

# Public consultation on the targeted revision of EU consumer law directives

Fields marked with \* are mandatory.

## About you

\*1 You are welcome to answer the questionnaire in one of the 24 official languages of the EU. Please let us know in which language you are replying.

English

\*2 You are replying

- as an individual in your personal capacity
- in your professional capacity or on behalf of an organisation

\*3 You are replying on behalf of:

- a national consumer association
- a European-level consumer association
- a company (or group of companies)
- a national business association
- a European-level business association
- a national consumer enforcement authority
- a national public enforcement authority in a specific area (energy, telecom etc.)
- a European Consumer Centre
- a government authority (ministry) in charge of consumer policy
- another public body /institution
- a professional consultancy/ law firm
- a think tank/ university/ research institute
- other

\*5 Please indicate the **country** where you live or, if you reply on behalf of an entity, the country where it has its headquarters/ place of establishment.

France

\*7 Publication of your **response**

*Note that, whatever option chosen, your response may be subject to a request for public access to documents under [Regulation \(EC\) N° 1049/2001](#)*



**my response can be published with my personal information** (I consent to the publication of all information in my response in whole or in part including my name or my organisation's name, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication)

- my response can be published without the information I provided in replies to questions about my or my organisation's name, registration number and e-mail address** (I consent to the publication of all the other information in my response in whole or in part (which may include quotes or opinions I express). I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.)

\*9 (If full response can be published). Please provide **your full name** or the **name of the entity** on whose behalf you are replying.

100 character(s) maximum

Trans Europe Experts, <https://www.transeuropexperts.eu>

Is your organisation included in the [EU Transparency Register](#)?

If your organisation is not registered, we invite you to register [here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

11 (if full response can be published). If your organisation is registered, please indicate the **Register ID number**.

30 character(s) maximum

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13 (if full response can be published). Please give your **e-mail address** in case we have questions about your reply and need to ask for clarifications.

contact@transeuropexperts.eu

## 1. Short Questionnaire

The evidence gathered during the [Fitness Check of EU consumer law and the evaluation of the Consumer Rights Directive](#) (CRD) indicate that, overall, the current EU consumer law acquis is still fit for purpose and does not require a major overhaul. However, infringements of consumer rights (lack of compliance with consumer law by traders) remain at relatively high levels.

21 What should be done, in your opinion, to ensure that traders comply better with consumer protection rules?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
EU and Member States should stimulate self-regulation by traders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Enforcement authorities should be given more financial and administrative resources	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Penalties for infringing consumer law should be strengthened (more proportionate, effective and dissuasive)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Victims of unfair commercial practices should be given rights to claim remedies from the traders (for example, to terminate the contract or claim damages)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 22 Please explain your reply and describe any other solution that you would like to propose.

One of the weaknesses of European consumer law is the lack of unified sanctions. The directives are too often delegating the power of adopting effective, dissuasive and proportionate sanctions to Member States (e.g. article 13 of the Directive 2005/29). Simply setting criteria for sanctions is not enough.

This approach shows two major disadvantages:

1. It happens that the chosen sanction is completely inadequate. For example, prior to the 2011 directive on consumer rights, the sanction for non-compliance with the information obligation was left to the Member States. For certain Member States, the sanction was nullity of the contract and, according to the decision of the ECJ from 17 December 2009, this nullity may be pronounced ex officio (however, in this case, the Spanish judge did not have this right according to the relevant internal rules). Nevertheless, this sanction was inadequate, as the consumer was running the risk of an imposed nullity, although this was not in his/her wish. Therefore, the 2011 Directive has modified this aspect. The choice of sanctions is not left to the Member States anymore, the sanction for such non-compliance is unified and leads today to a significant prolongation of the withdrawal period. This approach towards sanctions should be applied more often.

2. Leaving the choice of sanctions to the Member States also means compromising the overall objective of harmonisation, especially if we are faced with a directive that has as its objective the full harmonisation of rules throughout Europe. The sanction is the means to achieve the efficiency of a rule. It is meaningless to have substantive rules, if one is sanctioned through civil liability, and another through an administrative fine of 375.000 EURO, decided by a non-independent administrative authority, and doubled in case of recidivism (as it is the case in some Member States). In this case, the substantive rule will be much more efficient in some Member States and full harmonisation remains an illusion.

Yet, if consumer law has as its objective the establishment of the Single European market, sanctions need to be uniform, in order not to result in a multitude of procedures and sanctions - differences in legislation that we aim to avoid.

In this regard, the GDPR is a good step forward, as it creates unified sanctions throughout Europe (see article 83).

## 1.1 Clearer consumer rules for the digital economy

### 1.1.1 Platform transparency

An 'online marketplace', in the following questions, is a service provider which allows consumers and traders to conclude online sales and service contracts on its website.

The [Fitness Check and the evaluation of the Consumer Rights Directive](#) (CRD) showed that some consumers are confused when using online marketplaces. Firstly, it often seems unclear whether consumers buy from the platform itself or from someone else. Secondly, it is often not clear whether the contracting partner acts as trader and is therefore subject to EU consumer law or as a non-trader, against whom EU consumer rights cannot be invoked. For example, in a case leading to a reference for a preliminary ruling at the Court of Justice of the European Union, a consumer buying on a platform was denied the right to withdraw from the contract under the Consumer Rights Directive. Only then did the consumer learn that the seller was claiming not to be a trader (Case C-105/17 Kamenova).

25 In your professional experience, do consumers face the following situations when buying on online marketplaces?

	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer is not sure whether they bought from the online marketplace itself or from someone else	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer is not sure which rights they have, because it was unclear if the person they bought from was bound by EU consumer rules or not	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

26 Please explain your reply, including any other problem you have noticed that consumers experience when concluding contracts on online marketplaces.

See the answers to the full questionnaire.

29 In your professional experience, do consumers experience harm (e.g. financial and/or time loss, psychological harm) when buying on online marketplaces due to the following problems:

	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer was denied the right to cancel the order and return the product within 14 days	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer was denied a repair or replacement of a faulty product	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer did not know to whom to direct his/her claim	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

30 Please explain your reply and describe which kind of harm consumers suffer and which type of goods or services this relates to.

See the answers to the full questionnaire.

### 1.1.2 "Free" online services

"Free" online services in the following questions refer to online services for which consumers do not pay with money but provide data (e.g. cloud storage, e-learning, social network services).

The rules under the [Consumer Rights Directive](#) (CRD) on pre-contractual information requirements for traders and the 14-days right of withdrawal for consumers apply to all contracts for online provision of digital content (e.g. downloads of software, movies or songs) irrespective of consumer's payment with money. On the other hand, these CRD rules currently only apply to contracts for online services (such as subscription to cloud storage or social networks) for which the consumer pays with money. This calls for discussion as to whether the protection under the CRD should be extended also to contracts for online services for which the consumer provide data and does not pay with money. In this respect, the [upcoming EU rules on consumer remedies regarding 'defective' digital products](#) (rules that are currently negotiated by the European Parliament and the Council) may cover online services irrespective of whether the consumer pays with money.

34 Based on your professional experience, do consumers suffer harm (e.g. financial and/or time loss, psychological harm) when concluding contracts for "free" online services due to the following problems:

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	Yes, often	Yes, a few times	Yes, once	No	Do not know
Consumer was not informed about the main features of the service, such as its functionality and compatibility with his/her IT equipment (e.g. information on whether the service will be fully interoperable with his/her hardware and software)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer could not cancel the service within 14 days	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

35 Please explain your reply, including description of harm due to any other problems that consumers face, according to your professional experience.

See the answers to the full questionnaire.

36 In your view, is it problematic that consumers do not have the **right to be informed** (before acquiring the service) about the main features of "free" online services (e.g. on functionality and interoperability with hardware and software)?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
No, it is not a major issue	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it creates harm for consumers including when they use services cross-border	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it discourages consumers from acquiring such online services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it disrupts level playing field between digital traders offering services with and without payment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

37 Please explain your reply.

See the answers to the full questionnaire.

39 Based on your professional experience, would consumers use "free" online services more often if they had **the right to be informed** (before acquiring the service) about the main features of the service (e. g. on functionality and interoperability with hardware and software)?

- Yes
- No
- Do not know

40 In your view, is it problematic that consumers do not have the **right to cancel** "free" online services within 14 days?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
No, it is not a major issue	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it creates harm for consumers including when they use services cross-border	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it discourages consumers from acquiring such online services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Yes, it disrupts level playing field between digital traders offering services with and without payment	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

41 Please explain your reply.

See the answers to the full questionnaire.

43 Based on your professional experience, would consumers use "free" online services more often if they had the right to **cancel the service** within 14 days after acquiring it?

- Yes
- No
- Do not know

## 1.2 Better enforcement and redress opportunities for consumers

### 1.2.1 Individual redress/remedies for harm suffered from unfair commercial practices

"Redress/remedies" in the following questions refers to what consumers can get to remedy the situation when their consumer rights have been breached (e.g. terminating contract, getting their money back).

"Green claims" in the following questions refers to marketing that creates an impression that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services. For example, a misleading green claim would be if a car manufacturer in advertisements would mislead consumers on the environmental performance of its cars.

Currently, EU rules do not give consumers who have suffered harm from [unfair commercial practices](#), such as misleading advertising, any individual rights to remedy their situation. Furthermore, the consumer's right to remedies/redress for harm caused by unfair commercial practices are not always sufficiently guaranteed under national law. Different and ineffective national rules on remedies/redress may lead to costs for traders engaging in cross-border trade and detriment for consumers resulting from continued existence of many breaches on national and cross-border level. These problems lead to lack of consumer trust in purchasing, particularly cross-border, and thus to reduced frequency and volume of trade for both consumers and traders.

46 In your professional experience, do consumers experience problems with getting redress from traders when they have been victims of unfair commercial practices?

- Yes, often
- Yes, a few times
- Yes, once
- No
- Do not know

47 Please explain your reply, ideally referring to concrete cases.

See the answers to the full questionnaire.



48 Do you agree that differences between national rules on remedies for unfair commercial practices cause the following problems?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Harm to consumers as they cannot remedy the consequences resulting from unfair commercial practices on the national and cross-border level	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Costs for traders engaging in cross-border trade due to need to adapt to different national rules on remedies	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

49 Please explain your reply.

See the answers to the full questionnaire.

### 1.2.2 Penalties for breaches of consumer rules

"Penalties" in the following questions refer to a punishment imposed or to be imposed for a violation of consumer protection rules.

"Fines" in the following questions refer to monetary penalties.

Penalties for lack of compliance with consumer law, as foreseen under national law, are not always effective, proportionate and dissuasive enough to prevent lack of compliance by traders, which leads to consumer detriment. Penalties represent an important part of national enforcement systems, as they have an impact on the degree of deterrence provided by public enforcement. Today, fines for breaches of consumer law vary significantly between Member States, both as regards the way in which they are calculated and their maximum level.

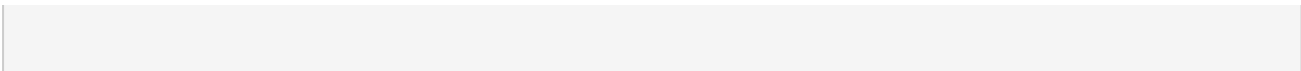
50 Do you agree that the following differences between the national legislation of EU Member States on penalties cause insufficient enforcement of EU consumer protection rules across the EU?

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	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
<p>Differences regarding the nature of penalties</p> <p>For example in some Member States traders using standard unfair terms in contracts with consumers (e.g. a standard term which denies the consumer right to a remedy where the good is defective) cannot be penalised with a fine whereas in other Member States the use of such terms may be penalised by a fine up to 50 000 EUR.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Differences regarding the level of maximum fines</p> <p>For example fines for unfair commercial practices such as a misleading green claim may go up to 32 000 EUR in one Member State, whereas in another Member State up to 5 million EUR.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Differences regarding the way of calculating fines</p> <p>For example breaches of the Consumer Rights Directive (e.g. not providing to consumers a mandatory information on their rights) may be fined up to a lump sum of 1 500 EUR in one Member State, whereas in another Member State up to 10% of a trader's turnover.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

51 Please explain your reply, preferably by providing examples of concrete cases. In addition, if possible please include a description of any other situation where differences in penalties and in fines in EU Member States cause insufficient enforcement of the EU consumer protection rules.

See the answers to the full questionnaire.



52 Do you agree with the following statements regarding fines for breaches of EU consumer protection rules?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
When imposing a fine on a trader, national authorities do not always take into account that consumers of several Member States may be affected.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The low level of maximum fines in some Member States is not likely to reflect the gravity of a breach and possible profits stemming from it, in particular where a breach affected a large number of consumers in several other Member States.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

53 Please explain your reply, preferably by providing examples of concrete cases.

See the answers to the full questionnaire.

54 Do you agree that differences in the nature and level of penalties for the same or similar breaches of EU consumer laws have the following consequences across the EU?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Insufficient compliance with EU consumer law	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient enforcement of EU consumer law in case of breaches that took place in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Insufficient deterrence especially for breaches that took place in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Unfair advantage for non-compliant traders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lack of level playing field between traders operating in Member States where fines are relatively low and traders operating in Member States where fines are relatively high	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

55 Please explain your response, including any "other consequences" that you wish to describe.

See the answers to the full questionnaire.

## 1.4 Doorstep selling

"Doorstep selling" refers to situations where the trader makes an offer to the consumer or concludes a contract with the consumer in a place which is not the business premises of the trader, in particular transactions taking place at a consumer's home without prior agreement or during excursions organised by the trader.

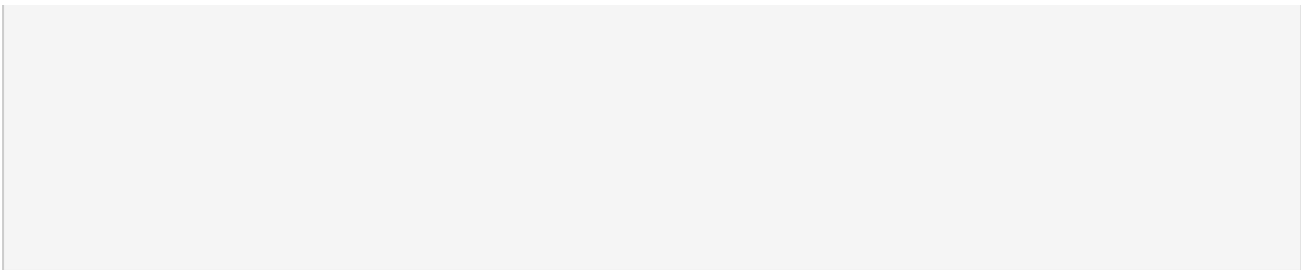
While doorstep selling is not prohibited as such under the [Unfair Commercial Practices Directive](#) (UCPD), the specific commercial practice of "ignoring the consumer's request to leave or not to return when conducting personal visits to the consumer's home" is always prohibited. However, the Commission has become aware of the fact that there are rules in some Member States that appear to ban or come very close to banning doorstep selling as a sales channel in general. The Commission would like to take this opportunity to seek stakeholders' views on this issue.

62 Under current EU law, doorstep selling is a legitimate sales channel in Europe, except for certain specific exceptions under the UCPD. Do you agree that Member States' authorities should be allowed to introduce a general ban on doorstep selling, as explained above?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

63 Please explain your reply.

See the answers to the full questionnaire.



64 Would you like to continue the survey by answering further, more detailed questions, which would help us in further mapping the issues consumers and businesses face?

- Yes
- No

## 2. Full questionnaire

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**Thank you for your commitment to answering some additional questions.**

Several of them indicate that they are targeted at specific respondents, such as businesses or national authorities. However, as a respondent to this survey you may answer any of the following questions, even if the question is not specifically targeted to you.

### 2.1 Clearer consumer rules for the digital economy

#### 2.1.1 Platform transparency

An 'online marketplace', in the following questions, is a service provider which allows consumers and traders to conclude online sales and service contracts on its website.

The [Fitness Check and the evaluation of the Consumer Rights Directive](#) (CRD) showed that some consumers are confused when using online marketplaces. Firstly, it often seems unclear whether consumers buy from the platform itself or from someone else. Secondly, it is often not clear whether the contracting partner acts as trader and is therefore subject to EU consumer law or as a non-trader, against whom EU consumer rights cannot be invoked. For example, in a case leading to a reference for a preliminary ruling at the Court of Justice of the European Union, a consumer buying on a platform was denied the right to withdraw from the contract under the Consumer Rights Directive. Only then did the consumer learn that the seller was claiming not to be a trader (Case C-105/17 Kamenova).

65 Do you agree that throughout the EU, consumers buying on online marketplaces should be informed about the following:

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Whether they buy from the online marketplace itself or from someone else	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Whether the contracting party declares to be a trader or not	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Whether EU consumer rights apply to their transaction	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 66 Please explain your reply.

To enable consumers to identify who is really the other party when contracting through an online platform, it may be desirable to develop at European level a rule inspired by French solutions that tend to platforms transparency.

Due to the lack of transparency on the functioning of platforms, the new articles L.111-7, L. 111-7-1 and L.111-7-2 of the Consumer Code impose a duty of loyalty upon the platform. Specifically, the new article L.111-7 of the Consumer Code not only provides a definition of online platforms, but it also places a duty of trustworthiness towards consumers from the platform operators to help reducing the informational asymmetry that exists between platforms and users. This obligation is two-folded in order to better tackle the different practices.

First, this duty to inform relates to the general terms and conditions of use, or to the arrangements for referencing, classification and dereferencing online offers (especially the existence of a contractual relationship, a capitalist link or remuneration for benefit, if they influence the ranking or referencing of content, goods or services offered on the platforms).

Second, article L.111-7-2 contains a provision requiring websites upon which online opinions are posted to indicate explicitly whether the opinions the website publishes have been subject to a checking process. It states that, if the website makes such checks, it has the obligation to clearly specify the main methods used as part of the checking process. Making this information available in advance should therefore enable consumers to assess the extent to which they should trust the opinions made available to them, and, by extension, the website publishing them.

These various duties to inform are accompanied by the traditional sanctions of the Consumer Code in the event of a violation of the duties to inform, but also by incentives for good practices.

To ensure that the principles of trustworthiness and transparency are fully effective, article L.111-7-1 of the Consumer Code encourages platforms with large audiences to define best practices, to reference indicators, and to regularly publish assessments of their own practices. This aims at making them play the role of virtuous leaders, and at avoiding the introduction of high market entry barriers for new entrants.

To ensure that the measure is reserved to the most important platforms, the article also provides for a decree to set the connection threshold beyond which online platforms will be subject to these obligations.

The assessment mechanisms of these best practices are entrusted to the regulators. The competent authority has the power to investigate and to assess the best practices of online platforms, to make their assessment public, and to establish a list of platforms that do not respect their obligations. With this “naming and shaming” tool, the reputational lever could be used to promote fair practices by platforms and enhance consumers’ confidence.

67 In your view, what would be the benefit to consumers to have such information when using online marketplaces?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
To know whom to contact in case of a problem	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To understand who is responsible for the performance of the contract	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To understand if consumer protection rules apply in case of a problem	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To increase consumer trust	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To compare offers	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

68 Please explain your reply, including description of any other reason why such information is important for consumers.

See the answer to the question 66

69 **[Companies, business associations]** Do you (or the companies you represent) incur compliance costs when trading cross-border due to different national laws related to information obligations on online marketplaces about the following:

	Yes, to a significant extent	Yes, to some extent	Do not know	Not applicable

Obligation to indicate whether the contract is concluded with the online marketplace or with third party suppliers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation to indicate whether any third party supplier is acting as a trader or not	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Obligation to indicate the applicability of consumer law to contracts	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

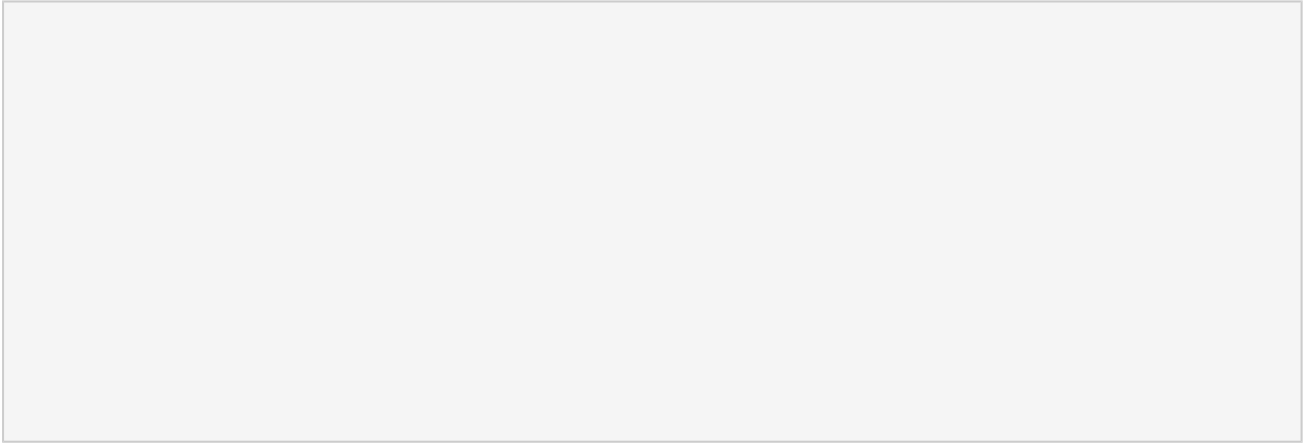
70 Please explain your reply.



71 **[Companies, business associations]** What are your (or the companies' you represent) estimated costs due to a need to adapt to these different national rules ?

	Estimated amount or % of turnover
Absolute one-off costs (in EUR)	
One-off costs as % of turnover	
Absolute annual running costs (in EUR)	
Annual running costs as % of turnover	

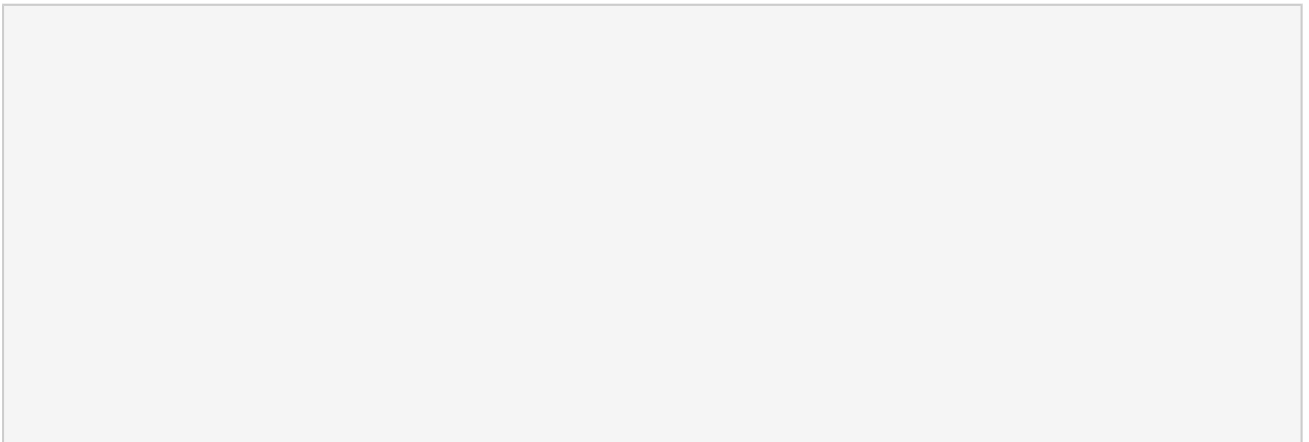
72 Please explain how you have calculated this estimated amount.



73 [**Companies, business associations**] Do you agree that these costs are reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

74 Please explain your reply.



75 **[Online marketplaces]** If a new EU rule was introduced obliging you first to require third party suppliers to declare their status as 'traders' or 'non-traders' to you, and then to pass this information to your users and inform them that EU consumer rights do not apply when the supplier is not acting as a trader, what would be the estimated costs of complying with these obligations for your online marketplace?

	Estimated amount or % of turnover
Absolute one-off costs (in EUR)	
One-off costs as % of turnover	
Absolute annual running costs (in EUR)	
Annual running costs as % of turnover	

76 Please explain how you have calculated this estimated amount.

77 **[Online marketplaces]** In your view, would the costs of complying with the information obligations as set out in the previous question be reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

78 Please explain your reply.

79 If a new EU rule was introduced requiring online marketplaces to inform consumers about who their contracting party is and whether they enjoy EU consumer rights vis-à-vis that person, what should be the consequences if an online marketplace fails to comply with these requirements?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
The online marketplace should become the only one liable for the correct performance of the contract	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The online marketplace should become jointly liable with the third party supplier for the correct performance of the contract	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Consequences of such non-compliance should be left to national law	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consequences of such non-compliance should be regulated at EU level.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

80 Please explain your reply, indicating also any other solution that you consider relevant.

To the question: “If a new EU rule was introduced requiring online marketplaces to inform consumers about who their contracting party is and whether they enjoy EU consumer rights vis-à-vis that person, what should be the consequences if an online marketplace fails to comply with these requirements?”, the ECJ Wathelet Case brings an answer full of potential and promise.

In its Decision, the Court states that “the concept of “seller”, for the purposes of article 1(2)(c) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, must be interpreted as covering also a trader acting as intermediary on behalf of a private individual who has not duly informed the consumer of the fact that the owner of the goods sold is a private individual, which it is for the referring court to determine, taking into account all the circumstances of the case. The above interpretation does not depend on whether the intermediary is remunerated for acting as intermediary”. This solution could also apply to online platforms that have not adequately informed the consumer that they are not their true supplier.

### 2.1.2 Free online services

"Free" online services in the following questions refer to online services for which consumers do not pay with money but provide data (e.g. cloud storage, e-learning, social network services, when consumers allow the trader to use their pictures).

The rules under the [Consumer Rights Directive](#) (CRD) on pre-contractual information requirements for traders and the 14-days right of withdrawal for consumers apply to all contracts for online provision of digital content (e.g. downloads of software, movies or songs) irrespective of consumer's payment with money. On the other hand, these CRD rules currently only apply to contracts for online services (such as subscription to cloud storage or social networks) for which the consumer pays with money. This calls for discussion as to whether the protection under the CRD should be extended also to contracts for online services for which the consumer provide data and does not pay with money. In this respect, the upcoming EU rules on consumer remedies regarding 'defective' digital products (rules that are currently negotiated by the European Parliament and the Council) may cover online services irrespective of whether the consumer pays with money.

81 In your opinion, should consumers benefit from the rights listed below when using "free" online services?

--	--	--	--

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
The right to pre-contractual information (e.g. about functionality and interoperability of the service with hardware and software)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The 14-day right of withdrawal (possibility to cancel the contract)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## 82 Please explain your reply.

This question highlights the need to combine the pre-existing directives on consumer law with the future directives on the same topic, in particular with the proposal for a Directive concerning contracts for the supply of digital content. Within the scope of this proposal, these contracts could be concluded indifferently in exchange of the payment of a price or without the payment of a price.

Moreover, at this stage of the negotiating process (version of June 2017), the proposal concerning contracts for the supply of digital content is expected to tackle the questions of conformity and of termination of the contract with regard to both the supply of digital content and the supply of digital services .

In this context in which economic operators who have chosen different, but equally viable, economic models will be treated in the same way, it appears difficult not to extend to free online services contracts the pre-existing consumer law rules, if this extension seems relevant. In this regard, this extension should be considered as relevant when it would allow to draw to the consumer attention the prerogatives and protections granted under consumer law (information about the main characteristics of the goods or services, right of withdrawal, guarantee of conformity...).

In addition, it seems desirable to adapt the pre-existing consumer law rules to the specific free provisions of services contract.

Finally, it is necessary to underline the question of the appropriate terminology: it is important not to establish, through all these reforms, a "patrimonialization" of the personal data, which would be contrary to the approach adopted by other instruments of the European Union (Charter of Fundamental Rights, art. 8 and GDPR).

This being said, when using « free » online services, consumers should benefit from the following rights:

1) The provider's obligations regarding the pre-contractual information should in particular allow the consumers to identify clearly:

- the main characteristics of the service they want to obtain, beyond notions of functionality and interoperability, regarding a precise description of the provided service, its duration and all the provider duties and obligations,
- the nature of the data to be collected during the contractual

- relationship, in compliance with the instruments about data protection,
- the hypotheses in which the service will be provided in exchange of the payment of a price or without the payment of a price, specifying in each case whether a collection of data will also take place,
  - where appropriate, the way the consumer will be able to move from the « free » phase to the “paid (with a price)” phase of the contractual relationship,
  - the hypotheses in which the consumer will be able to choose either to provide data or to pay with money in order to minimise the data supply.
  - the cases in which the customer will not benefit from the protection of consumer law,
  - the identity of the co-contracting party : it is desirable that this obligation shall be linked to the transparency duty of online platforms and in particular to the Wathelet decision of the Court of Justice (November, the 9th, 2016, C- 149/15), Cf. paragraph 2.1.1 about platforms transparency.
  - the identity of the debtor in charge of the conformity of the service in the event of a contractual non-performance.

These information should be given without prejudice to the obligations of the data controller deriving from data protection instruments.

2) The consumers should also benefit from a 14-days right of withdrawal (right to cancel the contract).

This consumer withdrawal right would allow him/her to recover the data he/she could have previously transferred to the online service.

The right of withdrawal should be made consistent with the rules governing the withdrawal of consent for the processing of personal data, or with portability rights, as prescribed by the GDPR.

3) The consumers should not only benefit from information and right of withdrawal when they conclude “free” services contracts. The silo-based approach, which seems to be promoted in the question 81 of the consultation, does not seem sufficient to reach the reality of the « free » services model. Therefore, consumers should benefit from all the consumer law rules that appear to be relevant when such a service is provided.

**83 Why would it be important that consumers have a right to pre-contractual information for "free" online services?**

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
To achieve a more level playing field between digital traders using different business models (services provided with or without payment of money)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To better protect the consumers of services with similar functionalities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

To ensure better synergies between EU consumer protection and the new EU personal data protection rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

84 Please explain your reply.

See the answer to the question 82

85 Why would it be important that consumers have a **possibility to withdraw from contracts** for "free" online services?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
To achieve a more level playing field between digital traders using different business models (services provided with or without payment of money)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To better protect the consumers of services with similar functionalities	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
To ensure better synergies between EU consumer protection and the new EU personal data protection rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

86 Please explain your reply.

Question 85 is partly ambiguous. The question in french version states as follows : 'Pourquoi serait-il important que les consommateurs disposent de la possibilité de résilier [terminate] leurs contrats de services «gratuits» en ligne?'. In the English version, the question makes use of the term 'withdraw' that could be a reference to the right of withdrawal of the consumer. In any way, termination and withdrawal from a contract may have similar consequences. Nevertheless, while withdrawal is linked to existing consumer law instruments, the termination is a notion linked to the future directive concerning contracts for the supply of digital content and services.



To the question « Why would it be important that consumers have a possibility to withdraw from contracts for "free" online services (or to terminate)? », several answers are possible:

The withdrawal from a contract - such as the termination - should allow the consumers to change of services provider. In this context, one should tackle the question of the modalities to be defined to make sure consumers have the possibility to switch/change from one service to another. In order to organize the certainty of this possibility, it would be appropriate to use the solution established by the GDPR regarding data portability (in a structured, commonly used and machine-readable format).

Moreover, the consumer, through withdrawal or termination, should be guaranteed that his/her data will no longer be available online, if he/she so wishes.

**87 [Companies, business associations]** Does your company, or companies you represent, provide online services for "free", i.e. services for which consumers do not pay with money but provide data?

- Yes
- No

### 2.1.3 Modernising the rules governing the means of communication between traders and consumers

103 Under the [Consumer Rights Directive](#), the fax number and the email address – both if available - are listed as information that must be provided to the consumer before conclusion of the contract ("pre-contractual information obligation"). In view of technological developments, which of the following communication means are for you most relevant when communicating with consumers/traders?

- Email
- Fax
- Web-based contact form
- Social media account
- Other

104 Please explain your reply.

In any case, e-mail and web-based contact form must be provided to the consumer. Moreover, if a social media account is used for communication, a social media account must be available for the consumer.

## 2.2 Better enforcement and direct redress/remedies opportunities for consumers

### 2.2.1 Right to individual redress/remedies for victims of unfair commercial practices

"Redress/remedies" refers to what consumers can get to remedy the situation when their consumer rights have been breached (e.g. terminating contract, getting their money back).

"Green claims" refers to marketing that creates an impression that a good or a service has a positive or no impact on the environment or is less damaging to the environment than competing goods or services.

Current EU rules do not give consumers who have suffered harm from [unfair commercial practices](#), such as misleading advertising, any individual rights to remedy their situation. Furthermore, the consumer's right to remedies/redress for harm caused by unfair commercial practices are not always sufficiently guaranteed under national law. Different and ineffective national rules on remedies/redress lead to costs for traders engaging in cross-border trade and detriment for consumers resulting from continued existence of many breaches on national and cross-border level. These problems lead to lack of consumer trust in purchasing, particularly cross-border, and thus to reduced frequency and volume of trade for both consumers and traders.

105 Based on your private or professional experience, how often do the existing different national rules make it difficult for consumers who are victims of unfair commercial practices to seek redress?

- Often
- Sometimes
- Rarely
- Never
- Do not know

106 Please explain your reply.

One of the weaknesses of European consumer law is the lack of unified sanctions. The directives are too often delegating the power of adopting effective, dissuasive and proportionate sanctions to Member States (e.g. article 13 of the Directive 2005/29). Simply setting criteria for sanctions is not enough.

This approach shows two major disadvantages:

1. It happens that the chosen sanction is completely inadequate. For example, prior to the 2011 directive on consumer rights, the sanction for non-compliance with the information obligation was left to the Member States. For certain Member States, the sanction was nullity of the contract and, according to the decision of the ECJ from 17 December 2009, this nullity may be pronounced ex officio (however, in this case, the Spanish judge did not have this right according to the relevant internal rules). Nevertheless, this sanction was inadequate, as the consumer was running the risk of an imposed nullity, although this was not in his/her wish. Therefore, the 2011 Directive has modified this aspect. The choice of sanctions is not left to the Member States anymore, the sanction for such non-compliance is unified and leads today to a significant prolongation of the withdrawal period. This approach towards sanctions should be applied more often.

2. Leaving the choice of sanctions to the Member States also means compromising the overall objective of harmonisation, especially if we are faced with a directive that has as its objective the full harmonisation of rules throughout Europe. The sanction is the means to achieve the efficiency of a rule. It is meaningless to have substantive rules, if one is sanctioned through

civil liability, and another through an administrative fine of 375.000 EURO, decided by a non-independent administrative authority, and doubled in case of recidivism (as it is the case in some Member States). In this case, the substantive rule will be much more efficient in some Member States and full harmonisation remains an illusion.

Yet, if consumer law has as its objective the establishment of the Single European market, sanctions need to be uniform, in order not to result in a multitude of procedures and sanctions - differences in legislation that we aim to avoid.

In this regard, the GDPR is a good step forward, as it creates unified sanctions throughout Europe (see article 83).

107 Do you agree that there should be an EU-wide consumer right to claim remedies from the trader in such situations?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

108 Please explain your reply.

One of the weaknesses of European consumer law is the lack of unified sanctions. The directives are too often delegating the power of adopting effective, dissuasive and proportionate sanctions to Member States (e.g. article 13 of the Directive 2005/29). Simply setting criteria for sanctions is not enough.

This approach shows two major disadvantages:

1. It happens that the chosen sanction is completely inadequate. For example, prior to the 2011 directive on consumer rights, the sanction for non-compliance with the information obligation was left to the Member States. For certain Member States, the sanction was nullity of the contract and, according to the decision of the ECJ from 17 December 2009, this nullity may be pronounced ex officio (however, in this case, the Spanish judge did not have this right according to the relevant internal rules). Nevertheless, this sanction was inadequate, as the consumer was running the risk of an imposed nullity, although this was not in his/her wish. Therefore, the 2011 Directive has modified this aspect. The choice of sanctions is not left to the Member States anymore, the sanction for such non-compliance is unified and leads today to a significant prolongation of the withdrawal period. This approach towards sanctions should be applied more often.
2. Leaving the choice of sanctions to the Member States also means compromising the overall objective of harmonisation, especially if we are faced with a directive that has as its objective the full harmonisation of rules throughout Europe. The sanction is the means to achieve the efficiency of a rule. It is meaningless to have substantive rules, if one is sanctioned through civil liability, and another through an administrative fine of 375.000 EURO, decided by a non-independent administrative authority, and doubled in case of recidivism (as it is the case in some Member States). In this case, the substantive rule will be much more efficient in some Member States and full

harmonisation remains an illusion.

Yet, if consumer law has as its objective the establishment of the Single European market, sanctions need to be uniform, in order not to result in a multitude of procedures and sanctions - differences in legislation that we aim to avoid.

In this regard, the GDPR is a good step forward, as it creates unified sanctions throughout Europe (see article 83).

109 If such an EU-wide consumer right were to be introduced, should it:

- Require Member States to ensure that consumers have a right to remedies, but leave the types of remedies to be defined at national level or
- Define which types of remedies should be available to consumers EU-wide?
- Do not know

110 Which types of EU-wide remedies should be introduced in case a consumer is a victim of an unfair commercial practice (multiple replies possible)?

- Right to terminate the contract and to get a refund of the price paid
- Right to a price reduction
- Right to receive compensation for the damage suffered
- Other

111 Please explain your reply.

Which civil penalties are appropriate for unfair commercial practices?

The standard civil penalties are nullity of the contract entered into and indemnification of the consumer through the intervention of the trader's liability insurance. In addition to the questions raised by these two sanctions (e.g. the conditions for nullity, the requirement of a text expressly providing for the nullity, the amount of damages which may be limited to the compensation of the prejudice suffered or to be extended to punitive damages), consideration must be given to the effectiveness of these standard civil penalties. In fact, in either case, the consumer must request a ruling from the court for these penalties to be implemented. Yet, the length and cost of these proceedings are obstacles to consumer action, even if consumer mediation often allows a more rapid outcome to the dispute.

The creation of automatic penalties that the consumer could apply without taking court action is therefore necessary. Such effective penalties are already provided for in certain European laws. For example, article 18 of the Directive 2011/83/EU of 25 October 2011 on consumer rights provides that in case of failure to deliver the goods or performance of the service within the agreed date, the trader shall deliver within 30 days from the conclusion of the contract. After this deadline, the consumer has a unilateral right to terminate the contract after formal notice to the trader to make the delivery within a reasonable time period (transposition into article L. 216-2 of the French Consumer Code). Another example: article 10 of the Directive 2011/83/UE of 25 October 2011 on consumer rights states that if the trader has not provided the consumer with information on the right of withdrawal, the withdrawal period shall expire 12 months from the end of the initial withdrawal period (transposition into article L. 221-20 of the French Consumer Code).

Several automatic penalties should be examined, particularly the automatic nullity of certain clauses of the contract (for example a misleading clause on after sales service), which would require that the consumer is informed on the conditions of this nullity; the automatic unilateral right to termination by the consumer, which will require a precise definition of the conditions and effects of the termination; the bearing by the trader of costs normally borne by the consumer (in this respect, see art. 14 1. Directive 2011/83/UE transposed into French law by article L. 221-23 al. 2 of the French Consumer Code = the failure to inform that the costs of returning goods after exercising the right to termination are to be borne by the consumer is sanctioned by the trader bearing these costs); the implementation of a flat rate system for the prejudice suffered by the consumer (such a system already exists in a completely different area, that of passenger air travel, see. Regulation n° 261 /2004 of 11 February 2004).

112 Do you agree that introducing an EU-wide right to individual remedies for victims of unfair commercial practices would bring about benefits, such as:

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Better compliance by businesses with consumer protection rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More level playing field to the benefit of compliant traders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater consumer trust	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

113 Please explain your reply, including any other benefits that you wish to describe.

The establishment of civil penalties for unfair commercial practices is recommended for the following reasons. From the perspective of consumer protection, consumers currently suffer a prejudice, as they cannot obtain damages for the consequences of unfair commercial practices. Moreover, the introduction of civil penalties at the European level for victims of unfair commercial practices would lead to increased respect for consumer protection rules by businesses, wishing to avoid multiple customer actions. In terms of development of the internal market, the establishment of civil penalties would reinforce consumer confidence thereby increasing the frequency and the volume of commercial exchanges for consumers and traders. The rules of the game would therefore be more equitable which is beneficial to law abiding traders.

Civil penalties for unfair commercial practices must be harmonized at European level. On the one hand, the harmonization of civil penalties would avoid the distortion of competition between businesses which, by default, would incur costs for cross-border transactions, due to the need to adapt to different national legislations regarding damages. On the other hand, it would allow consumers to obtain individual compensation, no matter where the business they

contracted with is located. This will thereby increase consumer confidence at the time of purchase.

114 **[Companies, business associations]** Does your company (or the companies you represent) face costs when trading cross-border due to a need to adapt to current different national laws related to remedies?

- To a significant extent
- To some extent
- Not applicable
- Do not know

115 Please explain your reply.

116 **[Companies, business associations]** What are your (or the companies' you represent) estimated costs when trading cross-border due to a need to adapt to current different national laws related to remedies?

	Estimated amount or % of turnover
Absolute annual costs (in EUR)	
Annual costs as % of turnover from cross-border trade	
Other	

117 Please explain how you have calculated this estimated amount.

118 **[Companies, business associations]** Do you agree that these costs are reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Not applicable
- Do not know

119 Please explain your reply.

120 **[Companies, business associations]** Are these costs a reason for you (or the companies you represent) not to sell to other Member States?

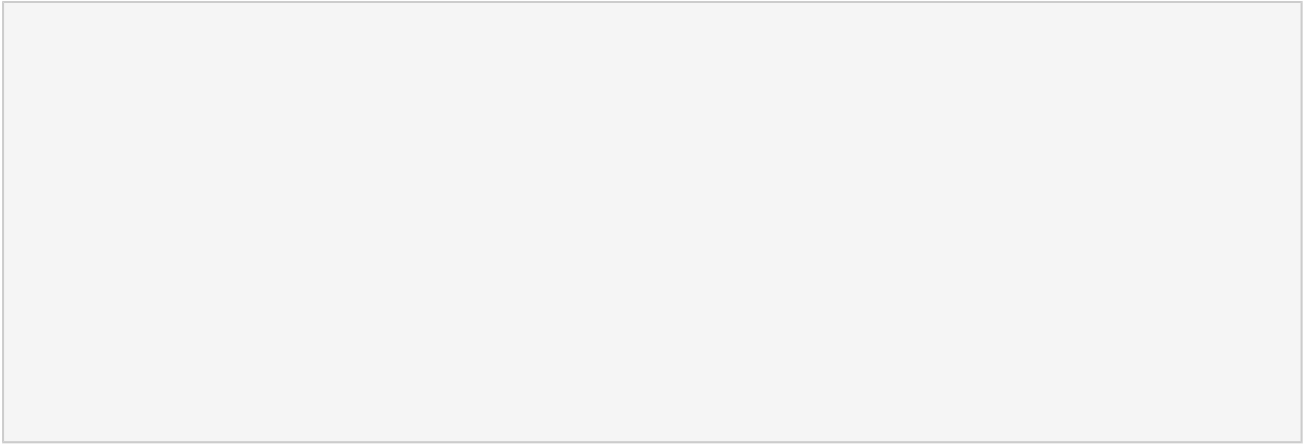
- Yes
- No
- Do not know

121 **[Companies, business associations]** Would the introduction of an EU-wide right to individual remedies for victims of unfair commercial practices have an impact on the costs of your companies or of the companies represented by your association?

- Yes, costs would go up
- Yes, costs would go down
- No, it would have no impact
- Do not know



122 Please explain your reply.



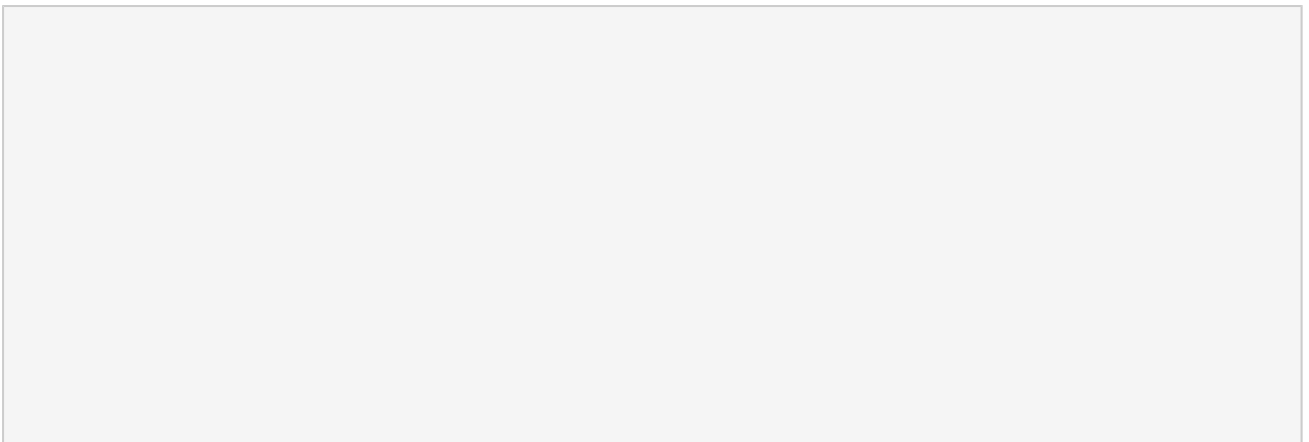
127 **[Companies, business associations]** Would an EU-wide right to individual remedies for victims of unfair commercial practices be introduced, do you agree that the estimated compliance costs would be reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

128 **[Consumer authorities, ministries, courts]** Would an EU-wide right to individual remedies for victims of unfair commercial practices be introduced, would the costs of administrative and judicial enforcement for national authorities or courts increase, in your view?

- To a significant extent
- To some extent
- Not at all
- Do not know

129 Please explain your reply.



## 2.2.2 Strengthening penalties for breaches of consumer rules

"Penalties" refers to a punishment imposed or to be imposed for a violation of consumer protection rules.

"Fines" refers to monetary penalties.

In order to step up the enforcement of EU consumer protection rules the Commission has already taken action, notably through its [2016 proposal for a revision of the Consumer Protection Co-operation Regulation](#) to extend the powers of national consumer authorities and improve their co-operation in dealing with cross-border infringements, including EU-wide infringements. However, traders infringing consumer rules face very different penalties in the different EU Member States. These national penalties are also not always proportionate, effective and dissuasive enough to ensure compliance with the rules. For example, penalties are too low or too high compared to the scale of traders' activity and therefore they are not proportionate; or penalties are too low in view of the gravity of infringements or benefits gained from infringements and therefore they are not effective and dissuasive. In particular, the levels of maximum monetary fines appear, in some cases, very small compared to fines provided, for example, under the forthcoming [EU personal data protection rules](#) or [fines that may be imposed by the European Commission for breaches of EU competition law](#), although breaches of EU consumer law get in the way of the overall economic growth by undermining consumer trust both offline and online.

130 Do you agree that the following measures should be established by EU law regarding penalties for breaches of EU consumer protection rules?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Fines should be available as penalties for breaches of consumer law in all Member States	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
When imposing fines, authorities or courts should always take into account that a breach has affected consumers in more than one Member State	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be common criteria in all Member States for imposing fines For example the intentional character and repetition of the breach, the nature of consumer rights affected, the number of consumers affected, the nature and amount of damage suffered by them etc.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There should be a common maximum level of fines in all Member States for example a common absolute amount or a common maximum % of the trader's turnover	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
In all Member States a part of the profits from fines should be dedicated to promote consumer protection, including financing consumer associations	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other

131 Please explain your response, including any other possible measures that you would like to propose.

One of the weaknesses of European consumer law is the lack of unified sanctions. The directives are too often delegating the power of adopting effective, dissuasive and proportionate sanctions to Member States (e.g. article 13 of the Directive 2005/29). Simply setting criteria for sanctions is not enough.

This approach shows two major disadvantages:

1. It happens that the chosen sanction is completely inadequate. For example, prior to the 2011 directive on consumer rights, the sanction for non-compliance with the information obligation was left to the Member States. For certain Member States, the sanction was nullity of the contract and, according to the decision of the ECJ from 17 December 2009, this nullity may be pronounced ex officio (however, in this case, the Spanish judge did not have this right according to the relevant internal rules). Nevertheless, this sanction was inadequate, as the consumer was running the risk of an imposed nullity, although this was not in his/her wish. Therefore, the 2011 Directive has modified this aspect. The choice of sanctions is not left to the Member States anymore, the sanction for such non-compliance is unified and leads today to a significant prolongation of the withdrawal period. This approach towards sanctions should be applied more often.

2. Leaving the choice of sanctions to the Member States also means compromising the overall objective of harmonisation, especially if we are faced with a directive that has as its objective the full harmonisation of rules throughout Europe. The sanction is the means to achieve the efficiency of a rule. It is meaningless to have substantive rules, if one is sanctioned through civil liability, and another through an administrative fine of 375.000 EURO, decided by a non-independent administrative authority, and doubled in case of recidivism (as it is the case in some Member States). In this case, the substantive rule will be much more efficient in some Member States and full harmonisation remains an illusion.

Yet, if consumer law has as its objective the establishment of the Single European market, sanctions need to be uniform, in order not to result in a multitude of procedures and sanctions - differences in legislation that we aim to avoid.

In this regard, the GDPR is a good step forward, as it creates unified sanctions throughout Europe (see article 83).

132 Do you agree that the following measures should be established by EU law?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
The maximum level of fines should be expressed as an absolute amount	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The maximum level of fines should be expressed as a percentage of the trader's turnover	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The maximum level of fines should be expressed as an absolute amount or a percentage of the trader's turnover whichever is higher (for example, up to 100 000 EUR or up to X% of trader's turnover, whichever is higher)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The maximum level of fines should be expressed as multiplication of the amount of the benefits gained or losses avoided because of the breach (for instance, twice the amount of the benefits gained or losses avoided because of the breach) where those can be determined	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

133 Please explain your response, including any other possible measures that you would like to propose.

If consumer law has as its objective the establishment of the Single European market, sanctions need to be uniform, in order not to result in a multitude of procedures and sanctions - differences in legislation that we aim to avoid. In this regard, the GDPR is a good step forward, as it creates unified sanctions throughout Europe and expresses it as an absolute amount or as a percentage of the total worldwide annual turnover of the preceding financial year of the undertaking (see article 83).

134 What would be the best measure to define the maximum level of fines as % of the trader's turnover?

- In terms of percentage of the trader's total worldwide annual turnover of the preceding financial year
- In terms of percentage of the trader's total EU annual turnover of the preceding financial year
- In terms of percentage of the trader's total annual turnover of the preceding financial year in the Member States where the infringement took place
- Other

135 Please explain your response, including any other option that you would like to propose.

If consumer law has as its objective the establishment of the Single European market, sanctions need to be uniform, in order not to result in a multitude of procedures and sanctions - differences in legislation that we aim to avoid. In this regard, the GDPR is a good step forward, as it creates unified

sanctions throughout Europe and expresses it as an absolute amount or as a percentage of the total worldwide annual turnover of the preceding financial year of the undertaking (see article 83).

136 What would be the best measure to define the maximum level of fines as % of the trader's turnover?

- on the basis of the company's total turnover (in all product markets)
- on the basis of the company's turnover in the specific market concerned by the breach of consumer law
- other

137 Please explain your response, including any other option that you would like to propose.

If consumer law has as its objective the establishment of the Single European market, sanctions need to be uniform, in order not to result in a multitude of procedures and sanctions - differences in legislation that we aim to avoid. In this regard, the GDPR is a good step forward, as it creates unified sanctions throughout Europe and expresses it as an absolute amount or as a percentage of the total worldwide annual turnover of the preceding financial year of the undertaking (see article 83).

138 Do you agree that strengthening penalties at the EU level would bring about benefits, such as:

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Better compliance by businesses with consumer protection rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More level playing field to the benefit of compliant traders	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Greater consumer trust	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
More effective enforcement of consumer protection rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Improved deterrence by EU consumer protection rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

139 Please explain your reply, including any other benefits that you wish to describe.

See the answer to the question 131

140 In your view, what would be the effect of establishing EU common rules on penalties for breaches of EU consumer law on the overall costs of administrative and judicial enforcement?

- There will be no effect on enforcement costs
- Costs will increase
- Costs will decrease
- Do not know

141 Please explain your reply.

See the answer to the question 131

142 Do you consider that the possible increase of costs of administrative and judicial enforcement of EU consumer protection rules would be reasonable?

- Yes
- No
- Do not know

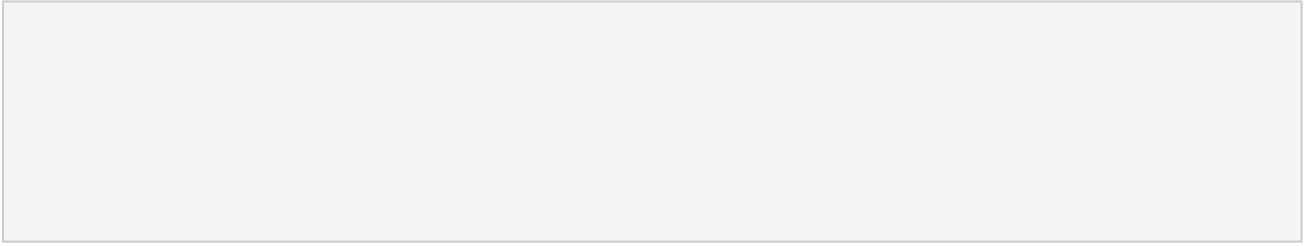
143 Please explain your reply.

See the answer to the question 131

144 Please give an estimate of the possible additional costs of administrative and judicial enforcement of establishing EU common rules on penalties according to your preferred option in questions 130-137 or other proposed solutions.

	Estimated amount or %
Absolute one-off costs (in EUR)	
One-off costs as % of current annual cost of the enforcement of consumer protection rules	
Absolute annual running costs (in EUR)	
Annual running costs as % of current annual cost of the enforcement of consumer protection rules	
Other	

145 Please explain your reply by indicating the estimated cost related to each of your preferred options.





146 Please give an estimate of a possible decrease of costs of administrative and judicial enforcement of establishing EU common rules on penalties according to your preferred option in questions 130-137 or other proposed solutions.

	Estimated amount or %
Absolute one-off savings (in EUR)	
One-off savings as % of current annual cost of the enforcement of consumer protection rules	
Absolute annual running savings (in EUR)	
Annual running savings as % of current annual cost of the enforcement of consumer protection rules	
Other	

147 Please explain your reply by indicating the estimated decrease of cost related to each of your preferred options.

## 2.3 Simplification of rules

### 2.3.1 Simplification of the rules on the right of withdrawal

In the [evaluation of the Consumer Rights Directive](#) (CRD), some businesses, and especially small and medium-sized enterprises (SMEs), reported specific burdens in complying with the 14-days right of withdrawal (the "cooling-off" period during which consumers may cancel the order and return the product). Specifically, some of them criticise the CRD rule whereby the trader is obliged to refund the consumer as soon as the consumer provides evidence of having returned the goods. As a consequence, the trader may have to refund the consumer even before he is in a position to determine whether the goods have been used more than strictly necessary and therefore have a diminished value.

148 Do you consider that traders face unnecessary and/or disproportionate burden due to the following obligations related to the right of withdrawal?

	Yes, to a significant extent	Yes, to some extent	Not at all	Do not know
Obligation to accept the return of goods bought online which consumers have used more than what they could have done in a brick and mortar shop (thus requiring the trader to calculate the diminished value of the used good, to resell it as second-hand goods and/or to dispose of it as waste)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
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.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

149 Please explain your reply.

The current rules regarding right of withdrawal of the consumer are efficient and must be maintained.

150 How important are the following consumer rights related to the 14-day right of withdrawal?

	Very important	Rather important	Rather not important	Not at all important	Do not know
The consumer's right to withdraw from an online sale and return the goods even if he used them more than what he could have done in a brick and mortar shop (thus requiring the trader to accept back the used good and assess its diminished value).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The consumer's right to get refunded as soon as he provides evidence to the trader of having sent the goods back, even before the trader has had the possibility to inspect them.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

151 Please explain your reply.

The current rules regarding right of withdrawal of the consumer are efficient and must be maintained.

152 **[Companies, business associations]** Do traders face the following problems when consumers return goods that they have used more than they could have done in a brick and mortar shop?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Difficulties with determining the 'diminished value' of returned goods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Practical difficulties with recovering from the consumer the diminished value of returned goods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Charging costs for diminished value is difficult from the customer relations' viewpoint	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Difficulties with reselling returned goods with diminished value as second-hand goods	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Costs related to the disposal of the returned goods as waste	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

153 Please explain your reply including any other problem that traders face in these situations.

154 **[Companies, business associations]** Over the last year, in proportion to the total of goods returned to your company (or the companies you represent) as result of the consumer's withdrawal, what is the % of goods used more than allowed?

 %

155 Please explain your reply.

156 **[Companies, business associations]** Over the last year, in proportion to the total of goods returned to your company (or the companies you represent) as result of the consumer's withdrawal, what is the % of goods the total price of which had to be refunded but were either never received back or turned out to have been unduly used once received back?

 %

157 Please explain your reply.

158 **[Companies, business associations]** What are the estimated losses related to returned goods which were used more than allowed?

	Amount or %
Absolute annual losses (in EUR)	
Annual losses as % of turnover	
Other	

159 Please explain your reply.

160 **[Companies, business associations]** What are the estimated losses related to goods the total price of which had to be refunded, but which were either never received back or turned out to have been unduly used once received back?

	Amount or %
Absolute annual losses (in EUR)	
Annual losses as % of turnover	
Other	

161 Please explain your reply.

### 2.3.2 Simplification of information requirements

The Fitness Check investigated whether some of the information requirements that apply at the advertising stage under the [Unfair Commercial Practices Directive](#) (UCPD) could be removed, in view of the fact that traders are required to provide the same and more detailed information at the later pre-contractual stage under the Consumer Rights Directive. The [findings of the Fitness Check](#) show that the current UCPD requirement to provide information about the trader's geographical address and complaint handling policy may not be relevant.

162 Currently, traders are required to provide the following information to consumers at the advertising stage and at the stage before the actual purchase. Do you agree that the following information is necessary already at the advertising stage even though the consumer will also receive this information at a later stage?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
Information about the geographical address of the trader	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Information about the complaint handling of the trader	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

163 Please explain your reply.

The current rules regarding information of the consumer are efficient and must be maintained.

164 **[Companies, business associations]** Would removal of the requirements to provide information about the trader's geographical address and complaint handling policy at the advertising stage result in savings for your company or the companies you represent?

- To a significant extent
- To some extent
- Not at all
- Do not know

165 Please explain your reply.

166 **[Companies, business associations]** What would be the estimated saving related to such simplifications?

	Estimated amount or % of turnover
Absolute annual savings (in EUR)	
Annual savings as % of turnover	
Other	

167 Please explain your reply.

## 2.4 Doorstep selling

"Doorstep selling" refers to situations where the trader makes an offer to the consumer or concludes a contract with the consumer in a place which is not the business premises of the trader, in particular

transactions taking place at a consumer's home without prior agreement or during excursions organised by the trader.

While doorstep selling is not prohibited as such under the [Unfair Commercial Practices Directive](#) (UCPD), the specific commercial practice of "ignoring the consumer's request to leave or not to return when conducting personal visits to the consumer's home" is always prohibited. However, the Commission has become aware of the fact that there are rules in some Member States that appear to ban or come very close to banning doorstep selling as a sales channel in general. The Commission would like to take this opportunity to seek stakeholders' views on this issue.

168 Based on your private or professional experience, is it difficult to purchase or trade cross-border because of national bans or restrictions on doorstep selling or other sales events outside a trader's business premises?

- Very often
- Often
- Sometimes
- Never
- Do not know

169 Please explain your reply.

170 **[Companies, business associations]** Do you or the companies represented by your association incur compliance costs or economic losses because of national bans or restrictions on doorstep selling or other sales events outside a trader's business premises?

- To a significant extent
- To some extent
- Not at all
- Do not know

171 Please explain your reply.

172 **[Companies, business associations]** What are your estimated costs or economic losses because of national bans or restrictions on doorstep selling or other sales events outside a trader's business premises?

	Estimated amount or % of turnover
Absolute annual costs (in EUR)	
Annual costs as % of turnover of cross-border trade	
Other	



173 Please explain how you have calculated this estimated amount.

174 **[Companies, business associations]** In your view, are these costs/losses reasonable?

- Strongly agree
- Tend to agree
- Tend to disagree
- Strongly disagree
- Do not know

175 Please explain your reply.

176 You can also upload an additional policy paper here

**0e9317f8-6599-4552-b075-d3e1bf036ee7**

**/TRANS\_EUROPE\_EXPERTS\_7\_October\_2017\_Public\_Consultation\_on\_Revision\_Consumer\_Law\_Directive.pdf**

## Contact

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