



Position Paper

6 OCTOBER 2017

Contribution to the Commission Consultation on EU Consumer Protection rules

EUROCHAMBRES' main highlights:

- EUROCHAMBRES is pleased to see that the REFIT evaluation leads to the conclusion that the current directives are still ***"fit for purpose"*** from the perspective of consumer protection. In line with the better regulation package, only new legislative measure should be taken if it is deemed really necessary.
- The Commission however notes in its Inception Impact Assessment of June 2017 that there is a need to "improve awareness, enforcement of the rules and redress opportunities to make the best of the existing legislation." We note that the **upcoming Consumer Protection Cooperation Regulation is already a step in this direction** and encourage enhanced cooperation between these authorities to ensure that consumer rights legislation is applied and enforced in a consistent manner across the Single Market. Interpretation of the laws should be aligned to the largest extent possible. In this sense, **interpretation guidelines would be welcome.**
- The **responsibility for the enforcement** of EU consumer protection law should remain with Member States. It should remain within their remit how their enforcement system functions.
- **There is no proven pattern between the level of penalties and the effectiveness of enforcement** as the results of the current Consumer Conditions Scoreboard reveal. Member States for example that do not primarily impose high penalties are performing well with regard in the rankings of the Consumer Conditions Scoreboard.
- Against the backdrop of the high complexity of the existing consumer law framework, especially for SMEs, **we cannot support the introduction of a common EU System of fines.** Enforcement should be governed by the principle that enforcement authorities and qualified entities should first advise non-compliant traders. Once compliance is achieved, authorities should refrain from imposing sanctions or injunction actions.

- The focus of the legislators must be on the **reduction of the complexity and the unnecessary burdens** and on the support of businesses to enable them to comply with consumer law.
- EUROCHAMBRES provided the Commission with a comprehensive document where the most burdensome provisions and necessities for legal clarification with regard to the Consumer Rights Directive are clearly described. The [document](#)¹ also provides for a number of areas in which improvement could be made. We urge the Commission to **resolve these important outstanding issues instead of proposing new legislative measures** with regard to a common EU system of sanctions and individual remedies in the context of the UCPD.
- Article 2 § 2 of Directive 1999/44/EC entitles consumers to claim remedies in the case that a purchased product *“does not meet the requirements made in any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling”*. **Additional remedies are sufficiently available under national laws**, e.g. avoidance of the contract on the grounds of error, avoidance on the grounds of fraudulent concealment, damages etc. **There is no need for further EU-legislation in this respect.**
- We believe that commission funded projects such as Consumer Law Ready (CLR) are part of the response to raise the **awareness** among traders and consumers of their rights and obligations. EUROCHAMBRES fully supports this objective. CLR is a train-the-trainer programme and ultimately seeks to reach SMEs.

¹ EU Burden Tracker 2016: The Consumer Rights Directive

http://www.eurochambres.eu/custom/Paper_EU_burden_tracker_-_CRD_-_Better_Regulation_-2016-00192-01.pdf

PART I: SHORT QUESTIONNAIRE

Question 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	X				
Enforcement authorities should be given more financial and administrative resources		X			
Penalties for infringing consumer law should be strengthened (more proportionate, effective and dissuasive)				X	
Victims of unfair commercial practices should be given rights to claim remedies from the traders (for example, to terminate the contract or claim damages)				X	

What the legislators should aim for are balanced rules that grant rights to consumers in a reasonable fashion. Especially under the Consumer Rights Directive a flurry of information obligations have been imposed on companies. It has become increasingly difficult for SMEs to understand and apply all the new obligations which have been imposed to them. In such circumstances, the legislators' priority should be to simply legal requirements.

1.1 Clearer consumer rules for the digital economy

1.1.1. Platform transparency

Comments *infra*

1.1.2. Free online services

In line with what we advocated for in the contract sales law dossier for digital content², we are not in favour of extending the rights for consumers in the area of services that are not delivered against a monetary remuneration. Also it would make sense to wait for the results of the mentioned contract sales law dossier before any proposals are made about free digital services. This would be better for the consistency between laws and principles of good policy making.

Question 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's not a major issue	X				
Yes, it creates harm to consumers including when they use services cross-border			X		
Yes, it discourages consumers from acquiring such online services				X	
Yes, it disrupts the level playing field between digital traders offering				X	

² EUROCHAMBRES Position Paper, 18 April 2016, REACTION to the European Commission's proposal on the distance sales of digital content (COM(2015)634 final): <http://www.eurochambres.eu/Content/Default.asp?PageID=1&DocID=7398>

services with and without payment					
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Question 40: In your view, is it problematic that consumers do not have the "free" online services right to cancel within 14 days?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	Do not know
No, it's not a major issue	X				
Yes, it creates harm to consumers including when they use services cross-border			X		
Yes, it discourages consumers from acquiring such online services				X	
Yes, it disrupts the level playing field between digital traders offering services with and without payment				X	

Next to the fact that we are not familiar with concrete cases related to this subject, it is easy for the consumer to merely stop using the free service.

1.2 Better enforcement and redress opportunities for consumers

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

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

Article 2 § 2 of Directive 1999/44/EC already entitles consumers to claim remedies in the case that a purchased product "does not meet the requirements made in any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling". Additional remedies are sufficiently available under national laws, e.g. avoidance of the contract on the

grounds of error, avoidance on the grounds of fraudulent concealment, damages etc. There is no need for further EU-legislation in this respect.

	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				X	
Costs for traders engaging in cross-border trade due to need to adapt to different national rules on remedies				X	

1.2.2 Penalties for breaches of consumer rules

Question 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?

We refer to our answer to question 21 in this case.

Question 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				X	
Insufficient enforcement of EU consumer law in case of breaches that took place in more than one Member State				X	
Insufficient deterrence especially for				X	

breaches that took place in more than one Member State					
Unfair advantage for non-compliant traders				X	
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				X	

1.3 Simplification of rules

Vide infra

1.4 Doorstep selling

Question 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

We are surprised of the Commission's questions on doorstep selling. We don't understand the rationale to potentially give Member States' authorities the right to introduce a general ban on doorstep selling. In this context we would like to recall our Position Paper on the CRD³. In this paper we have clearly pointed out the significant problems and bureaucratic burdens that are imposed in the case of off-premises contracts. These are issues that need to be tackled, in particular for SMEs.

³ http://www.eurochambres.eu/custom/Paper_EU_burden_tracker_-_CRD_-_Better_Regulation_-_2016-00192-01.pdf

PART II: DETAILED QUESTIONNAIRE

2.1 Clearer consumer rules for the digital economy

2.1.1 Platform transparency

Question 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		X			
Whether the contracting party declares to be a trader or not		X			
Whether EU consumer rights apply to their transaction			X		

It already speaks for itself that if one of the contracting parties in a commercial transaction on a platform is a professional trader, that in this case EU consumer law applies. It always applies to traders, whether the transaction takes place on a platform or elsewhere. In this context it would be logical that non-professional sellers, *de casu* consumers active on platforms, would notify that they are not professional sellers, but merely consumers selling to other consumers on a platform.

2.1.2. Free online services

Question 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				X	

service with hardware and software)					
The 14-day right of withdrawal (possibility to cancel the contract)				X	

In line with our position for the contract sales law proposal for digital content, we don't understand why these services should fall in the scope of new regulations.

Question 101: Would the current EU-wide right of withdrawal be extended also to the provision of "free" online services, do you agree that the estimated compliance costs for your business would be reasonable?

- ☐ Strongly agree
☐ Tend to agree
☐ Tend to disagree
☒ **Strongly disagree**

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

Question 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**

Question 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				X	
More level playing field to the benefit of compliant traders				X	

Greater consumer trust				X	
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Consumers are already entitled through the Sales of Goods Directive entitled to legal remedies such as price reductions and annulment of a contract under the appropriate conditions.

2.2.2 Strengthening penalties for breaches of consumer rules

Question 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				X	
When imposing fines, authorities or courts should always take into account that a breach has affected consumers in more than one Member State				X	
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.				X	
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				X	
In all Member States a part of the profits from fines should be dedicated to promote consumer protection, including financing consumer associations				X	

Question 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				X	
More level playing field to the benefit of compliant traders				X	
Greater consumer trust				X	

More effective enforcement of consumer protection rules				X	
Improved deterrence by EU consumer protection rules				X	

2.3 Simplification of rules

2.3.1 Simplification of the rules on the right of withdrawal

Question 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)	X			
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	X			

We believe that the 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 creates an excessive burden on companies. In particular it's also hard for companies to determine what the exact "*diminished value*" of a good might be.

We refer in this case to section 1.3 of our paper on the Consumer Rights Directive which deals with the right of withdrawal⁴.

Question 152: Do traders face the following problems when consumers [Companies, business associations] 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	X				

⁴ <http://www.eurochambres.eu/Content/Default.asp?PageID=1&DocID=7495>

value' of returned goods					
Practical difficulties with recovering from the consumer the diminished value of returned goods	X				
Charging costs for diminished value is difficult from the customer relations' viewpoint	X				
Difficulties with reselling returned goods with diminished value as second-hand goods	X				
Costs related to the disposal of the returned goods as waste	X				

2.3.2 Simplification of information requirements

Question 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			X		
Information about the complaint handling of the trader				X	

EUROCHAMBRES recommends the revision of the model instructions with a view to enabling the trader to use the model instruction as such, without being burdened with the difficult task to select the correct ones out of many different options. An all-encompassing model instruction covering all of the possible aspects could be designed for example with the support of the European Law Institute.

In addition, severe legal uncertainty was reported in the framework of distance contracts with regards to the extent to which the main characteristics of a good or a service shall be outlined before placing an order in accordance to Art. 8(2). If according to this provision, the information on the main characteristics of a good or service must be repeated to the same extent and in the same way as according to Art. 6(1)(a), to which Art. 8(2) refers, the "order overview" that should make the consumer aware in a clear and prominent manner and directly before the consumer places his order (i.e. activates the order button) becomes extremely confusing, especially when the consumer orders several products. Instead of merely referring to Art. 6(1)(a), Art 8(2) should state that the trader should make the consumer aware of the clearly identifiable product chosen by the consumer.

Question 164: Would removal of the requirements to provide information [Companies, business associations] 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

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All our position papers can be downloaded from www.eurochambres.eu/content/default.asp?PageID=145

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