

QUESTIONNAIRE ON CONTRACT RULES FOR ONLINE PURCHASES OF DIGITAL CONTENT AND TANGIBLE GOODS

Information about the respondent

1. Please enter your full name *OR* the name of the organisation / company / institution you represent if you are responding on its behalf:

TELEFÓNICA - ID Register: 52431421-12

2. Please indicate your main country of residence:

Spain / Germany

3. Please indicate your main country of activity:

Europe, Latam

4. Contributions received will be published on the Commission's website unless it would harm your legitimate interest. Do you agree to your contribution being published along with your identity?

Yes, your contribution may be published under the name you indicate

Yes, your contribution may be published but should be kept anonymous (without name and contact details)

No, you do not want your contribution to be published. Your contribution will not be published, but it may be used internally within the Commission.

5. Are you answering this questionnaire as a:

Consumer

Organisation representing the interests of consumers

Company mainly selling digital content products / Organisation representing the interests of companies mainly selling digital content products (if so, please indicate your business sector and whether you are a small and medium enterprise or not)

Company mainly selling tangible goods online / Organisation representing the interests of companies mainly selling tangible goods online (if so, please indicate your business sector and whether you are a small and medium enterprise or not)

Company mainly buying digital content products / Organisation representing the interests of companies mainly buying digital content products (if so, please indicate your business sector and whether you are a small and medium enterprise or not)

Company buying mainly tangible goods online / Organisation representing the interests of companies buying tangible goods online (if so, please indicate your business sector and whether you are a small and medium enterprise or not)

Organisation representing the interests of businesses in general

Member State of the EU or EEA/ Public authority

€ Other (for example, academics, other NGO, public authority outside the EU/EEA, trade union) (please specify)

Depending on your profile, you may decide to respond only to the questions you have a particular interest for. For example, if you are a company selling only tangible goods and do not intend to sell digital content products in the future, you may decide not to respond to Part 1 of the questionnaire dedicated to digital content products.

PART 1 – DIGITAL CONTENT

Context

Digital content products markets are growing rapidly. For instance, the app sector in the EU has grown significantly in less than five years, and is expected to contribute EUR 63 billion to the EU economy by 2018. Consumer spending in the video game sector is estimated at 16 billion EUR in 2013. In the music industry, digital revenues now represent 31% of total revenue in the EU. This economic potential should be further unleashed by increasing consumer trust and legal certainty for businesses.

However, when problems with digital content products arise (for example, the digital content products cannot be downloaded, are incompatible with other hardware/software, do not work properly, or even cause damage to the computer), specific remedies are lacking at the EU level (namely a right of the user against the trader when the digital content is defective). In addition, the user cannot influence the content of the contracts on the basis of which digital content products, which are 'off-the-shelf' products, are offered because these are 'take it or leave it' contracts. For instance, contracts may limit the user's right in case the digital content products do not work properly. They may also exclude the user's right to receive compensation if the digital content products caused damage (for example by damaging the computer), or limit compensation solely to so-called 'service credits' (extra credits for future service).

In addition, contracts for the supply of digital content products may be characterised differently in the Member States for example as service, lease or sales contracts. Such different treatment may result in different sets of remedies, some of them in the form of mandatory rules, others not. This may cause legal uncertainty for businesses about their obligations – and for users about their rights- when selling digital content products both domestically and cross-border.

A number of Member States have enacted or started work to adopt specific legislation on digital content products (namely the UK, the Netherlands and Ireland). This could further increase the differences between national rules that businesses would have to consider when providing digital content products throughout the EU.

Legal background at EU level

Certain aspects of contract law for online supply of digital content products are already covered by EU law. For example, the Consumer Rights Directive provides uniform rules on the information that should be provided to consumers before they enter into a contract and on the right to withdraw from the contract if they have second thoughts; the Unfair Contract Terms Directive provides rules against unfair standard contract terms in consumer contracts. However, there are no EU rules on other aspects of contracts for digital content products (such as what remedies are available if the digital content product is defective).

Section 1 –Problems

1. In general, do you agree with the analysis of the situation made in the "Context"? Please explain.

To truly establish consumer trust and incentives for business activities, a complete approach is required that establishes consistent and relevant standards for e-commerce, in order also to reduce the regulatory burden for companies and help consumers understand their rights.

The sector-specific rules create “regulatory arbitrage and therefore, providers of electronic communications services face competitive disadvantages and consumers cannot rely on similar protection standards when they are using similar services. Consequently, it is necessary to carry out an overall assessment to ensure that the scope of European consumer law will encompass all digital products and services regardless of the provider and of the way by which they are provided to the customers.

Nowadays in EU there are sufficient specific mandatory rules to protect consumers' rights. The above mentioned regulation regulates already all the on-line purchases. These rules apply all the European agents who operate with consumers in the EU. Likewise these procedures cover all the purchases that are realized on-line, independently of the nature of the acquired good.

Therefore, it is not necessary to create more consumer protection rules and establish a specific regulation for online purchases of digital content and tangible goods. The real need is to arbitrate mechanisms that force and control the application of these procedures to all the agents who operate on the European market (therefore including the companies which headquarters are located out of the EU).

For these reasons the aim must be to apply the existing regulation to all the agents who operates on the European market, regardless of where their headquarters are based. Likewise, the above mentioned rules must cover all, purchases, regardless of the nature of the good or services that are acquired (digital content, provision of telecommunications services, equipments, etc). Therefore, the mentioned regulation must govern any transaction, either executed in exchange for money, or paid by other means (delivery of information, consent for the use of personal character, etc) even if the acquisition of the product is free for the consumer.

This answer applies to both parts of the questionnaire, part I related to Digital content and Part II related to on line sale of tangible goods.

2. Do you think that users should be more protected when buying digital content products? Please explain why by giving concrete examples.

No, we consider that the current framework on contract rules for online purchases is sufficient. However, the real problem is the enforcement of these rules, there is a need to ensure the application of these rules to all agents, both those in the EU, as those which headquarters are located out of the EU. Hence, consumers can rely on similar protection standards when they are using similar services independently of the type of provider and its jurisdiction.

3. Do you perceive difficulties/costs due to the absence of EU contract law rules on the quality of digital content products? Please explain.

No.

4. Do you think that upcoming diverging specific national legislations on digital content products may affect business activities? Please explain.

Yes. Diverging consumer protection laws such as data protection legislation, audiovisual service legislation, etc, give rise to legal uncertainty for service providers, as well as additional compliance costs.

To ensure fair competition the transposition on consumer protection laws must be equivalent.

Section 2 – Need for an initiative on contract rules for digital content products at EU level

5. The European Commission has explained in the Digital Single Market Strategy¹ that it sees a need to act at EU level. Do you agree? Please explain.

In a Single Market, companies should be able to manage their sales under a common set of rules. Most aspects of consumer and contract law have already been fully harmonized for online sales (such as the information that should be provided to consumers before they enter into a contract or the rules governing their right to withdraw from the deal if they have second thoughts). The problem is not the absence of rules but the way this rules are different implemented at national level.

6. The European Commission has announced in the Digital Single Market Strategy that it will make a proposal covering harmonised EU rules for online purchases of digital content. Other approaches include, for example, the development of a voluntary model contract that consumers and businesses could use for their cross-border e-commerce transactions or minimum harmonisation. What is your view on the approach suggested in the Digital Single Market Strategy?

See answer 5.

Section 3 – Scope of an initiative

7. Do you think that the initiative should cover business-to-consumers transactions only or also business-to-business transactions? Please explain.

The initiative should be restricted to B2C contracts. B2B contracts do not require such a high level of protection, as contractual provisions already provide adequate protection and freedom to negotiate.

8. What specific aspects in business-to-business transactions, if any, should be tackled? Please explain.

¹ A Digital Single Market Strategy for Europe COM(2015)192 final

9. Digital content products may cover inter alia the products listed below. Which of these digital content products/services should be covered by the initiative (tick as many as apply)?

- € games, including online games
- € media (music, film, sports, e-books) for download
- € media (music, film, sports) accessible through streaming
- € social media
- € storage services
- € on-line communication services (for example, Skype)
- € any other cloud services
- € applications and any other software that the user can store in its own device
- € any software that the user can access online
- € any other service that is provided solely online and result in content that the user can store in its own device (such as translation service, counselling)
- € any other service that is provided solely online

Please explain your choice(s).

As we have explained in answer 2, there is a need to ensure the application of these rules to all agents which provide digital content services and products, both those in the EU, as those which headquarters are located out of the EU. Hence, consumers can rely on similar protection standards when they are using similar services independently of the type of provider and its jurisdiction.

10. Digital content products can be supplied against different types of counter-performance. Which of the following counter-performances should be covered by the initiative (tick as many as apply)?

- € Money
- € Personal or other data actively provided by the user (for example, by registration)
- € Data collected by the trader (for example, the IP address or statistical information)
- € Activity required by the user in order to access the digital content (for example, by watching an advertisement video, or visiting another homepage)

Please explain your choice(s).

As we stated before, we consider that the current framework on contract rules for online purchases is sufficient although there is a need to ensure the application of these rules to all agents.

The mentioned regulation must govern any transaction, either executed in exchange for money, or paid by other means (delivery of information, consent for the use of personal character, etc) even if the acquisition of the product is free for the consumer.

Section 4 –Content of an initiative

11. Among the areas of contract law below, which ones do you think are problematic and should be covered by an initiative (tick as many as apply)?

- Quality of the digital content products
- Remedies and damages for defective digital content products
- How to exercise these remedies, like who has to prove that the product was, or was not, defective (the burden of proof) or time limits for exercising these remedies
- Terminating long term contracts
- The way the trader can modify contracts
- Other (please specify)

Please explain your choice(s).

At first glance we do not clearly understand which is the scope of the question. Considering that digital content is mostly consumed in an immediate way, all of the contract law areas mentioned in this question are difficult to implement with regards to digital content. In this sense, and in some cases, extension of traditional legislation to the digital content world seems complicated.

Quality of the digital content products

12. Should the quality of digital content products be ensured by:

- Subjective criteria (criteria only set by the contract)
- Objective criteria (criteria set by law)
- A mixture of both

Please explain your choice(s).

See answer 11.

13. When users complain about defective products, should:

- Users have to provide evidence that the digital content products are defective
- Traders have to provide evidence that the digital content products are not defective if they consider the complaint to be unfounded

Please explain your choice(s).

See answer 11.

Remedies for defective digital content products

14. What are the key remedies that users should benefit from in case of defective digital content products (tick as many as apply)?

- Resolving the problem with the digital content product so that it meets the quality promised in the contract

- € Price reduction
- € Termination of the contract (including reimbursement)
- € Damages
- € Other (please specify)

Please explain your choice(s).

See answer 11.

15. Should users have the same remedies for digital content products provided for counter-performance other than money (for example, the provision of personal data)? Please explain.

Considering that digital content is mostly consumed in an immediate way, remedies are difficult to implement with regards to digital content. In this sense, and in some cases, extension of traditional legislation to the digital content world seems complicated. Nevertheless, as a general principle, some remedies can be appropriate, when the digital product is provided for counter-performance other than money, such as return of the data collected from the user.

16. Should users be entitled to ask for remedies for an indefinite period of time or should there be a specific time limit after they have acquired the digital content products or discovered that the digital content products were defective? Please explain.

As said in question 11, digital content is mostly consumed in an immediate way, thus in principle no remedies could be considered. However, if there is a service that, due to its particular nature, it could be subject to such remedies, we consider that there should be a specific time limit.

17. Should there be one single time limit or should there be two different time limits, one for the period during which the defect should appear and one during which users have to exercise the remedies? Please explain.

As said in question 11, digital content is mostly consumed in an immediate way, thus in principle no remedies could be considered. However, if there is a service that, due to its particular nature, it could be subject to such remedies, we consider that it should be only one time limit to keep it simple. We propose to apply the same limit that applies to the acquisition of tangible goods.

18. Which time limit(s) do you think is (are) appropriate? Please explain.

As said in question 11, digital content is mostly consumed in an immediate way, thus in principle no remedies could be considered. However, if there is a service that, due to its nature, it could be subject to such remedies, we consider that it should be as short as possible.

19. If there is a right to damages, under which conditions should this remedy be granted? For example, should liability be based on the trader's fault or be strict (irrespective of the existence of a fault)?

As said in question 11, digital content is mostly consumed in an immediate way, thus in principle no remedies could be considered. However, if there is a service that, due to its particular nature, it could be subject to such remedies, we consider that damages should be based on the trader's fault only.

20. Should it be possible for damages to mainly consist of 'service credits' (extra credits for future service)? Please explain.

As said in question 11, digital content is mostly consumed in an immediate way, thus in principle no remedies could be considered. However, if there is a service that, due to its particular nature, it could be subject to such remedies, we consider that it should be difficult to implement.

Additional rights

21. Should users be able to terminate long term contracts (subscription contracts) for digital content products?

Yes

No

We consider it is already regulated in the consumer protection legislation.

22. If you reply yes to question 21, please specify under which conditions and following which modalities should users be able to terminate the contract (tick as many as may apply):

- Termination should be expressed in advance
- Termination should be made by notice
- Users are provided with means to retrieve its data
- The trader may not further use the users' data
- Other (please specify)

Please explain your choice(s).

See question 21.

As to the right to terminate long term subscription contracts, telecom operators generally need to recover their investment (connection costs, promotions, subsidies of terminal equipment, etc.) by proposing fixed-term contracts with cancellation fee before the end of the fixed term. Early termination without charges reduces the possibility for operators to propose significant discounts to loyal customers, with disruptive effects for the market where there are now also, increasingly, offers with no commitments on duration for consumers who do not wish to commit to a longer-term contract.

It should be noted that additionally to the Consumer Rights Directive, the Universal Services Directive provides that "subscribers have a right to withdraw from their contract without penalty upon notice of modification to the contractual conditions (where such

modifications are to the disadvantage of the consumer)”. “Subscribers shall be given adequate notice, not shorter than one month, of any such modification”.

Accordingly, in the field of contract duration, the rules applicable to services provided by electronic communications providers are currently more onerous than those provided for other players under the horizontal legislation. The rules applicable to other services, and particularly regarding similar services, should therefore be simplified and harmonised.

In transactions where the counter-performance for the provision of a digital products or service is represented by user’s data, it is reasonable to ask for a return of the counter-performance once the effects of the contract terminate.

23. In case of termination of the contract, should users be able to recover the content that they generated and that is stored with the trader in order to transfer it to another trader?

Yes

No

Please explain your choice.

Telefonica firmly supports that new regulatory policies related to data portability should be carefully approached. Regarding Portability of data (contents) that the consumer has uploaded in a platform there could probably be a case for some form of data portability obligations when it is an unreasonable burden for the customer to change all his data/content from one platform/ service to another, provided that such a data portability is feasible from a technological point of view.

By the contrary, regarding the Portability of personal data generated by a customer through the provision and delivery of a service, we understand that there is no case to establish portability obligations in this context because personal data are linked to the service provision. Upon leaving the service by the customer, the provider should withdraw the user’s personal data and those personal data should not be subject to portability.

24. If you reply yes to question 23, please indicate under which conditions (tick as many as may apply):

Free of charge

In a reasonable time

Without any significant inconvenience

In a commonly used format

Other (please specify)

Please explain your choice(s).

25. Upon termination, what actions should the trader be entitled to take in order to prevent the further use of the digital content?

Disable the user account

- Employ technical protection measures in order to block the use of the digital content products
- Other (please specify)

Please explain your choice(s).

There is already horizontal and sectorial legislation that regulate this kind of situations.

26. Should the trader be able to modify digital content products features which have an impact on the quality or conditions of use of the digital content products?

- Yes
- No

Please explain your choice.

Such a possibility should be allowed in order not to hamper the technological evolution of products/services.

27. If you reply yes to question 26, under which conditions should the trader modify digital content products features which have an impact on the quality or conditions of use of the digital content products:

- The contract foresees this possibility
- The consumer is notified in advance
- The consumer is allowed by law to terminate the contract free of charge
- Other (please specify)

Please explain your choice(s).

It is already regulated by the consumer protection legislation.

28. Which information should the notification of modification include? Please explain.

PART 2 – ONLINE SALE OF TANGIBLE GOODS

Context

In 2014, 50% of EU consumers shopped online, rising from 30% in 2007. With an average annual growth rate of 22%, online retail sales of tangible goods surpassed EUR 200 billion in 2014, reaching a share of 7% of total retail in the EU-28. The Commission's Digital Single Market Strategy has highlighted that this economic potential should be further unleashed by removing barriers.

If traders decide not to sell outside their domestic market, this may limit consumer choice and prevent lower prices by lack of competition. Today, traders may be deterred from doing this by differences in contract law which may create costs for traders who adapt their contracts or increase the legal risk for those who do not. For example, depending on the Member State, consumers may have two years, five years, or the entire lifespan of the purchased product to claim their rights. In business-to-business transactions, where no specific EU rules exist, negotiation on the applicable law may also create costs.

Legal background at EU level

As for digital content products, certain aspects of contract law have already been fully harmonised for online purchase of tangible goods by consumers. In particular, the Consumer Rights Directive has fully harmonised the information that should be provided to consumers before they enter into a contract and the right to withdraw from the contract if they have second thoughts. The Unfair Contract Terms Directive provides rules against unfair contract standard terms for consumer contracts. In addition, contrary to digital content products, remedies in case of defective tangible goods are also regulated at EU level in business-to-consumers transactions (under the Consumer Sales and Guarantees Directive). Nevertheless, this harmonisation only sets minimum standards: Member States have the possibility to go further and add requirements in favour of consumers. Many Member States have used this possibility – on different points and to a different extent.

Section 1 – Problems

29. In general, do you agree with the analysis of the situation made in the "Context"? Please explain.

The responses to the questionnaire related with part 1 apply equally to the purchase online of tangible goods.

We consider that the current framework on contract rules for online purchases is sufficient. However, the real problem is the enforcement of these rules, there is a need to ensure the application of these rules to all agents, both those in the EU, as those which headquarters are located out of the EU. Hence, consumers can rely on similar protection standards when they are using similar services independently of the type of provider and its jurisdiction.

Moreover, the problem is not the absence of rules but the way this rules are different implemented at national level.

30. Do you think that users should have uniform rights across the EU when buying tangible goods online? Please explain why by giving concrete examples.
31. Do online traders adapt their contract to the law of each Member State in which they want to sell? If yes, do they face difficulties/costs to do so? Please explain.
32. Do you think that any such difficulties and costs dissuade traders from engaging at all or to a greater extent in cross-border e-commerce? Please explain.

Section 2 - Need for an initiative on contract rules for online sales of tangible goods at EU level

33. The European Commission has explained in the Digital Single Market Strategy that it sees a need to act at EU level. Do you agree? Please explain.
34. The European Commission announced in the Digital Single Market Strategy that it will make a proposal allowing traders to rely on their national laws based on a focused set of key mandatory EU contractual rights for domestic and cross-border online sales of tangible goods which would be harmonised in the EU. Other approaches include, for example, the development of a voluntary stakeholders' model contract that consumers and businesses could use for their cross-border e-commerce transactions. What is your view on the approach suggested in the Digital Single Market Strategy?

Section 3 – Content of the initiative

35. Do you see a need to act for business-to-consumers transactions only or should the EU also act for business-to-business transactions? Please explain.
36. What specific aspects in business-to-business transactions, if any, should be tackled? Please explain.
37. Among the areas of contract law below, which ones do you think create problems related to national divergences which should be covered by an initiative (tick as many as apply)?
- € Quality of the tangible goods
 - € Remedies and damages for defective tangible goods
 - € How to exercise these remedies, like who has to prove that the product was, or was not, defective (burden of proof) or time limits for exercising these remedies
 - € Restitution of price and tangible goods in case of termination of the contract
 - € Unfair standard contract terms beyond the existing protection
 - € Other (please specify)

Please explain your choice(s).

Quality

38. Which should be the criteria for establishing the quality of the tangible goods? Should there be any additional/different criteria in addition to those already provided by Article 2² of the Consumer Sales and Guarantees Directive? Please explain.
39. How long should the period be during which the trader is required to prove that the tangible goods were not defective at the moment of delivery? Please explain.

*Remedies*³

40. Which contractual rights should the buyer have in case of a defective good (tick as many as apply)?

- Repair or replacement of the good
- Price reduction
- Termination of the contract (including reimbursement)
- Damages
- Right to withhold the payment of the price until the defect is remedied
- Other (please specify)

Please explain your choice(s).

41. Should the buyer have a free choice of remedies or should there be a hierarchy of remedies (namely the trader is first given the option to repair the good)? Please explain.

*Time limits to exercise remedies*⁴

² Article 2 (Conformity with the contract)

1. The seller must deliver goods to the consumer which are in conformity with the contract of sale.
2. Consumer goods are presumed to be in conformity with the contract if they:
 - (a) comply with the description given by the seller and possess the qualities of the goods which the seller has held out to the consumer as a sample or model;
 - (b) are fit for any particular purpose for which the consumer requires them and which he made known to the seller at the time of conclusion of the contract and which the seller has accepted;
 - (c) are fit for the purposes for which goods of the same type are normally used;
 - (d) show the quality and performance which are normal in goods of the same type and which the consumer can reasonably expect, given the nature of the goods and taking into account any public statements on the specific characteristics of the goods made about them by the seller, the producer or his representative, particularly in advertising or on labelling.
3. There shall be deemed not to be a lack of conformity for the purposes of this Article if, at the time the contract was concluded, the consumer was aware, or could not reasonably be unaware of, the lack of conformity, or if the lack of conformity has its origin in materials supplied by the consumer.
4. The seller shall not be bound by public statements, as referred to in paragraph 2(d) if he:
 - shows that he was not, and could not reasonably have been, aware of the statement in question,
 - shows that by the time of conclusion of the contract the statement had been corrected, or
 - shows that the decision to buy the consumer goods could not have been influenced by the statement.
5. Any lack of conformity resulting from incorrect installation of the consumer goods shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods and the goods were installed by the seller or under his responsibility. This shall apply equally if the product, intended to be installed by the consumer, is installed by the consumer and the incorrect installation is due to a shortcoming in the installation instructions.

³ Certain aspects in the questions within this section are currently covered by the Consumer Sales and Guarantees Directive.

⁴ *Idem*.

42. Should the buyer be entitled to ask for remedies for an indefinite period of time or should there be a specific time limit after the buyer has bought the good or discovered that the good was defective? Please explain.
43. Should there be one single time limit or should there be two different time limits, one for the period during which the defect should appear and one during which the buyer has to exercise the remedies? Please explain.
44. Which time limit(s) you think is (are) appropriate? Please explain.
45. Should the time limit(s) be shorter in case of second-hand tangible goods?

Damages⁵

46. If there is a right to damages, under which conditions should this remedy be granted? Should liability be based on the trader's fault or be strict (namely, irrespective of the existence of a fault)?

Notification⁶

47. Should the buyer be obliged to notify the defect within a certain period of time after discovery? If so, should the period start from the moment the buyer is aware of the defect or, rather, from when he could be expected to have discovered the defect? How long should the period be? Please explain.

Commercial guarantees

48. Commercial guarantees are voluntary commitments by the trader to repair, replace or service tangible goods beyond their obligations under the law. Do you think uniform rules on the content and form of commercial guarantees are needed? Please explain.
49. Could these requirements on the content and form of commercial guarantees be modified contractually or should they be mandatory rules? Please explain.

Unfair terms

50. Should there be a list with contract terms which are always to be regarded as unfair? If yes, which terms should always be regarded as unfair? Please explain.

⁵ *Idem.*

⁶ *Idem.*

51. Should there be a list of standard contract terms which are presumed to be unfair? If so which terms should be on such a list? In particular, how to treat advance payment which is very frequent in the online world? Please explain.

ANNEX

This Annex to the consultation contains questions on product-related rules such as labelling. These questions are not linked to the Commission future proposal announced in the Digital Single Market Strategy on contract rules for online purchases of digital content and tangible goods and provisions on labelling will not be included in that initiative. However, since the issue of product-related rules such as labelling is also mentioned in the Digital Single Market Strategy in relation to cross-border e-commerce aspects, this annex has been attached to the consultation.

Context

In a Digital Single Market, both consumers and traders should be confident in trading cross-border without barriers that may be created by differences between national rules. The EU's Digital Single Market Strategy identified several obstacles stopping businesses and consumers from fully enjoying the benefits of the Digital Single Market and highlighted the objective of *"ensuring that traders in the internal market are not deterred from cross-border trading by (...) differences arising from product specific rules such as labelling"*.

Different technical specifications or rules on labelling and selling arrangements may apply in specific areas and, depending on where in the EU the consumer is located, national product-related rules may require the trader to adapt their products and packaging accordingly. Although the mutual recognition principle applies, Member States may justify such rules by a public-interest objective taking precedence over the free movement of goods, such as on health and safety grounds. National measures which hinder the free movement of goods have to be justified and have to be necessary to effectively protect the public interest invoked. However, even for product categories for which harmonised rules apply, Member States can - under certain conditions and in accordance with a legally established procedure - introduce certain additional mandatory labelling requirements at national level.

This situation means that online suppliers of goods and services who wish to serve a pan-European market may potentially need to know about, and comply with, 28 differing sets of national regulations. Finding out which regulation applies in which case may be difficult. 37% of firms in the EU that have experience with selling online to other Member States stated that lack of knowledge of the rules that have to be followed is a barrier to selling online cross-border. Moreover, 63% of firms that have no experience with selling online cross-border stated that they believe that lack of awareness of which rules have to be followed may constitute a barrier⁷. This shows that the perceived barriers are significantly higher than the real barriers and that there is space for better communication and transparency. This situation creates information and compliance costs for online traders, especially for small and medium-sized enterprises, and in particular when the value of the transaction remains low.

Section 1 – Problem

1. In general, do you agree with the description of the situation made in the "Context"? Please explain.

⁷ European Commission, Flash Eurobarometer 413, 2015

2. Do you consider that certain national product-related rules should oblige traders to alter their product/product information when they sell their legally marketed products to consumers in other Member States?

3. If you answered yes to the previous question, please explain which products and on which grounds.

Specific questions for traders

4. Do you have information about all the national product-related rules in the Member States:

a) To which you sell on-line?

b) To which you do not sell into but where there would be a market for your products?

5. If you answered yes to the previous question, please explain:

a) How did you obtain this information and at what cost?

b) How did you address the need to comply with Member State-specific requirements?

Specific questions for consumers

6. Would you consider buying the following products from another Member State, provided you are fully informed:

	in a physical shop in the other MS	on-line
- a product labelled according to the rules of that EU Member State	Yes / No	Yes / No
- a product packaged according to the rules of that EU Member State	Yes / No	Yes / No
- a product made according to product specifications of that EU Member State	Yes / No	Yes / No

Section 2 – Need for an initiative on product-related rules such as labelling

7. In the Digital Single Market Strategy, the European Commission pointed to product-related rules, such as labelling, as a possible obstacle to cross-border e-commerce. Do you agree? Please explain.

Section 3 – Content of a possible initiative

8. Should an action at EU level for product-related rules affecting cross-border on-line sale of tangible goods cover:

a) Difficulties related to different product specifications at national level

Yes / No

b) Difficulties related to different packaging rules at national level

Yes / No

c) Difficulties related to different labelling rules at national level

Yes / No

d) Other issues, if so, please explain