European Commission

EU consumer and marketing law: still fit for purpose? Achievements and challenges

17 October 2016

EUROPEAN CONSUMER SUMMIT

BRUSSELS

Justice and Consumers

Workshop 2
Increasing fairness of commercial practices and of contract terms

Unfair commercial practices: UCPD MCAD
What works well?

- Co-existence of principles and black list is useful:
- Principle based approach helps to apply UCPD to new commercial practices
- At the same time, black list gives legal certainty to ban "standard" practices

Unfair commercial practices: UCPD MCAD

What should be improved?

- Introduction of harmonised civil remedies for breach of UCPD – right to claim nullity of contract
- More effective and consistent enforcement, including cross-border
- Commission to hold MS to account for effective and equal enforcement
- Streamline information requirements under UCPD and CRD
- Applicability of UCPD to collaborative economy has to be clarified, who is consumer/trader?
- Transactional decision test is difficult to apply in practice. Extend blacklist to facilitate proof in court and update that list to emerging practices.
- Extension of UCPD to B2B: protect SMEs by black list and prohibiting aggressive practices
- Minimum harmonisation to allow for additional national protection?

What should be improved – unfair contract terms

- General support for EU-black list, strong support for grey list, in addition to a general clause
- Some prefer an EU-black list that is rather short and not fully harmonised/exhaustive
- One group: inclusion also of individually negotiated terms
- One group: more guidance and better enforcement
- Mixed views on graphically enhanced models for T&C's – one group asked whether DG JUST's experience regarding digital content had been positive,
- Some consider icons not to be the most relevant issue and not flexible enough
- Consensus that such models should not be binding

What should be improved – unfair contract terms

Should there be further rules to protect businesses in B2B relations as regards standard contract terms?

- One group says "Yes, in order to protect SMEs”
- Another group: "Yes, a single piece of legislation for the protection of consumers and businesses”

Collaborative economy: Evidence of consumer detriment?

- Yes but still limited in size & amount

What works well

- Cheaper, faster, local

What should be improved

- Access to ADR
- Action by consumer associations
- More research on detriment

Criteria for defining a “trader”

What should be improved

- Define clear and balanced responsibilities of platforms, consumers and traders
- EU standard on what is a trader, clarify what is B2C, C2C, B2B

Regulate P2P/C2C in online platforms at EU level?

What works well

- National civil law C2C (*for one group*)

What should be improved

- Minimum standard for online platforms
- Transparency requirements – ie identify who is trader
- Intermediary liability for P2P transaction

Please vote now…

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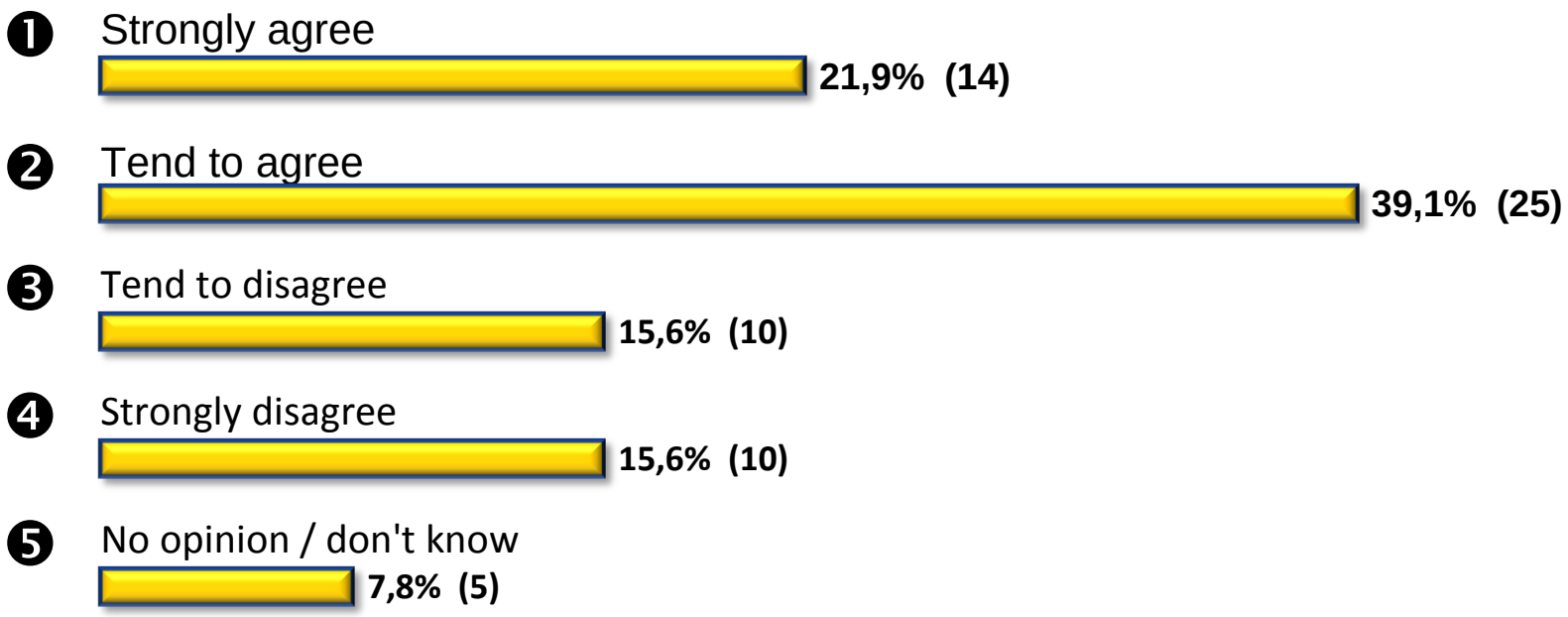
1. Should EU consumer and marketing law rules be simplified and streamlined by bringing them into a single horizontal EU instrument / an EU "code"?



Justice and Consumers

Topic 1. Is there adequate protection against unfair commercial practices?

	Agree in % (total no. of votes)
❶ Should there be rights to individual contractual remedies for consumers in case of unfair commercial practices affecting their transactional decision (e.g. right to claim nullity of the contract or compensation)?	77% (64)
❷ Should the existing "black list" of unfair practices be extended to include new practices?	74% (69)
❸ Should there be further rules to protect businesses in B2B relations, e.g. by introducing a "black list" of prohibited practices and/or regulating also aggressive commercial practices?	48% (69)

Topic 2. Is there adequate protection against unfair contractual terms?

❶	Should a 'black list' of recurrent and harmful standard T&C be introduced across the EU?	71% (69)
❷	Should there be a graphically enhanced model for the presentation of the main elements of the T&Cs?	57% (68)
❸	If yes, should such model be binding?	31% (68)
❹	Should there be further rules to protect businesses in B2B relations as regards standard contract terms?	43% (68)

Topic 3. Is there adequate consumer protection in the collaborative and peer-to-peer economy?

❶ Is there evidence of consumer detriment in online collaborative and peer-to-peer platform markets?

51% (67)

❷ Should additional specific criteria be introduced to establish when a supplier qualifies as a "trader" in the meaning of EU consumer protection rules?

72% (67)

❸ Should EU-level regulation be introduced to govern also the consumer-to-consumer (C2C) relations in online platform markets?

45% (71)