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Position paper

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

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Bitkom represents more than 2,400 companies in the digital sector, including 1,600 direct members. With more than 700,000 employees, our members generate a domestic turnover of 140 billion Euros a year, exporting high-tech goods and services worth another 50 billion Euros. Comprising 1,000 small and medium-sized businesses as well as 300 start-ups and nearly all global players, Bitkom' members offer a wide range of software technologies, IT-services, and telecommunications or internet services. They produce hardware and consumer electronics or operate in the sectors of digital media and the network industry. 78 percent of the companies' head-quarters are located in Germany with an additional amount of 9 percent in other countries of the EU and 9 percent in the USA as well as 4 percent in other regions. Bitkom supports an innovative economic policy by focussing the modernization of the education sector and a future-oriented network policy.

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. Bitkom thanks the EU Commission for the opportunity to take part in the public consultation. In addition to our answer to the online consultation via the EU SURVEY tool we would like to seize the opportunity to give a more detailed answer regarding some of the questions in the consultation questionnaire.

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

Please explain your reply, including any other consumer right that you wish to highlight:

Effective consumer protection is essential – but must also be proportionate and not place overly burdensome requirements on the industry which could result in higher costs and less innovation. Considering this, the current regulatory framework for consumer protection has proven to provide a high level of consumer protection. EU-

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level horizontal legislation provides a principle-based approach across all business sectors. Given the evolution in technology-based and digital business models, some of the existing rules and provisions may have to be clarified to ensure they are understood by consumers and meet consumer expectations and preferences.

According to current legal obligations extensive information has to be provided to users, often already at the precontractual stage. In fact, the sheer amount of this information makes it difficult for consumers to identify what is most important to them. This overwhelming effect may even result in the information not being read at all. While consumer information and an according obligation are necessary, the current rules should be simplified. Companies should have the possibility to present the consumer information in a layered structure, possibly via links, with clear prioritization depending on the particular content type and its intended use. More concise and better targeted information will render a much better service from the perspective of consumer protection.

German law provides the right to repair or replacement of a product for two years after the conclusion of the contract, if the origin of the defect existed already at the time of the passage of risk. The burden of proof is reversed for six months. Two years is, however, already a very long time span for certain types of devices. The shift of the burden of proof should therefore not be extended to more than six months.

Regarding the right of withdrawal for digital content we would like to point out the following particularity: Online purchases of digital content are characterized by the instant availability of the purchased good. "Performance" here means making a good available for download, which typically happens directly at the moment of completing the purchase. This is significantly different from offline purchases or from online purchases of physical goods.

Bitkom members have experienced a significant abuse rate of the right of withdrawal for digital content intended for immediate consumption. This is particularly the case with regards to content intended for immediate consumption (such as in-app purchases).

2. How effective for protecting the rights of consumers 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)?

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

Bitkom regards self- und co-regulation initiatives as very effective. The digitisation showed that classical regulatory instruments alone are not able to adapt fast enough to the ever-changing circumstances of modern society. Very often regulation does not fit to new products and changing consumer behaviour or the time between a newly arising challenge and the legislative answer takes too long. This unfitting legal environment makes it harder – or even impossible – for consumers and companies to benefit from new technologies. Therefore, classical regulation needs to be concretised and completed by effective self- and co-regulation (SR/CR). In the German rights enforcement model through self- und co-regulation consumer/business associations play an important role as they are considered far

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more effective. An individual consumer gets redress by way of an association action, as associations have sufficient locus standi. Thus breaches of national laws or relevant Directives can be addressed by these institutions directly. Associations are not only independent and neutral but also widely accepted, efficient, they act in the interests of the economy, have expertise and are therefore able to control the compliance with regulations. That is why Bitkom considers that self- and co-regulation initiatives are more effective than actions carried out by state authorities.

Experience shows that SR/CR is effective if the legal environment (1) allows an official confirmation that a concretising voluntary measure – e.g. a code of conduct – is compliant with a legislative act, (2) requires an effective and transparent enforcement (e.g. by an approved private body) and (3) provides incentives for companies to join the voluntary measure (e.g. by providing protection from actions of supervising authorities in case of adherence with the code of conduct and a functional monitoring system).

Examples of successful co- and self-regulation:

- The 'Zentrale zur Bekämpfung unlauteren Wettbewerbs' (Wettbewerbszentrale)
- Youth protection in the media (e.g. FSK/FSM/USK in Germany, PEGI on European level)
- European Product Safety legislation
- Consumer Codes Approval Scheme (CCAS) in England
- Social and Economic Council (SER) in the Netherlands (e.g. in the field of terms and conditions for contracts with consumers)
- PhonepayPlus in England
- Data Protection Code for Geodata Services in Germany

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

The rules to protect consumers against unfair commercial practices are available and function well overall, though there may be issues about effective implementation.

Regarding the amount and relevance of information available to consumers: According to current legal obligations extensive information has to be provided to users, often already at the pre-contractual stage. This may even result in the information not being read at all. The current rules should be simplified, as stated above. Regarding the protection of businesses against misleading marketing and unfair comparative advertising practices Bitkom would

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like to point out that companies with well-known brands face the following situation: Shops or service providers (e.g. repair shops) use logos of big brands to suggest a direct business connection where in fact there is none. Sometimes their activity causes damage to devices, which can then not be repaired by certified partners. For the companies it is hard to protect themselves against such misleading practices.

Regarding the question of a level playing field amongst EU-based businesses Bitkom recommends the following approach: Regulators should keep in mind that any intervention should be closely targeted to the specific harm identified on the facts. With a view to secure a level playing field among services, regulators should focus on the question if these services exercise similar or equivalent functions and if there is evidence based on facts for a specific harm caused by these services. If this is the case, similar rules should be applied to similar services, with every care given to avoid disproportionate actions and unwelcome side-effects that could hamper innovation in what is a very dynamic and rapidly evolving space. The answer is simplification; not additional layers of regulatory complexity. If there is no evidence based on facts for a specific harm caused by services which are currently already subject to regulation, there should also be room for deregulation.

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 <u>93/13/EEC;</u>
- Consumer Sales and Guarantees Directive <u>1999/44/EC;</u>
- Unfair Commercial Practices Directive <u>2005/29/EC;</u>
- Price Indication Directive <u>98/6/EC;</u>
- Misleading and Comparative Advertising Directive <u>2006/114/EC;</u>
- Injunctions Directive <u>2009/22/EC</u>.

In addition, this consultation covers also the Consumer Rights Directive <u>2011/83/EU</u>, 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 <u>Commission Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods</u>.

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

*

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

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Marie-Teresa Weber, Federal Association for Information Technology, Telecommunications and New Media
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*

3. Is the entity on whose behalf you are replying registered in the EU Transparency Register?

- yes
- 0

*

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

30 character(s) maximum

531830264-31

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

mt.weber@bitkom.org

*

- **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
 - Oprus
 - Czech Republic
 - Denmark
 - Estonia
 - Finland
 - France
 - Germany
 - Greece
 - Hungary
 - Ireland
 - Italy
 - Latvia
 - Lithuania
 - Luxembourg
 - Malta
 - Netherlands
 - Poland
 - Portugal
 - Romania
 - Slovak Republic
 - Slovenia
 - Spain
 - Sweden
 - Onited 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	۲	O	O		O
Right to get adequate information about the goods and services offered, i.e. the main characteristics, the total price, the delivery time, etc.	O	۲	O	O	O

Right to get information also about the unit price of goods (i.e. for one kilogramme, one litre etc.)	©	۲	O	۲	٢
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')	۲	۲	۲	۲	٢
Right to get information about the functionality and interoperability of digital content	©	۲	O	O	O

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')	۲	O	۲	O
Right to be protected against unfair clauses in the "small print" (the 'right to fair standard contract terms')	۲	O	O	©

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)	۲		٢		O
Right of consumer organisations and public bodies to take legal actions which can stop infringements of consumers' rights (the right to seek injunctions)	O	۲	۲	O	O

Other (please specify in the box below)	0	0	0	۲	©
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Please explain your reply, including any other consumer right that wish to highlight (optional)

1500 character(s) maximum

Effective consumer protection is essential, but should not place overly burdensome requirements on the industry which could result in higher costs and less innovation. The current regulatory framework provides a high level of consumer protection.

Given the evolution in technology-based and digital business models, some of the existing rules may have to be clarified to ensure they are understood by consumers and meet consumer expectations and preferences. According to current legal obligations extensive information has to be provided to users, often already at the pre-contractual stage. The sheer amount of this information makes it difficult for consumers to identify what is most important to them. This may even result in the information not being read at all. The current rules should be simplified. Companies should have the possibility to present the consumer information in a layered structure, possibly via links, with clear prioritization depending on the particular content type and its intended use to get more concise and better targeted information. German law provides the right to repair or replacement of a product for two years after the conclusion of the contract, if the origin of the defect already existed at the time of the passage of risk. The burden of proof is reversed for six months. Two years is, however, already a very long time span for certain types of devices. The shift of the burden of proof should therefore not be extended to more than six months.

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		۲	O	0	0
Communications and internet access services	0	۲	0	0	0
Financial services	0	0	O	0	۲
Passenger transport	O	O	O	0	۲
Tourism and package travel	O	©	O	0	۲
Energy	0	O	0	0	۲

Other (please specify in the box below)	O	0	O	0	0	

1500 character(s) maximum

We observe that consumer associations tend to only communicate via legal actions (for example in controversies around T&Cs). If a court order is then again implemented in a way not considered adequate, the consumer association will move into another round of court proceedings. It would be much more effective to pursue communication channels before resorting to court rulings in order to remedy mistakes or clarify misunderstandings. Apart from this, application of injunctions is effective and more proportionate for addressing potential issues than overly strict ex ante regulation such as applied to telecoms' services.

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	©	۲	0	O	O
Traders don't know/ don't understand consumer protection rules	0	۲	©	©	©
Traders don't comply with consumer protection rules	0	۲	0	0	O
Consumer law is too complex	۲	0	0	0	O

There are significant differences between national consumer protection rules across EU countries	0	۲	0	0	۲
National administrative authorities lack legal powers to enforce consumer rights	0	©	©	۲	0
National authorities responsible for enforcing consumer rights are not active enough	0	0	O	۲	0
Court proceedings are complex / long / costly	0	0	0	۲	0
Administrative enforcement proceedings are complex / long / costly			0	۲	0
Injunctions proceedings are complex / long	0	0	0	۲	0

Injunctions proceedings are costly	0	O	©	۲	©
There are significant differences between national rules on injunctions proceedings across EU countries	0	0	0	۲	O
Other (please specify in the box below)	0	O	0	0	0

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

1500 character(s) maximum

The complexity of the different rules for the European market for digital goods, content and services is a major challenge from a consumer protection perspective. In fact, complex rules are difficult to understand, not only for consumers, but also for traders. As a direct result of the complex regulatory framework, traders may fail compliance - not because of any lack of goodwill. In our view, the main problem for the effectiveness in protecting consumers refers to the complexity of protection standards. Regarding the efficiency of the different means to enforce consumer's rights it should be noted that the German implementation law of the alternative dispute resolution directive will fully enter into force only in the beginning of 2017. The effects of this new law should be taken into account in the

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

rules.

- 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

Self- und co-regulation initiatives are very effective. Classical regulatory instruments alone are not able to adapt fast enough to the ever-changing circumstances of modern digital society. Often regulation does not fit to new products and changing consumer behaviour or the time between a newly arising challenge and the legislative answer takes too long. This unfitting legal environment makes it harder - or even impossible - for consumers and companies to benefit from new technologies. Therefore, classical regulation needs to be concretised and completed by effective self- and co-regulation. In the German rights enforcement model through self- und co-regulation consumer/business associations play an important role. An individual consumer gets redress by way of an association action, breaches of national and EU laws can be addressed by these institutions directly. Associations are not only independent and neutral but also widely accepted. They act in the interests of the economy, have expertise and are able to control the compliance with regulations. That is why Bitkom considers that self- and co-regulation initiatives are often more effective than actions carried out by state authorities. Examples:

- 'Zentrale zur Bekämpfung unlauteren Wettbewerbs' (Wettbewerbszentrale)
- Youth protection in the media, e.g. FSK/FSM/USK, Germany
- European Product Safety legislation
- Consumer Codes Approval Scheme (CCAS), England
- Data Protection Code for Geodata Services, Germany

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	O	۲	0	0	0
Businesses are well protected against misleading marketing practices of other businesses	0	0	۲	0	0
Businesses are well protected against unfair comparative advertising of other businesses	0	0	۲	0	0

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

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)

	%
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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	O	O		۲	O	O
A level playing field amongst EU-based businesses	O	0	۲	O	©	O

Protection of consumers against unfair commercial practices	0	۲	0	0	0	0
Protection of businesses against misleading marketing and unfair comparative advertising	O	O	۲	©	©	O
Availability and choice of products	O	۲	O	۲	0	O
Lower prices of products	O	0	۲	0	0	0
Higher quality and longer durability of products	O	O	۲	0	©	O

More customers and revenues for EU-based businesses		0	۲	©	۲	۲
Increase of national e-commerce (i.e. within the trader's EU country)	O	O	۲	O	©	O
Increase of e-commerce across EU Member States	O	0	۲	O	0	0
Competitiveness of EU businesses vis-à-vis non-EU businesses	O	O	©	۲	©	0

1500 character(s) maximum

The rules to protect consumers against unfair commercial practices are available and function well overall. There may be issues about effective implementation.

Regarding the protection of businesses against misleading marketing and unfair comparative advertising practices companies often face the following situation: Shops or service providers use logos of brands to suggest a direct business connection where there is none. Sometimes their activity causes damage to devices, which cannot be repaired by certified partners. For the companies it is hard to protect themselves against such practices.

Regarding the question of a level playing field, any regulatory intervention should be closely targeted to the specific harm identified on the facts. With a view to secure a level playing field among services, regulators should focus on the question if these services exercise similar or equivalent functions and if there is evidence based on facts for a specific harm caused by these services. If this is the case, similar rules should be applied to similar services, with every care given to avoid disproportionate actions and unwelcome side-effects that could hamper innovation in what is a very dynamic and rapidly evolving space. The answer is simplification; not additional layers of regulatory complexity. If there is no evidence based on facts for a specific harm caused by services which are currently already subject to regulation, there should also be room for deregulation.

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	۲	0	0	0	0	0
An individual consumer gets redress through an alternative dispute resolution mechanism		۲	O	0	0	0
An individual consumer gets redress through a court action	۲	0	0	0	0	0

An individual consumer gets redress through an administrative enforcement decision	0	۲	0	۲	0	0
An administrative authority issues an injunction which stops an infringement of consumer rights	۲	O	©	O	0	0
A court issues an injunction which stops an infringement of consumer rights	۲	0	0	O	0	0
Other (please specify in the box below)	۲	0	O	0	۲	0

1500 character(s) maximum

Consumers have a variety of possibilities to address complaints and effectively assert their rights. First of all, this refers to customer care services, which provide satisfactory solutions for the bulk of consumers' complaints. Mechanisms of co- and self-regulation can be another effective way of dealing with consumer complaints. Only in selected cases, a court decision might be helpful to bring a required clarification. Alternative dispute resolutions may complement these mechanisms. Other possible mechanisms such as court action and injunctions are available, however, should only be considered as a last resort. The German law on alternative dispute resolution transposing the corresponding EU Directive will enter into force in early 2017.

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
Use by traders of unfair standard contract terms	۲	0	O	0	۲	۲
Use by traders of misleading or aggressive commercial practices	©	0	۲	0	0	0
Breach of the traders' obligations related to the legal guarantee	0	0	۲	0	0	0
Breach of the traders' obligations related to the information they are legally required to provide to consumers	O	0	۲	0	0	O
Breach of the traders' obligation related to the consumers' right of withdrawal (cancellation) for distance and off-premises contracts		0	۲		۲	۲

Other illegal practices (please specify in the box below)	0	0	0	©	©	۲
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1500 character(s) maximum

Injunctions can be considered as an effective instrument to tackle any of these listed problems. However, as described in the previous section, injunctions are a last resort. Besides general regulation, co- and self-regulation appears to be more effective to address general problems in the market.

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	O	۲	۲	۲	۲
There is a need for ensuring coherence between the Injunctions Directive and other provisions on enforcement of consumer rights	©	۲	O	O	O

Please explain your reply (optional)

1500 character(s) maximum

Clarification and regulatory coherence are a key to ensure legal certainty and to avoid regulatory overlaps.

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		۲	۲	O	0
Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector	O		۲	O	۲
Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them	©	۲	۲	©	0

The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate	O	۲	O		O
The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened	O	۲	O	O	۲

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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EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules	۲	۲	۲	۲	۲
Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector	O	O	©	©	۲
Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them	O	۲	۲	۲	۲
The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate				۲	۲

The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened	O	O	O	O	۲
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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
EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules	O	O	O	O	۲

Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector	0	©	0		۲
Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them	O	O	O	O	۲
The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate				O	۲
The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened				O	۲

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			۲		۲
Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector	O		۲		O
Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them	۲		۲		۲

The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate	۲		O	O	0
The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened	O	۲	O	O	O

1500 character(s) maximum

Coexistence of the different public enforcement authorities increases the risk of contradictory decisions. Better cooperation is therefore necessary to support the compliance efforts of companies.

The overly strict additional rules for telecoms are neither efficient nor proportionate. Consumers are usually not aware of the details of different applicable regulations.

Regarding the question of adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules, regulators should keep in mind that any intervention should be closely targeted to the specific harm identified on the facts. With a view to secure a level playing field among services, regulators should focus on the question if these services exercise similar or equivalent functions and if there is evidence based on facts for a specific harm caused by these services. If this is the case, similar rules should be applied to similar services, with every care given to avoid disproportionate actions and unwelcome side-effects that could hamper innovation in what is a very dynamic and rapidly evolving space. The answer is simplification; not additional layers of regulatory complexity. If there is no evidence based on facts for a specific harm caused by services which are currently already subject to regulation, there should also be room for deregulation. 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 **environment al 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
EU consumer and marketing rules provide adequate complementary protection regarding issues, which are not expressly regulated by the sector-specific EU rules	۲			۲	
Consumers are aware about the complementary application of EU consumer and marketing rules in the specific sector	O	O	۲	۲	0
Traders in the relevant sector are aware of the complementary application of these EU rules and comply with them	۲	©	©	©	©

The competent public enforcement authorities in the relevant sector are aware of the complementary application of these EU rules and enforce them where appropriate	۲		O	O	0
The co-operation between the various public enforcement authorities in charge of consumer protection should be strengthened	O	۲	O	O	O

1500 character(s) maximum

Eco-design rules do not always meet user preference. The obligation to pre-install an auto-power-down-function, for instance, often goes against user preference, and there is certainly a lack of information around its supposed benefits or ways to deactivate it. Consumers should be able to make an informed choice about whether or not to use it. The auto-power-down-function has to be preinstalled due to the eco-design regulation. Many consumers don't know that the function can be deactivated. A high number of consumers complain to the vendor that the device does not function properly as it switches to the standby-mode without any active decision of the consumer to shut it down on stand-by. Instead of prescribed default settings, consumers should be encouraged to use the energy saving mode voluntarily.

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
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		۲	۲	۲	۲
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	۲	O	O	O	O
Online platform providers should inform consumers about the criteria used for ranking the information presented to consumers	0	0	۲	0	0
The presentation of pre-contractual information to consumers should be simplified by applying a uniform model , e.g. using icons		O	۲	©	۲

The obligation to display also the price per unit (eg, 1 Kg, 1 I) of the goods should apply to all businesses irrespective of their size		©	O	۲	O
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			۲	۲	۲
Consumer protection against unfair contract terms should be strengthened by introducing a "black list" of terms that are always prohibited	O		۲	۲	۲
The presentation of key standard Terms and Conditions to consumers should be improved by applying a uniform model , e.g. using icons			0	۲	0
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	0		۲	0	

The legal guarantee period for goods should depend on their characteristics (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)	٢	O	O	۲	٢
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		0	O	۲	0
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	0	©	0	۲	
There should be additional requirements for the protection of "vulnerable consumers" as regards standard contract terms	O	O	O	۲	O

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	O	©	O	۲	O
Further criteria should be defined to allow for a clearer distinction between consumers and traders in the collaborative economy			0	0	۲
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			۲	۲	۲
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		۲	۲	۲	

EU consumer and marketing rules should be simplified by bringing them into a single horizontal EU instrument	0	©	©	©	۲
Consumer protection should be strengthened by making sure that non-compliant businesses face truly dissuasive sanctions amounting to a significant % of their yearly turnover	©	©	©	۲	O
Other (please specify in the box below)	0	0	0	0	0

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

The current regulatory framework in principle provides protection against unfair commercial practices. Existing information obligations for companies are adequate to ensure transparency. There is no need for additional new laws, while in certain areas clarification may be helpful, better taking digital practice into account.

The ECJ's definition of "average consumer" as "reasonably well-informed and reasonably observant and circumspect" is adequate. There is no need to change this definition.

Specific consumer groups, such as children and minors, are identified and already subject to specific legal protection. There is no need to add legal provisions for the protection of "vulnerable consumers" with regard to standard contract terms or unfair commercial practices. Any further attempt to define "vulnerable consumers" risks to be considered as discrimination rather than as an increase of consumer protection. Example: senior citizens often object to being defined as "vulnerable".

Regarding the question if consumer protection should be strengthened by making sure that non-compliant businesses face truly dissuasive sanctions amounting to a significant percentage of their yearly turnover, there are already effective instruments. We do not see a need for further amendment of these rules.

Regarding the question if the presentation of key standard terms and conditions to consumers, uniform models, e.g. using icons, might be helpful to reduce the amount of information. However, companies should make the choice by their own whether they want to use those simplified models or not. Initiatives of industry co- and self-regulation are best placed to develop a simplified model.

Regarding the question of "one single horizontal instrument", Bitkom cautions against the idea of creating one single horizontal instrument if this idea is based on the principle of more regulation for all services. If the single instrument is based on the principle of deregulation of those sectors which are currently subject to strict sector-specific regulation, Bitkom is more open to this idea.

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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Businesses protection against unfair commercial practices should be strengthened by introducing a "black list" of B2B practices that are always prohibited	۲	۲	۲	۲	٢
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		O	۲	O	
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		٢	٢	۲	٢

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	٢	٢	٢	۲	٢
Business protection against unfair commercial practices should be strengthened by introducing an enforcement co-operation mechanism for cross-border B2B infringements	O	۲	©	©	O
The scope of application of the Injunctions Directive should be enlarged to cover the protection of collective interests of businesses	۲	۲	۲	۲	O
Other (please specify in the box below)	O	0	0	O	0

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

Member States currently may extend, under their national laws, the protection granted under the UCPD to B2B commercial practices. Seven Member States currently apply the UCPD also to B2B relations - some of them fully and some only partly. The current situation results in a fragmentation regarding the protection of businesses across the European member states. With the goal of a Digital Single Market in mind, a revision of the UCPD should aim for a more streamlined and harmonized approach including B2B commercial and contractual terms in the directive.

You can also upload an additional policy paper here

06ba47d9-7ac1-4395-a086-8d23fc2fdce6/201600901__Bitkom_position_paper_REFIT_of_consumer_law_

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