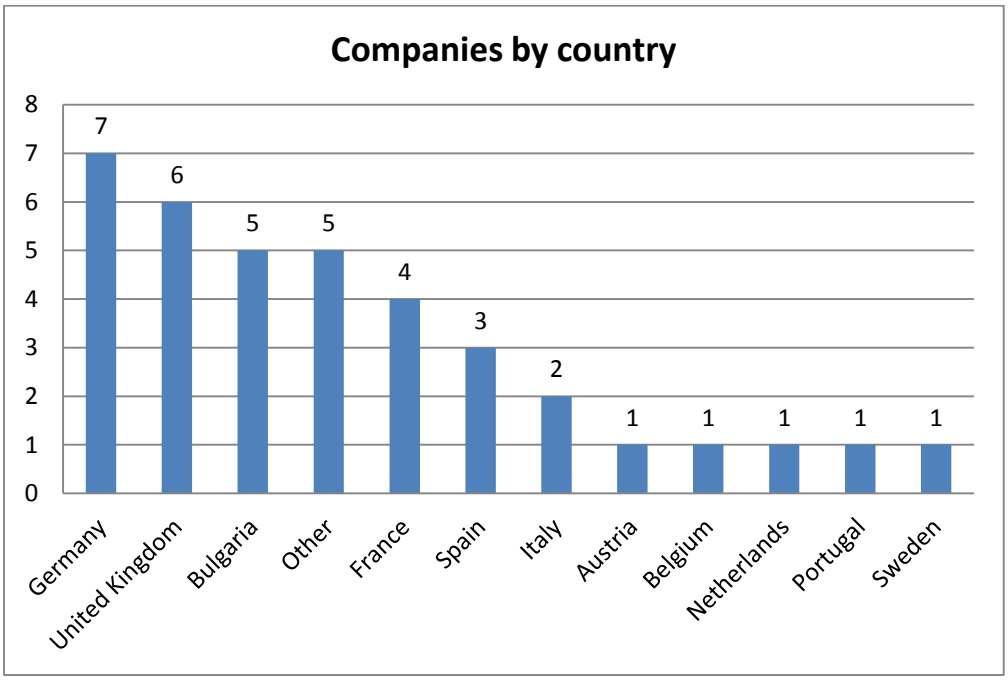


1.3. 176 companies (or groups of companies) from 14 Member States answered the **short business questionnaire**



Other includes: Norway, Switzerland, Turkey, USA, "EU-level", "several countries".

37 companies (out of the 176) answered also the **full questionnaire**



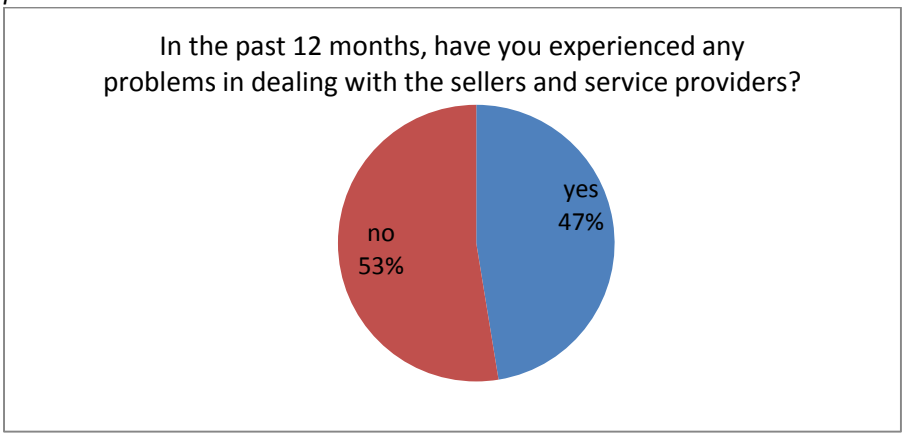
1.4. All other respondents (e.g. consumer/business associations and public authorities) were asked to reply to the full questionnaire:

- **86 Business associations:** 51 national + 35 European level ones;
- **20 Consumer associations**: 16 national + 4 European level ones;
- **28 Public authorities** in 20 Member States (+ Norway): 13 government authorities in charge of consumer policy, 10 national consumer enforcement authorities, 5 national sector-specific (e.g. energy/telecom) enforcement authorities.
- "Other" types of respondents: different public bodies /institutions, professional consultancies/law firms, think tank/university/research institute.

2. Implementation experience

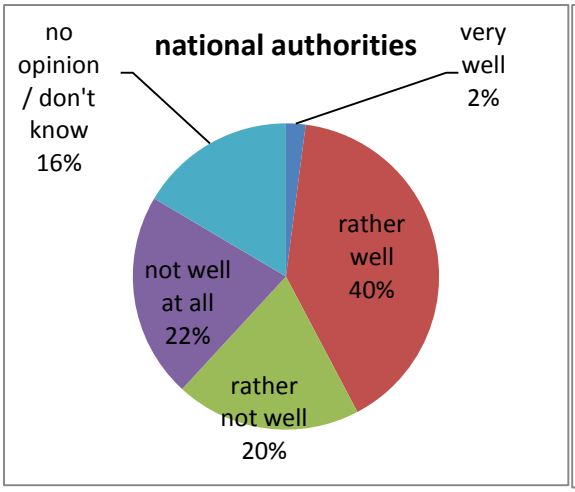
2.1. Outcome of the consumer questionnaire (97 respondents)

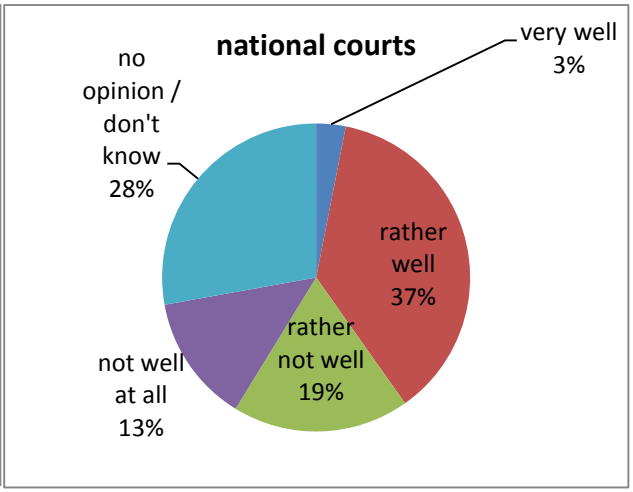
In the past 12 months, have you experienced any problems in dealing with the sellers and service providers?



In your view, how well do the competent national authorities implement consumer and marketing law to protect EU consumers?

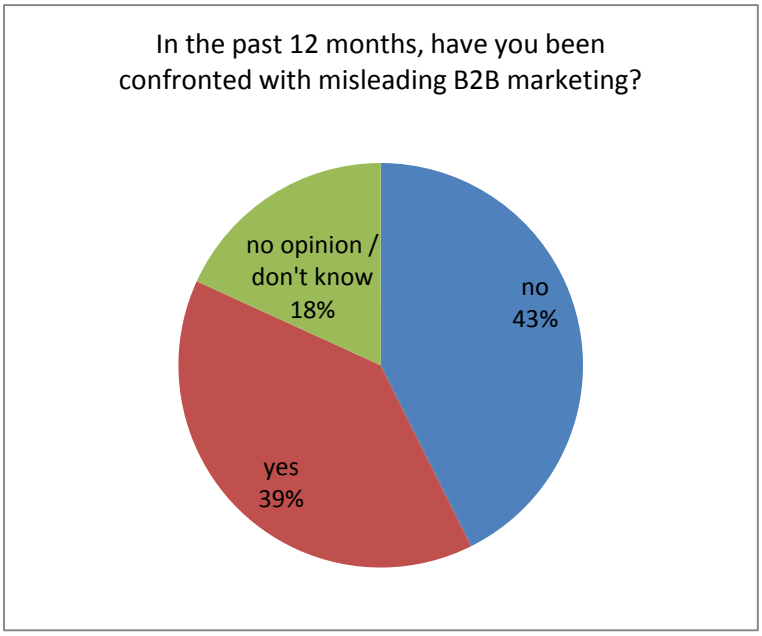
	competent national authorities	national courts
very well	2%	3%
rather well	40%	37%
rather not well	20%	19%
not well at all	22%	13%
no opinion / don't know	16%	28%
No Answer	0%	0%





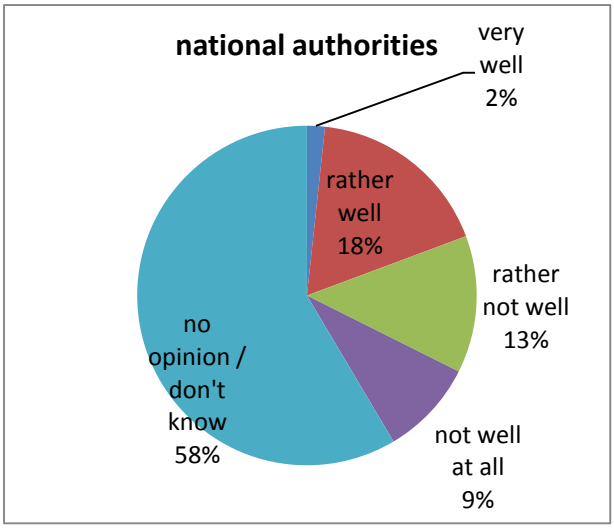
2.2. Outcome of business questionnaire (176 respondents)

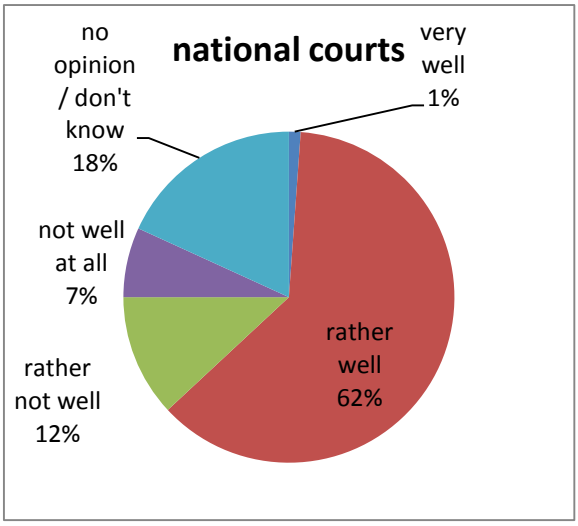
In the past 12 months, have you been confronted with misleading B2B marketing?



In your view, how well do the competent national authorities / national courts implement consumer and marketing rules to protect EU businesses against misleading marketing?

	competent national authorities	**national courts**
very well	2%	1%
rather well	18%	62%
rather not well	13%	12%
not well at all	9%	7%
no opinion / don't know	59%	18%
No Answer	0%	0%

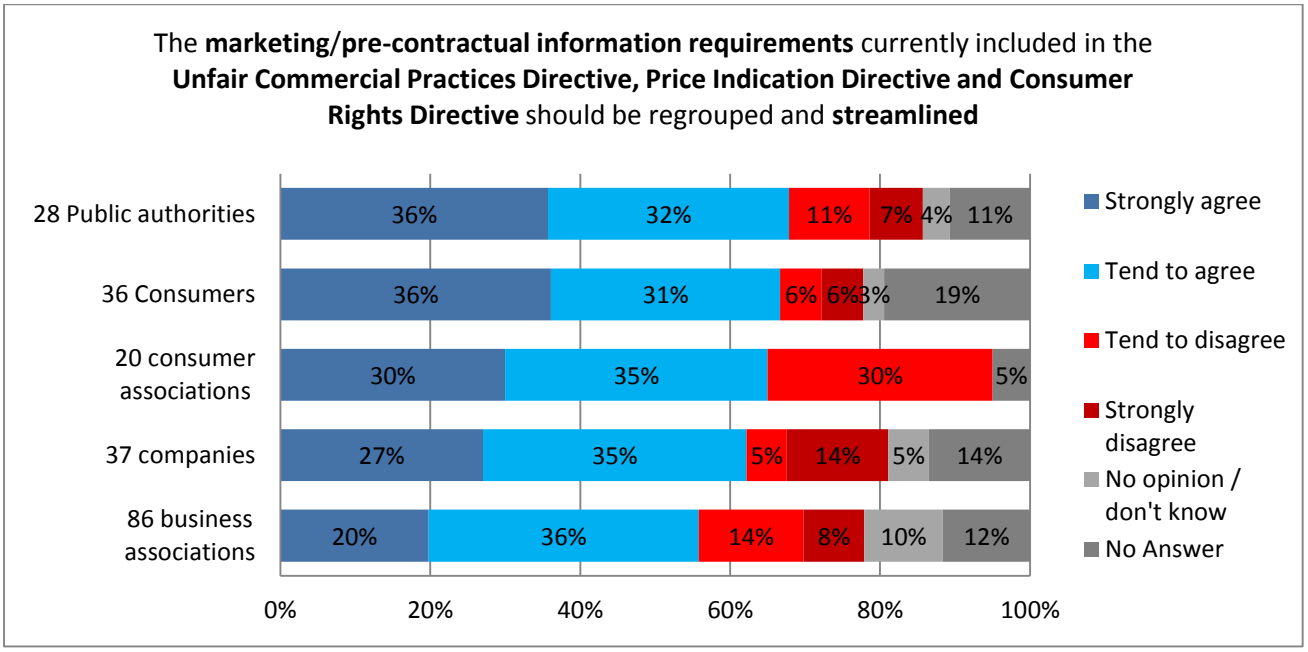




3. Potential areas to improve consumer protection

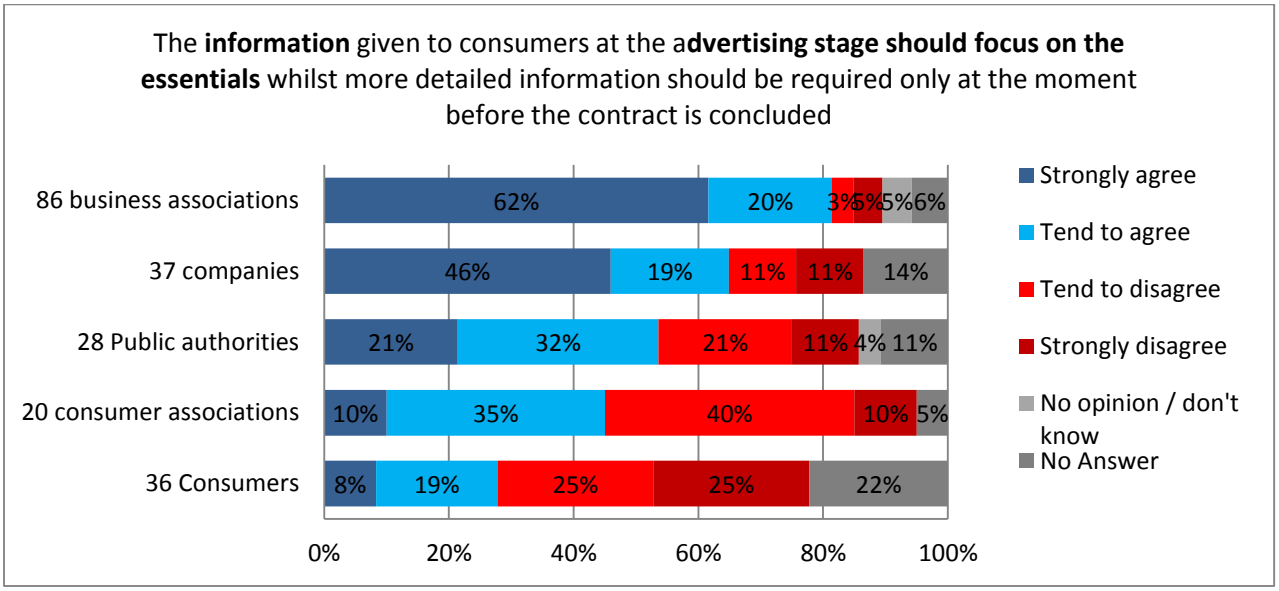
*The **marketing/pre-contractual information requirements** currently included in the **Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive** should be regrouped and **streamlined:***

- 67 % of consumers agree
- 68 % of public authorities agree
- 65 % of consumer associations agree
- 62 % of companies agree
- 56 % of business associations agree



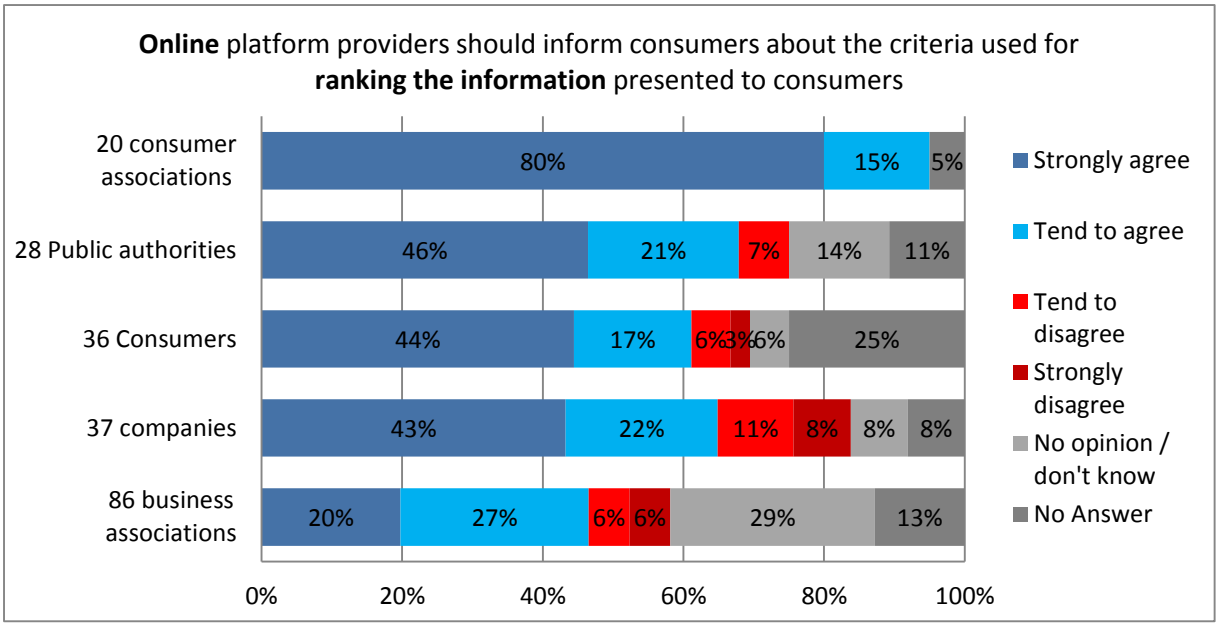
*The **information** given to consumers at the **advertising stage should focus on the essentials** whilst more detailed information should be required only at the moment before the contract is concluded*

- 82% of business associations agree
- 65% of companies agree
- 53% of public authorities agree
- 45% of consumer associations agree
- 27% of consumers agree



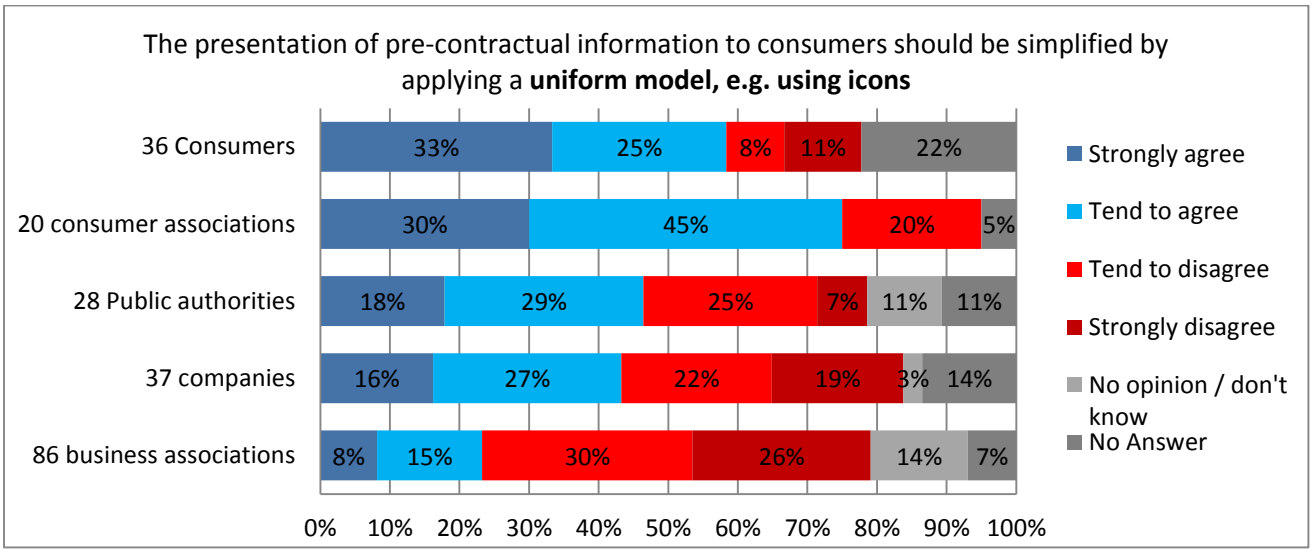
***Online** platform providers should inform consumers about the criteria used for **ranking the information** presented to consumers*

- 95 % of consumer associations agree
- 67 % of public authorities agree
- 65 % of companies agree
- 61 % of consumers agree
- 47 % of business associations agree



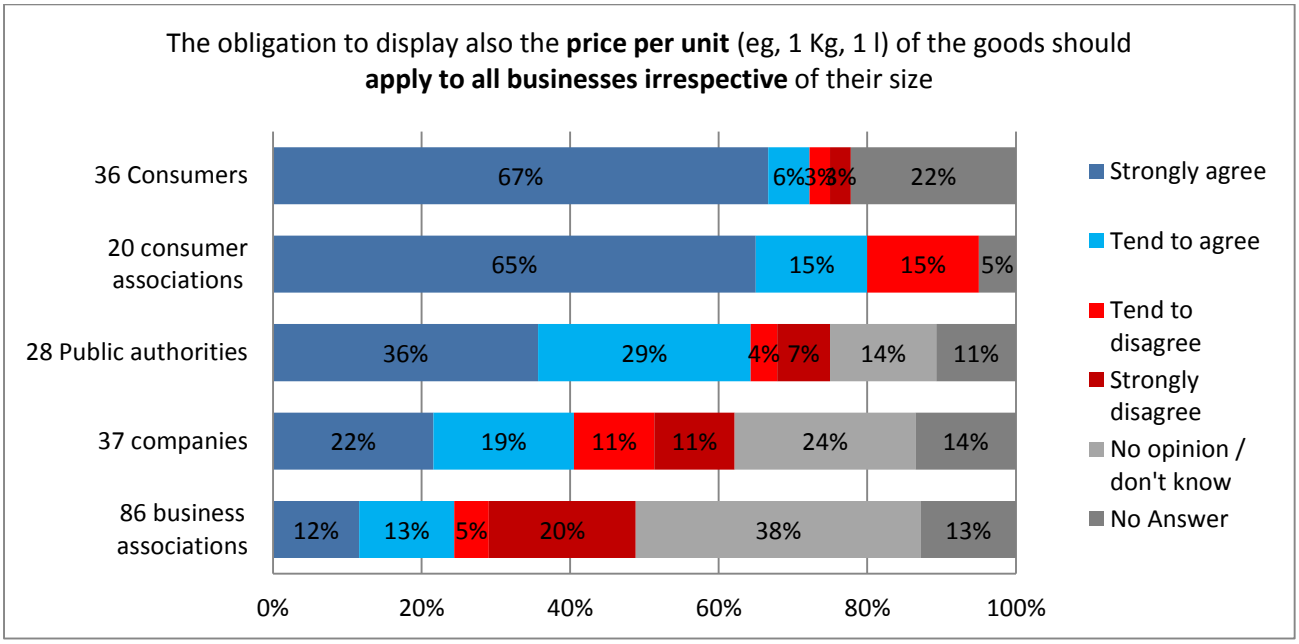
The presentation of pre-contractual information to consumers should be simplified by applying a ***uniform model, e.g. using icons:***

- 75 % of consumer associations agree
- 58 % of consumers agree
- 47 % of public authorities agree
- 43 % of companies agree
- 23% of business associations agree



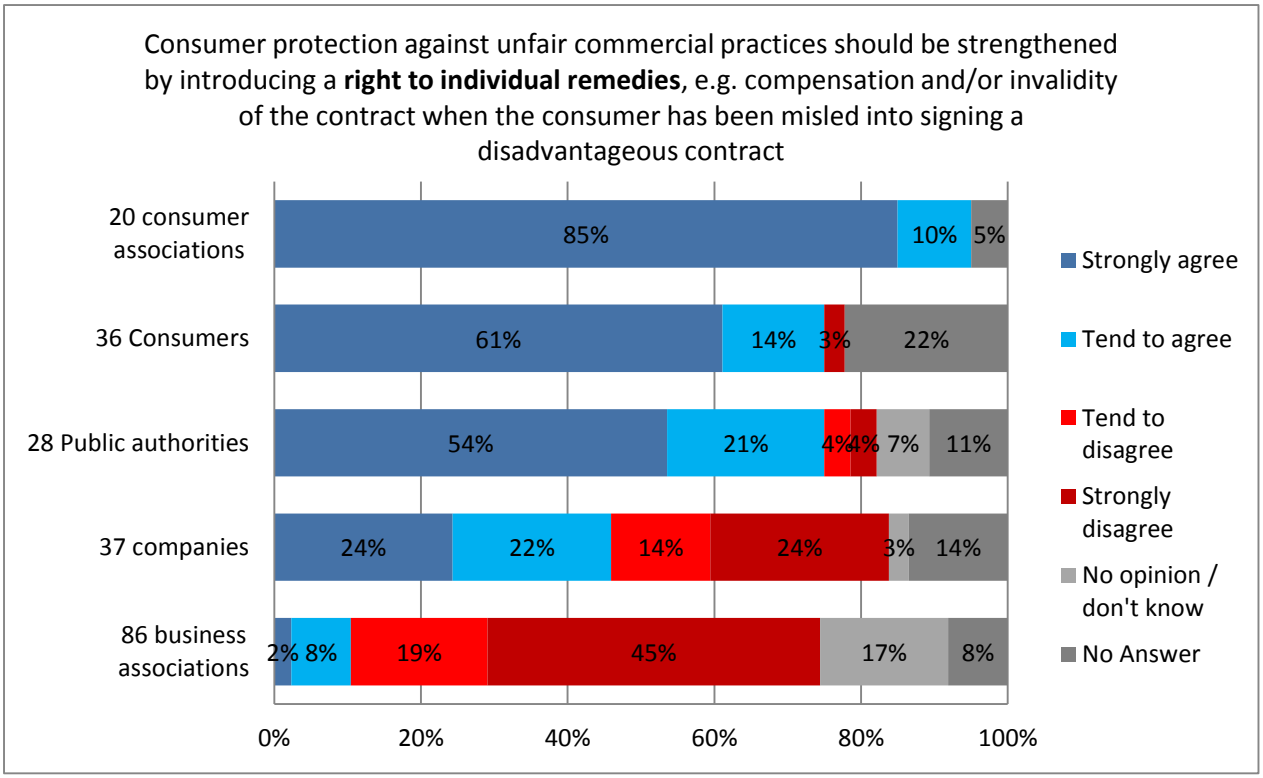
*The obligation to display also the **price per unit** (eg, 1 Kg, 1 l) of the goods should **apply to all businesses irrespective** of their size*

- 80 % of consumer associations agree
- 73 % of consumers agree
- 65 % of public authorities agree
- 41 % of companies agree
- 25 % of business associations agree



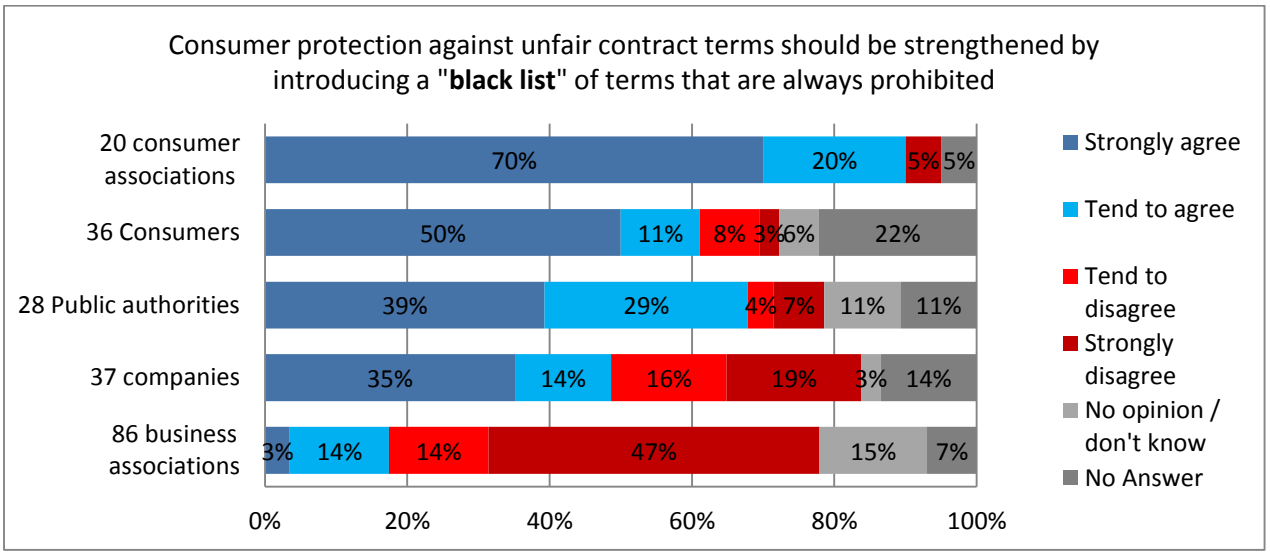
*Consumer protection against unfair commercial practices should be strengthened by introducing a **right to individual remedies**, e.g. compensation and/or invalidity of the contract when the consumer has been misled into signing a disadvantageous contract*

- 95 % of consumer associations agree
- 75 % of consumers agree
- 75 % of public authorities agree
- 46 % of companies agree
- 10 % of business associations agree



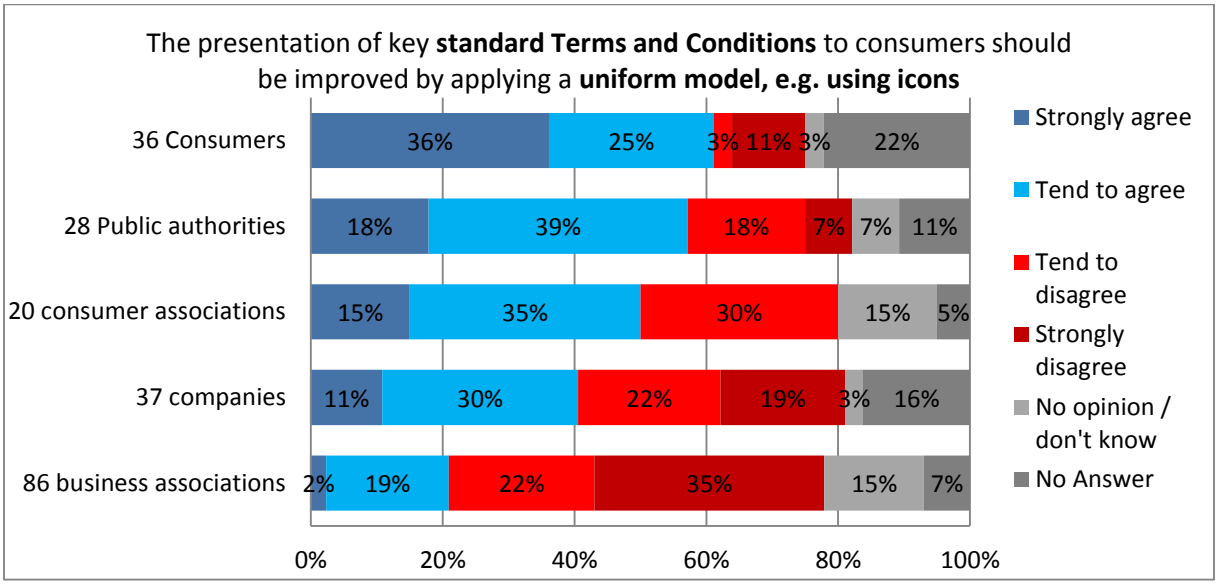
*Consumer protection against unfair contract terms should be strengthened by introducing a "**black list**" of terms that are always prohibited*

- 90 % of consumer associations agree
- 68 % of public authorities agree
- 61 % of consumers agree
- 49 % of companies agree
- 17 % of business associations agree



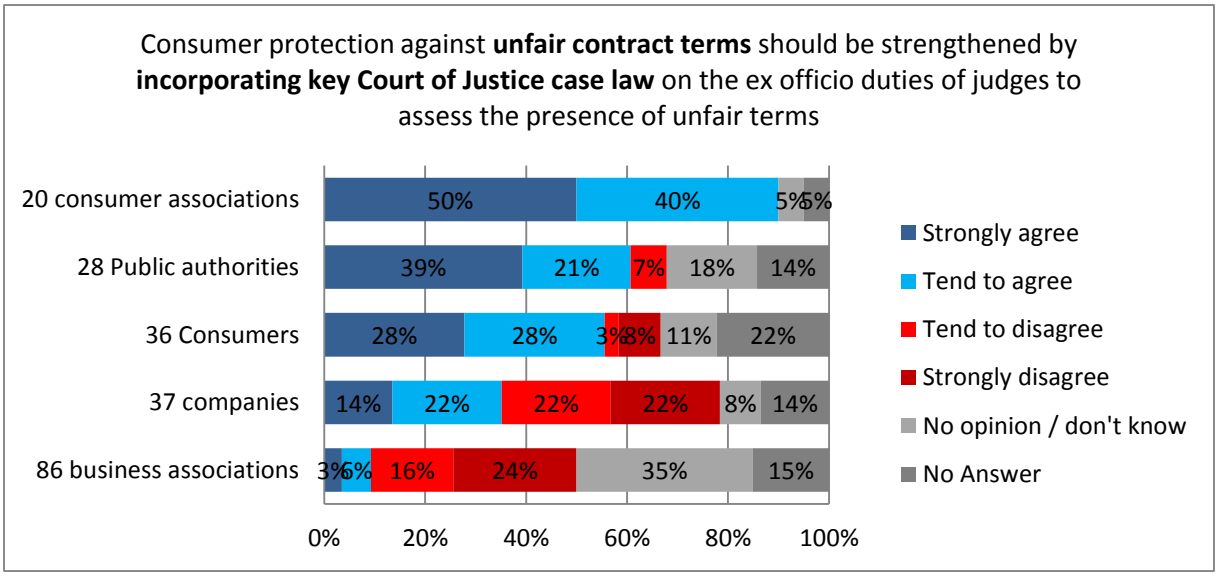
*The presentation of key **standard Terms and Conditions** to consumers should be improved by applying a **uniform model, e.g. using icons:***

- 61 % of consumers agree
- 57 % of public authorities agree
- 50 % of consumer associations agree
- 41 % of companies agree
- 21 % of business associations agree



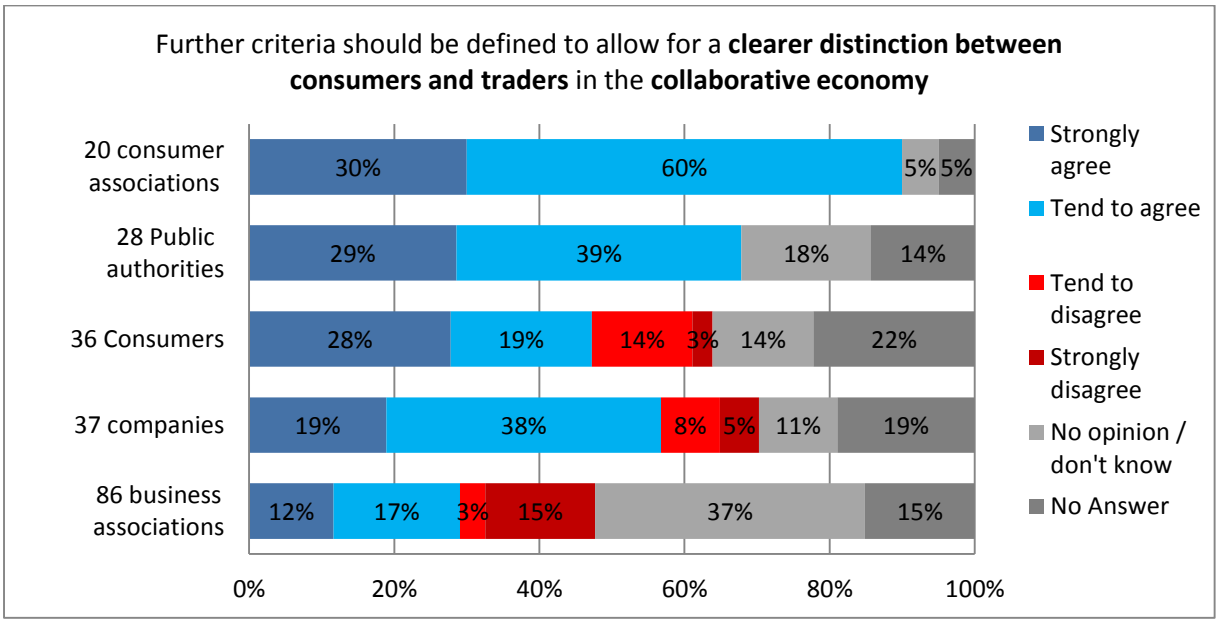
*Consumer protection against **unfair contract terms** should be strengthened by **incorporating key Court of Justice case law** on the ex officio duties of judges to assess the presence of unfair terms*

- 90% of consumer associations agree
- 60% of public authorities agree
- 56% of consumers agree
- 36% of companies agree
- 9% of business associations agree



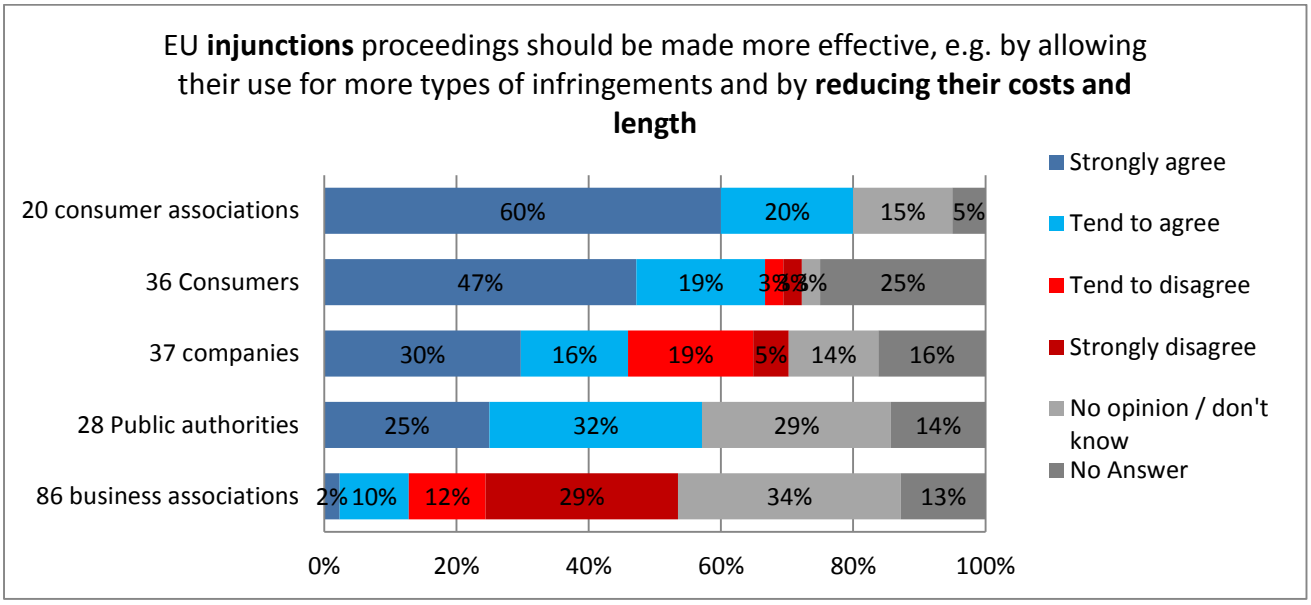
*Further criteria should be defined to allow for a **clearer distinction between consumers and traders** in the **collaborative economy***

- 90 % of consumer associations agree
- 68 % of public authorities agree
- 57 % of companies agree
- 47 % of consumers agree
- 29 % of business associations agree



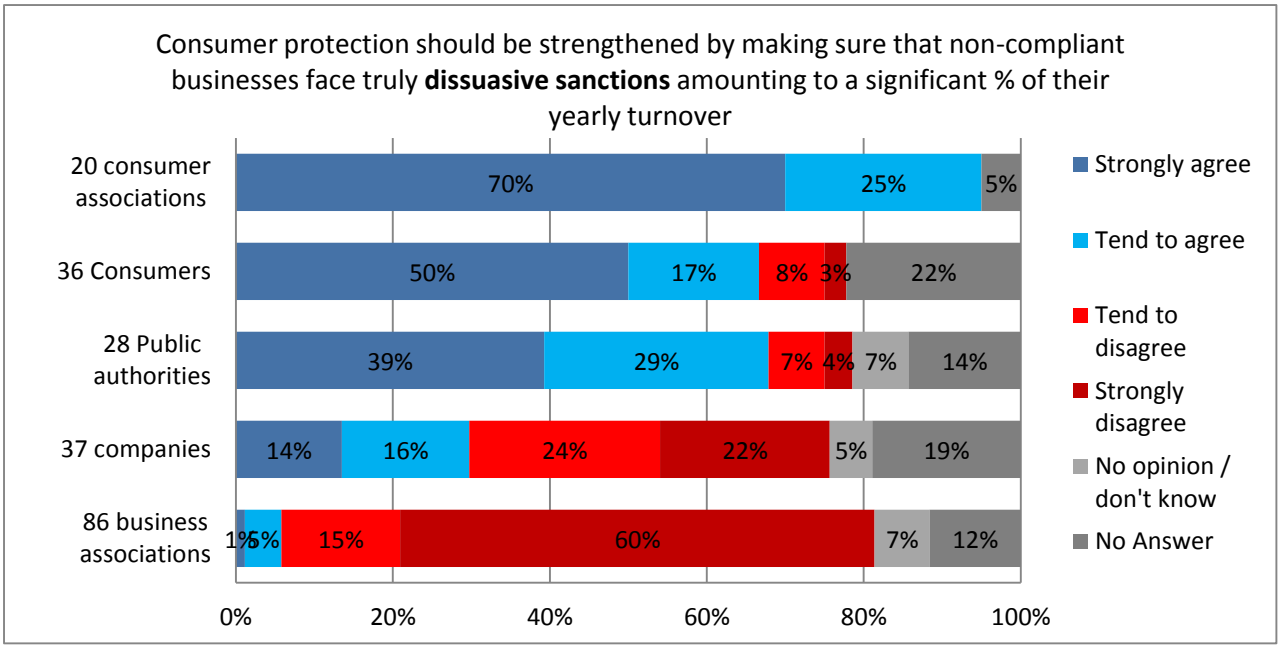
*EU injunctions proceedings should be made more **effective**, e.g. by allowing their use for more types of infringements and by **reducing their costs and length:***

- 80% of consumer associations agree
- 66% of consumers agree
- 57 % of public authorities agree
- 46 % of companies agree
- 12% of business associations agree



*Consumer protection should be strengthened by making sure that non-compliant businesses face truly **dissuasive sanctions** amounting to a significant % of their yearly turnover:*

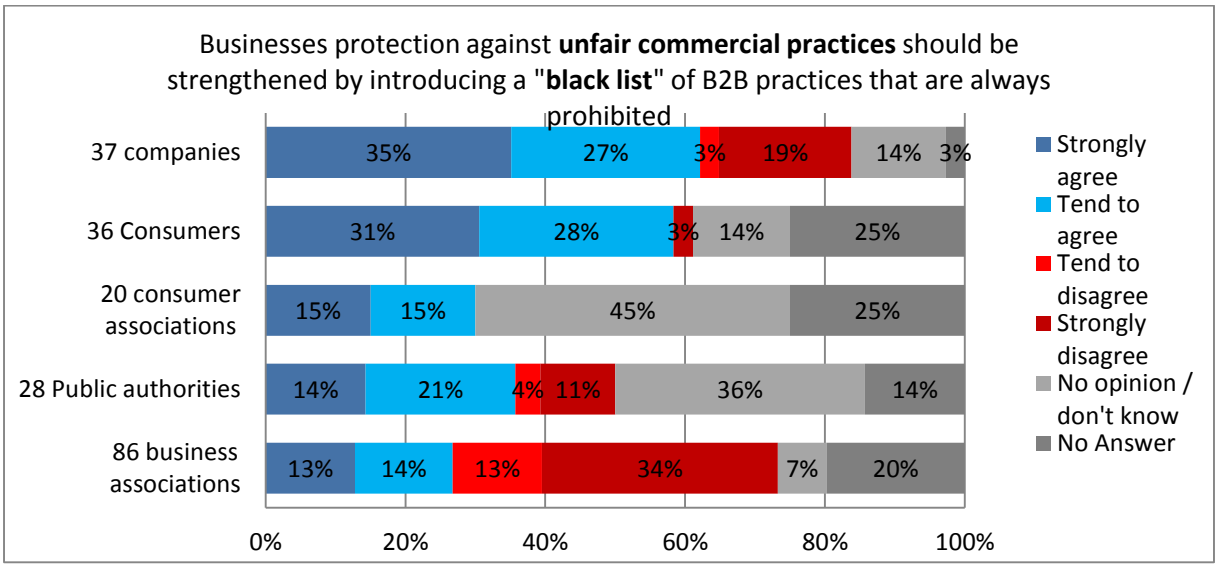
- 95 % of consumer associations agree
- 67 % of consumers agree
- 68 % of public authorities agree
- 30 % of companies agree
- 6 % of business associations agree



4. Potential areas to improve business protection

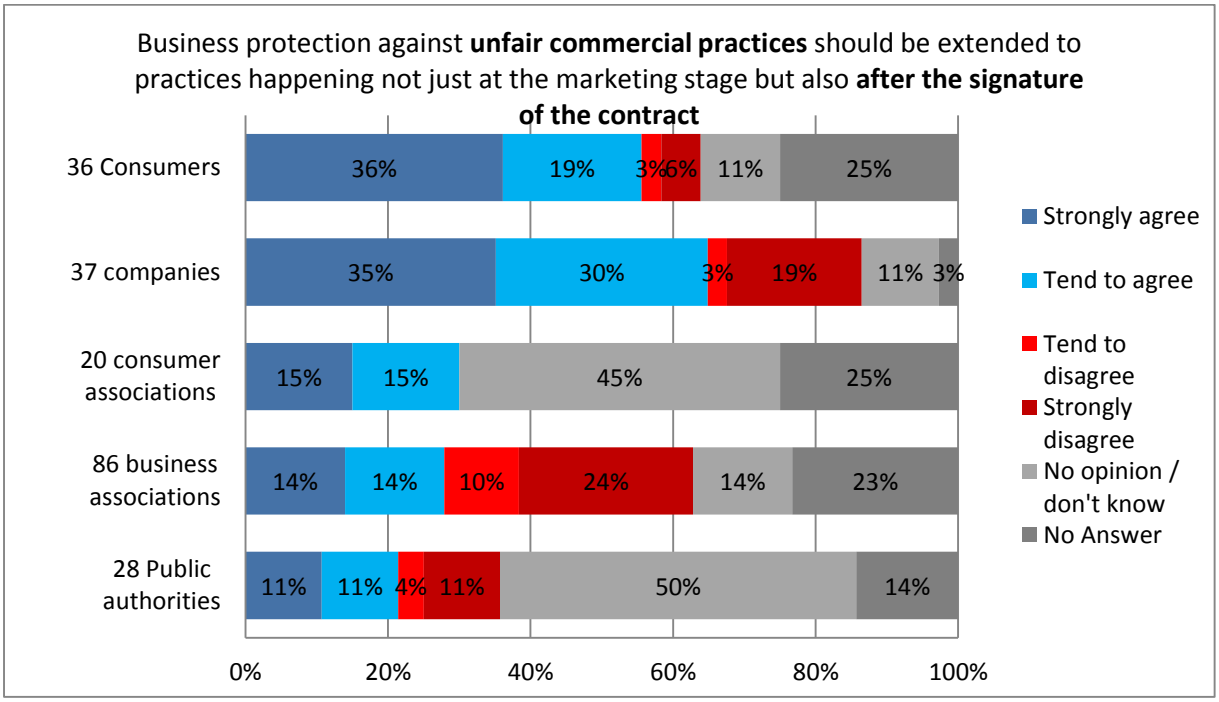
*Businesses protection against **unfair commercial practices** should be strengthened by introducing a "**black list**" of B2B practices that are always prohibited*

- 62 % of companies agree
- 59 % of consumers agree
- 35 % of public authorities agree
- 30% of consumer associations agree
- 27% of business associations agree



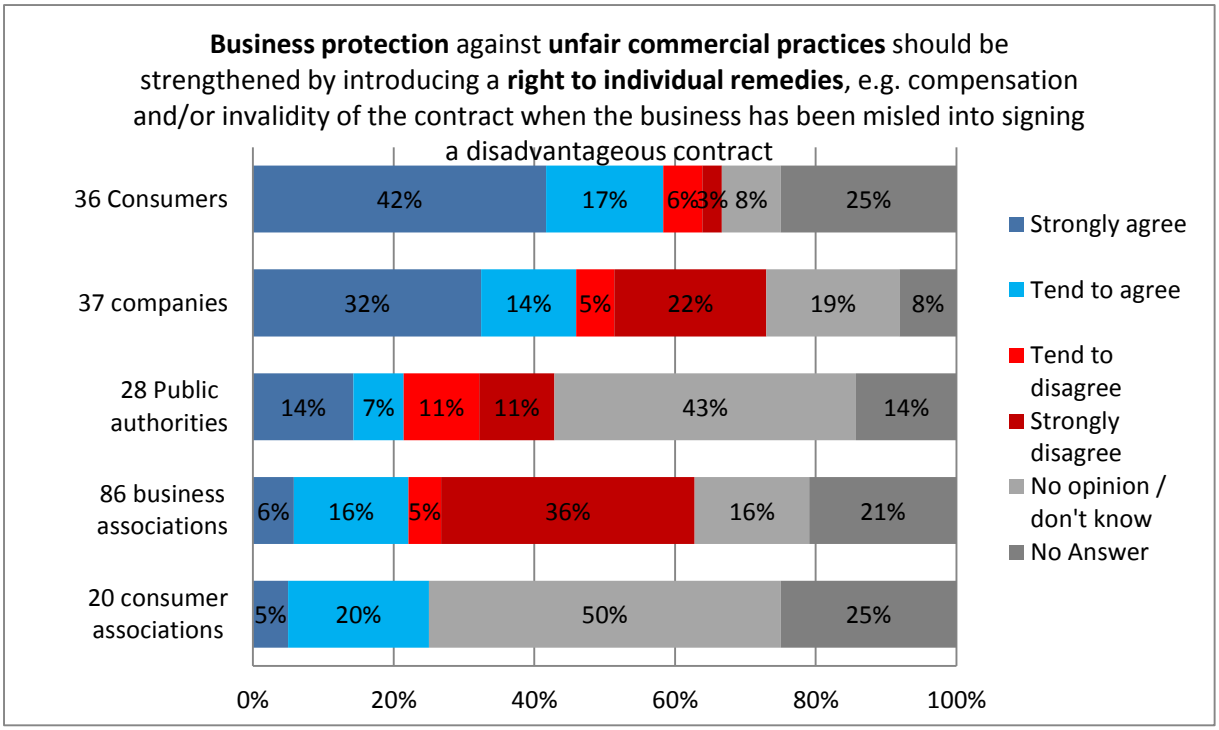
*Business protection against **unfair commercial practices** should be extended to practices happening not just at the marketing stage but also **after the signature of the contract***

- 65 % of companies agree
- 55 % of consumers agree
- 28 % of business associations agree
- 30 % of consumer associations agree
- 22% of public authorities agree



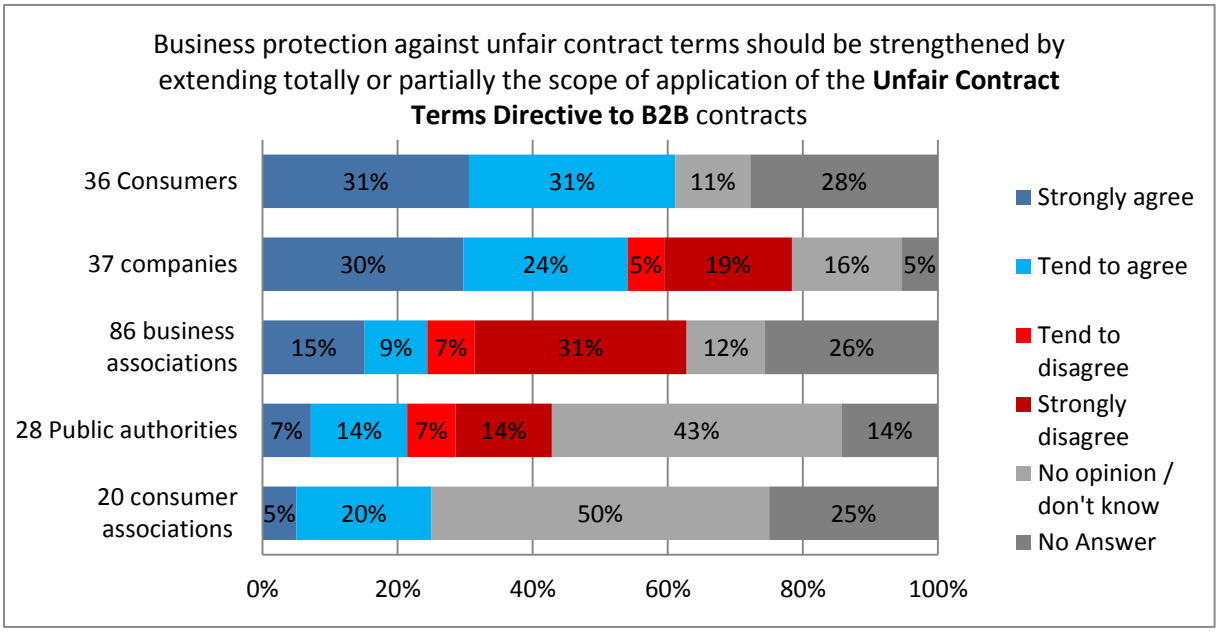
***Business protection** against **unfair commercial practices** should be strengthened by introducing a **right to individual remedies**, e.g. compensation and/or invalidity of the contract when the business has been misled into signing a disadvantageous contract*

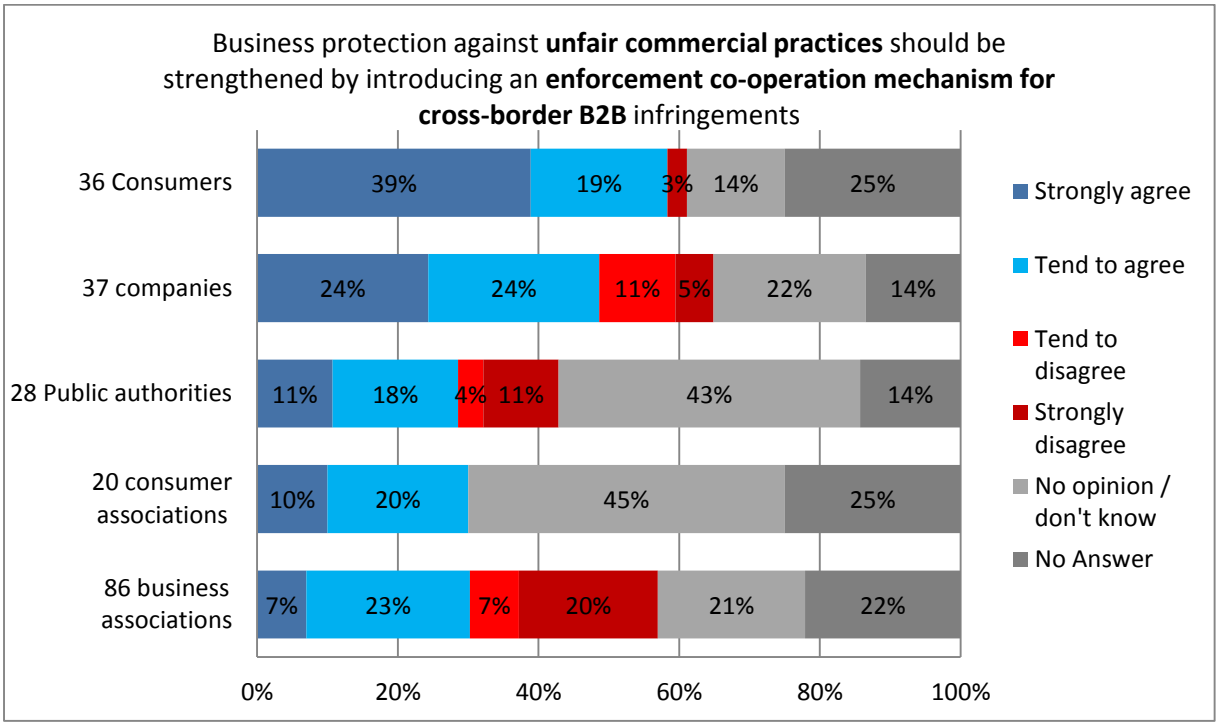
- 59 % of consumers agree
- 46 % of companies agree
- 25 % of consumer associations agree
- 22 % of business associations agree
- 21 % of public authorities agree



*Business protection against unfair contract terms should be strengthened by extending totally or partially the scope of application of the **Unfair Contract Terms Directive to B2B** contracts*

- 62 % of consumers agree
- 54 % of companies agree
- 25% of consumer associations agree
- 24 % of business associations agree
- 21 % of public authorities agree



*Business protection against **unfair commercial practices** should be strengthened by introducing an **enforcement co-operation mechanism for cross-border B2B** infringements*

- 58 % of consumers agree
- 48 % of companies agree
- 30 % of business associations agree
- 30 % of consumer associations agree
- 29 % of public authorities agree