

Public consultation for the Fitness Check of EU consumer and marketing law

Fields marked with * are mandatory.

Introduction

In the context of the 'Fitness Check' of EU consumer and marketing law directives the Commission seeks views on whether these rules are still up to date and fit for purpose. The following six directives are subject to this Fitness Check:

- Unfair Contract Terms Directive [93/13/EEC](#);
- Consumer Sales and Guarantees Directive [1999/44/EC](#);
- Unfair Commercial Practices Directive [2005/29/EC](#);
- Price Indication Directive [98/6/EC](#);
- Misleading and Comparative Advertising Directive [2006/114/EC](#);
- Injunctions Directive [2009/22/EC](#).

In addition, this consultation covers also the Consumer Rights Directive [2011/83/EU](#), which is subject to a separate evaluation.

When the consultation questionnaire refers to **EU consumer and marketing law or rules**, this term covers the six EU directives that are subject to the Fitness Check as well as the Consumer Rights Directive.

Link to a [short description of the Directives](#).

The results of this public consultation will also feed into the currently ongoing legislative process on the [Commission Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods](#).

This consultation is open until **12 September 2016**.

You can reply in any EU official language.

The consultation consists of **short questionnaires** for (1) consumers (citizens) and (2) businesses. Other respondents (associations, authorities etc.) will be asked to fill in the **full version**. The full version is optional for consumers (citizens) and businesses.

When answering a question, you will be asked to tick one of the provided multiple choice replies. You can choose "do not know/no opinion" as a reply. You will also be able to add comments.

You can pause and save your work and continue later. You can download the questionnaire in PDF format before starting to help you with the preparations or discussions within your organisation. You will be able to download an electronic copy of your replies.

The European Commission will assess and summarise the responses. The summary will be published on the [webpage of the Fitness Check](#).

Link to the [Privacy statement](#).

The Commission service responsible for the consultation:
Directorate-General for Justice and Consumers
Unit E2 "Consumer & Marketing Law"
e-mail: JUST-NOTIFICATIONS-E2@ec.europa.eu

About the respondent

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1. Are you replying as / on behalf of:

- a citizen/consumer
- 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 government authority in charge of consumer policy
- another public body /institution
- a professional consultancy/ law firm
- a think tank/ university/ research institute
- other

*

2. Please provide **your full name** or the **name of the entity** on whose behalf you are replying.

100 character(s) maximum

European Confederation of Fuel Distributors

*

3. Is the **entity** on whose behalf you are replying registered in the EU [Transparency Register](#)?

- yes
- no

*

4. Please indicate the **registration number** in the Transparency Register.

30 character(s) maximum

48067211204-09

5. Please give your **e-mail address** in case we have questions about your reply and need to ask for clarifications.

tpentcheva@cambre-associates.com

*

6. 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.

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

*

7. Please indicate whether you agree to the **publication** of your response.

- Under the name indicated** – I agree to the publication of all information in my response
- Anonymously** – I agree to the publication of all information in my response, except the replies to Question 2 (name), Question 4 (registration number) and question 5 (e-mail address)
- No, I do not agree to the publication of my response** - I understand that my anonymised response may be included in any published statistical data, for example, to show general trends in the responses to the consultation

Full questionnaire

In your view, to what extent are the following EU consumer and marketing rules **beneficial to consumers**?

	Very beneficial for consumers	Rather beneficial for consumers	Rather not beneficial for consumers	Not beneficial at all for consumers	No opinion / don't know
Right to be protected against misleading or aggressive commercial practices	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Right to get adequate information about the goods and services offered, i.e. the main characteristics, the total price, the delivery time, etc.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>Right to get information also about the unit price of goods (i.e. for one kilogramme, one litre etc.)</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Right to cancel a contract concluded at a distance within 14 days from the delivery goods or conclusion of a service contract (the 'right of withdrawal')</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Right to get information about the functionality and interoperability of digital content</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>Right to cancel the contract concluded at a distance for the downloading (or streaming) of digital content before its performance begins (the 'right of withdrawal')</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>Right to be protected against unfair clauses in the "small print" (the 'right to fair standard contract terms')</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>Right to have a defective good repaired or replaced for free or to obtain a price reduction or refund during the legal guarantee period (in most EU countries 2 years from delivery; longer in some EU countries)</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Right of consumer organisations and public bodies to take legal actions which can stop infringements of consumers' rights (the right to seek injunctions)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Other (please specify in the box below)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Please explain your reply, including any other consumer right that wish to highlight (optional)

1500 character(s) maximum

The Commission should clarify at EU level that Heating Oil falls under the exceptions listed in article 16 of the Directive CRD, and 16 (b) “the supply of goods or services for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period”.

This clarification became necessary due to a fundamental decision of the German Federal Court of Justice in 2015. According to this consumers can use their right of withdrawal of Heating Oil distant purchases before delivery - in order to get a better deal in case of fallen prices. Every such cancellation causes costs for Heating Oil Suppliers, as the agreed delivery can only be realised at a lower price or must be removed completely. On his part, the supplier cannot cancel any contracts, neither the one with the refinery nor the consumer order e.g. in the event of increasing prices. That means all economic risks caused by normal daily oil-price fluctuations are shifted alone to the trader. The risk of bankruptcy of so far very customer-oriented SME's followed by reduced competition within the sector became real. Without a clarification in article 16 CRD structural detrimental effects for suppliers as well as for consumers must be expected (see “Economic Consequences of the New Right of Withdrawal in Distant Heating Oil Sales”, Expert Opinion of the Cologne Institute for Economic Research, 07/2016).

How effective are the legal actions (“**injunctions**”) taken by consumer organisations and public bodies to stop infringements of consumers' rights in the following **economic sectors**?

	Very effective	Rather effective	Rather not effective	Not effective at all	No opinion / don't know
Online provision of goods, services and digital content	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Communications and internet access services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Financial services	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Passenger transport	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Tourism and package travel	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Energy	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Other (please specify in the box below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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Please explain your reply (optional)

1500 character(s) maximum

Across Europe, the situation varies across the Member States. In Germany, for example, consumer complaints in the heating oil distribution sector are not very common. This is the reason why there are usually no occasions for consumer organisations to undertake legal actions against heating oil suppliers. Most of heating oil suppliers are family-owned and regional businesses enjoying a reliable and trustful relationship with consumers.

On the contrary, in the UK, the distributors receive complaints which are normally dealt with in-house although the industry association's code of practice does allow consumers to register complaints with the association which they cannot resolve with their supplier. The Alternative Dispute Resolution legislation allows consumers to have independent third party pre-court arbitration too.

How important are the following **problems** for protecting the rights of consumers?

	Very important	Rather important	Rather unimportant	Unimportant at all	No opinion / don't know
Consumers don't know/ don't understand their rights	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders don't know/ don't understand consumer protection rules	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Traders don't comply with consumer protection rules	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consumer law is too complex	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

There are significant differences between national consumer protection rules across EU countries	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
National administrative authorities lack legal powers to enforce consumer rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
National authorities responsible for enforcing consumer rights are not active enough	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Court proceedings are complex / long / costly	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Administrative enforcement proceedings are complex / long / costly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Injunctions proceedings are complex / long	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Injunctions proceedings are costly	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
There are significant differences between national rules on injunctions proceedings across EU countries	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Other (please specify in the box below)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your reply, including any other problem that wish to highlight (optional)

1500 character(s) maximum

Because of the lack of harmonized interpretation at EU level of the CRD a national court made an own interpretation of its provisions with a detrimental effect: the German Supreme Court ruled in 2015 that Heating Oil consumers could use their right of withdrawal in the case of Heating Oil purchase, when the sector was considered until then as being part of the exceptions listed under article 16 (b) CRD. Although this change of interpretation was meant to enhance consumers' protection, in fact it increases the risk of bankruptcy of Heating Oil supplying SME's. This will lead to a reduced competition in the sector, to the detriment of consumers. It became necessary to establish definitive legal certainty throughout Europe whereby Heating Oil should be notably exempted from the right of withdrawal in article 16 CRD.

Generally the right to withdraw distant sales contracts might be useful for such consumer goods as shoes or clothes. But it doesn't make sense in the Heating Oil supply (see: "Distance Sales of Heating Oil and the Consumer's Right of Withdrawal-A Fair Balance?", Frauke Henning-Bodewig, Journal of European Consumer and Market Law, EuCML, 2/2016, pages 87-91 and "Heating Oil-Right of Withdrawal", Expert Opinion Issued by Committee of Experts for Competition Issues Germany, published in "wvp - Wettbewerb in Recht und Praxis", June 2016).

Apart from that complexity and costs of proceedings are quite reasonable, so there is no need for any legal actions by EU-commission

How effective for protecting the rights of consumer are **self- and co-regulation initiatives by businesses at national or EU level**, under which businesses establish standards as to how they deal with consumers (eg. industry trust marks)?

- very effective
- rather effective
- rather not effective
- not at all effective
- no opinion / don't know

Please provide information on any successful self- and co-regulation initiative and describe what makes it successful (optional)

1500 character(s) maximum

There are very professional self- and co-regulated initiatives by companies and their organisations at national level. In Germany for example, the "Wettbewerbszentrale" (Centre for protection against unfair competition) is an institution of companies and companies-associations. It works very successfully as an enforcement system against unfair commercial practices in Germany, and its rules are respected by oil market participants.

What is your opinion regarding the following statements?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
Businesses can trade across the EU easily thanks to the harmonised EU consumer and marketing rules	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Businesses are well protected against misleading marketing practices of other businesses	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Businesses are well protected against unfair comparative advertising of other businesses	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your view, what are the **benefits for businesses** from complying with EU consumer and marketing law?

- Consumers whose rights are respected come back
- Consumers whose rights are respected bring/attract other consumers (by word of mouth, online endorsements)
- On the contrary, consumers whose rights are not respected discourage other consumers (damage to reputation)
- Compliant and hence trusted businesses can sell at higher prices
- There are no benefits
- No opinion / don't know
- Other

Please specify

100 character(s) maximum

Harmonised EU consumer and marketing rules are a good basis for a fair competition.

What is your most **accurate estimate of the direct costs** of compliance with consumer and marketing rules for **the companies you represent**, e.g. costs of providing legal guarantee for goods, complying with consumer information requirements? (% of annual turnover)

1

%

How **positive / negative is the impact** of EU consumer and marketing law on the following aspects?

	Very positive impact	Rather positive impact	Neutral	Rather negative impact	Very negative impact	No opinion/ don't know
Amount & relevance of information available to consumers to compare and make informed purchasing choices	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A level playing field amongst EU-based businesses	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Protection of consumers against unfair commercial practices	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Protection of businesses against misleading marketing and unfair comparative advertising	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Availability and choice of products	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lower prices of products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Higher quality and longer durability of products	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

More customers and revenues for EU-based businesses	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increase of national e-commerce (i.e. within the trader's EU country)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increase of e-commerce across EU Member States	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Competitiveness of EU businesses vis-à-vis non-EU businesses	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your reply (optional)

1500 character(s) maximum

Consumers making common orders of heating oil for a cheaper price has always been a practice well accepted by ECFD members. If this has existed for decades, the emergence of online platforms to provide this kind of service is on the other hand relatively new, though emerging in all Member States. ECFD is concerned that some online oil buying groups are not providing sufficient or incorrect information to potential customers, competing with other heating oil distributors on unfair terms. Some platforms calculate the possible discounts based on the official maximum price, which does not necessarily reflect the market price, as a result misleading consumers. Some consumers eventually refuse the oil delivery if the actual price doesn't match the one advertised on the website, which delays tank refilling and can cause unnecessary delivery trips, especially during winter time.

Moreover, those platforms organize the collective buying of goods and services without taking any responsibility regarding the quality of goods or services delivered or the particular details of the customers' premises (ease of access/safety of the installation). For example, who is liable if the consumer does not receive their oil purchase?

In addition, there is often a lack of transparency regarding commissions being charged to consumers by third parties, such as these to cover their administrative costs. ECFD feels that any such commission should be explicit on the consumers invoice.

How **effective** are the following **consumer redress/enforcement mechanisms** in protecting consumer rights in case of breach of EU consumer and marketing rules?

	Very effective	Rather effective	Neutral	Rather not effective	Not effective at all	New Text
An individual consumer gets redress through direct negotiations with the trader	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An individual consumer gets redress through an alternative dispute resolution mechanism	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
An individual consumer gets redress through a court action	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

An individual consumer gets redress through an administrative enforcement decision	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
An administrative authority issues an injunction which stops an infringement of consumer rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
A court issues an injunction which stops an infringement of consumer rights	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify in the box below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain your reply (optional)

1500 character(s) maximum

How effective are the **injunction actions** sought against the following illegal practices?

	Very effective	Rather effective	Neutral	Rather not effective	Not effective at all	No opinion / don't know
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<p>Use by traders of unfair standard contract terms</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Use by traders of misleading or aggressive commercial practices</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Breach of the traders' obligations related to the legal guarantee</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Breach of the traders' obligations related to the information they are legally required to provide to consumers</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Breach of the traders' obligation related to the consumers' right of withdrawal (cancellation) for distance and off-premises contracts</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Other illegal practices (please specify in the box below)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain your reply (optional)

1500 character(s) maximum

How strongly do you agree or disagree with the following statements about the **interplay between the Injunctions Directive and the provisions on enforcement of consumer rights** included in other Directives covered by this questionnaire?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
There is a need for clarification of the interplay between the Injunctions Directive and other provisions on enforcement of consumer rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
There is a need for ensuring coherence between the Injunctions Directive and other provisions on enforcement of consumer rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain your reply (optional)

1500 character(s) maximum

How strongly do you agree or disagree with the following statements about the **interplay** between EU consumer and marketing rules and the EU sector-specific consumer rights in the area of **consumer financial services**?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain your reply (optional)

1500 character(s) maximum

How strongly do you agree or disagree with the following statements about the **interplay** between EU consumer and marketing rules and the EU sector-specific consumer rights in the area of **passenger transport**?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
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<p>EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules</p>	○	○	○	○	●
<p>Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector</p>	○	○	○	○	●
<p>Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them</p>	○	○	○	○	●
<p>The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate</p>	○	○	○	○	●

<p>The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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Please explain your reply (optional)

1500 character(s) maximum

How strongly do you agree or disagree with the following statements about the **interplay** between EU consumer and marketing rules and the EU sector-specific consumer rights in the area of **energy supply (electricity and gas)**?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
<p>EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain your reply (optional)

1500 character(s) maximum

How strongly do you agree or disagree with the following statements about the **interplay** between EU consumer and marketing rules and the EU sector-specific consumer rights in the area of **electronic communications services**?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please explain your reply (optional)

1500 character(s) maximum

How strongly do you agree or disagree with the following statements about the **interplay** between EU consumer and marketing rules and the EU sector-specific consumer rights in the area of **environmental protection - rules on Ecodesign, energy labelling, car labelling, emission limits for vehicles etc.?**

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
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<p>EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules</p>	○	○	○	○	●
<p>Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector</p>	○	○	○	○	●
<p>Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them</p>	○	○	○	○	●
<p>The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate</p>	○	○	○	○	●

<p>The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
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Please explain your reply (optional)

1500 character(s) maximum

How strongly do you agree or disagree with each of the following statements about the **potential areas to improve EU consumer and marketing rules** for the benefit of consumers?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
<p>The marketing/pre-contractual information requirements currently included in the Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive should be regrouped and streamlined</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>The information given to consumers at the advertising stage should focus on the essentials whilst more detailed information should be required only at the moment before the contract is concluded</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Online platform providers should inform consumers about the criteria used for ranking the information presented to consumers</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The presentation of pre-contractual information to consumers should be simplified by applying a uniform model, e.g. using icons</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>The obligation to display also the price per unit (eg, 1 Kg, 1 l) of the goods should apply to all businesses irrespective of their size</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Consumer protection against unfair commercial practices should be strengthened by introducing a right to individual remedies, e.g. compensation and/or invalidity of the contract when the consumer has been misled into signing a disadvantageous contract</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

<p>Consumer protection against unfair contract terms should be strengthened by introducing a "black list" of terms that are always prohibited</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The presentation of key standard Terms and Conditions to consumers should be improved by applying a uniform model, e.g. using icons</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Consumer protection against unfair contract terms should be strengthened by incorporating key Court of Justice case law on the ex officio duties of judges to assess the presence of unfair terms</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The legal guarantee period for goods should depend on their characteristics</p> <p>(If you agree with this statement please indicate the relevant characteristics in the box below, e.g. the category of the good (such as small/large household appliances, ICT products, cars etc.), price, expected/advertised lifespan)</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>The period during which the defect is presumed to have existed already at the time of delivery of the good (reversal of the burden of proof) should be extended. It is 6 months under current EU law but longer in a few EU countries</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>The notion of "vulnerable consumers" should be reviewed/ updated. Under current EU law vulnerable consumers are those that are particularly vulnerable to unfair commercial practices because of their mental or physical infirmity, age or credulity</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>There should be additional requirements for the protection of "vulnerable consumers" as regards standard contract terms</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>The notion of "average consumer" should be reviewed/ updated. According to the case law of the EU Court of Justice, the average consumer is defined as reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>Further criteria should be defined to allow for a clearer distinction between consumers and traders in the collaborative economy</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>EU injunctions proceedings should be made more effective, e.g. by allowing their use for more types of infringements and by reducing their costs and length</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>EU consumer and marketing rules should be further harmonised to make it easier for traders to offer their products/services cross-border and for consumers to rely on the same level of protection across the EU</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>EU consumer and marketing rules should be simplified by bringing them into a single horizontal EU instrument</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Consumer protection should be strengthened by making sure that non-compliant businesses face truly dissuasive sanctions amounting to a significant % of their yearly turnover</p>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other (please specify in the box below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Please explain your reply, including suggestion(s) for other area(s) where the current EU consumer and marketing rules should be improved (optional)

2500 character(s) maximum

Consumers making common orders of heating oil for a cheaper price has always been a practice well accepted by ECFD members. If this has existed for decades, the emergence of online platforms to provide this kind service is on the other hand relatively new, though emerging in all Member States. While the volumes ordered increase, these platforms are a commercial service, charging heating oil distributors a service cost. Distributors might face challenges if tank conditions and locations are not verified (ease of access/safety of the installation), ordered volumes do not correspond with actual deliverable volumes, and in the case of problems with the solvency of clients. These kinds of problems do not occur when heating oil distributors are dealing directly with consumers.

Moreover, ECFD is concerned that some online oil buying groups are not providing sufficient or incorrect information to potential customers, competing with other heating oil distributors on unfair terms. Some platforms calculate the possible discounts based on the official maximum price, which does not necessarily reflect the market price, as a result misleading consumers. Some consumers eventually refuse the oil delivery if the actual price doesn't match the one advertised on the website, which delays tank refilling and can cause unnecessary delivery trips, especially during winter time. The liability for buying groups has also to be addressed, in particular who is liable if the consumer does not receive its oil purchase or does not receive the quality he asked for.

In addition, there is often a lack of transparency regarding commissions being charged to consumers by third parties, such as these to cover their administrative costs. ECFD feels that any such commission should be explicit on the consumers invoice.

To what extent do you agree or disagree with each of the following statements about **potential areas to improve the protection of businesses**, especially SMEs and in particular micro enterprises?

	Strongly agree	Tend to agree	Tend to disagree	Strongly disagree	No opinion / don't know
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<p>Businesses protection against unfair commercial practices should be strengthened by introducing a "black list" of B2B practices that are always prohibited</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Business protection against unfair commercial practices should be extended to practices happening not just at the marketing stage but also after the signature of the contract</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Business protection against unfair commercial practices should be strengthened by introducing a right to individual remedies, e.g. compensation and/or invalidity of the contract when the business has been misled into signing a disadvantageous contract</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

<p>Business protection against unfair contract terms should be strengthened by extending totally or partially the scope of application of the Unfair Contract Terms Directive to B2B contracts</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Business protection against unfair commercial practices should be strengthened by introducing an enforcement co-operation mechanism for cross-border B2B infringements</p>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>The scope of application of the Injunctions Directive should be enlarged to cover the protection of collective interests of businesses</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
<p>Other (please specify in the box below)</p>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain your reply and any other suggestion(s) for area(s) where the current EU rules for the protection of businesses should be improved (optional)

2500 character(s) maximum

ECFD would like to reiterate its comment regarding the importance of protecting companies, especially SME's, against any abuse of the legal framework provided for consumer rights protection, e.g. extensive speculative behavior from a consumer in relation with the right of withdrawal. The SME sector is essential for cost-efficient consumer services and supplies and therefore it should be considered adequately in the EU legislation.

ECFD would like one point to be clarified for the fuel delivery sector, in the occasions where fuel is, due to a genuine mistake, delivered to the incorrect address. At the moment this fuel is usually not recoverable and consumer refuse to pay causing significant losses to the delivering company, especially for small businesses. The legislation needs to ensure that both the consumer and supplier are protected on these occasions either by allowing the supplier reasonable access to uplift the fuel or allowing the consumer to pay an equitable price for the fuel delivered. The legislation needs to ensure that both the consumer and supplier are protected on these occasions and in the B2B sector the EU legislation should assure a fair competition. This is important for a liable consumer-oriented business, especially in the sector of the family-owned small and mid-sized companies, which have a strong relation to their region they are located.

That's why especially for these cases a compensation fee would be fair and could be legally regulated.

You can also upload an additional policy paper here

[aa503b5b-9dc5-4b92-90c4-51629eef80bf/Attachment_3_Expert_Opinion-IW_K_In_English.pdf](#)

Contact

just-notifications-e2@ec.europa.eu
