

Public Consultation on "Retail regulations in a multi-channel environment"

Fields marked with * are mandatory.

I. Introduction

Retail is the biggest sector in the EU non-financial business economy in terms of number of enterprises and persons employed. It alone represents 4.5% of value added and 8.6% of EU employment. Nearly 5.5 million companies are active in the EU retail and wholesale sectors (3.6 million enterprises in retail and 1.8 million in wholesale -23% of all non-financial business economy in 2014). Most of them are SMEs, which also generate 66% of the sectors' value added and 70% of employment. Retail is also closely linked to other sectors of the economy (wholesale, manufacturers, farmers as well as transportation and logistics, and other business services). Moreover, the sector is bringing the Single Market to European consumers. Therefore, the competitiveness of the sector is essential to the EU economy.

The sector is currently undergoing fundamental changes with the rapid development of e-commerce which is not only influencing the way consumers shop (they can shop online at any moment, often from websites located far away from where they live) but also modifies the landscape of the retail sector. Trends indicate that the future will be multi-channel retailing with retailers being active both offline and online (either through their own web shop or via platforms). Another trend is the creation of platforms that offer retailers the possibility to sell their products in online "shopping centres". Some of these platforms are not only providing such a virtual shopping centre but have launched their own range of products competing directly with their retail clients.

On 28 October 2015 the Commission adopted the Single Market Strategy[1] which announced a series of initiatives and actions to remove economically significant barriers holding back Europe's jobs, growth and investment agenda.

The primary responsibility to regulate the establishment and operation of retail shops lies with the Member States. They have a margin of discretion in designing their regulatory frameworks provided they comply with the fundamental Treaty freedom of establishment and freedom to provide services as well as the Service Directive.

Integration of the EU retail market has to a large extent taken place through establishment across borders. The ten largest retail companies in the EU are multinational and some of them have shops in the majority of the 28 Member States. The regulatory environment they have to deal with when establishing is crucial for the success of such investments. With development of e-commerce European retail markets are increasingly integrating also through distant sales across borders.

E-commerce provides new opportunities for retailers. Reaching out to consumers in other Member States has become easier in particular for smaller businesses. Online presence enables them to cross borders without the need to invest in physical premises. The cross-border expansion of retail also helps European consumers to benefit from the Single Market through an increased variety of the retail offer. Over 40% of European online buyers purchase products from abroad at least once a year and nearly 2 out of 3 have bought cross-border at least once in their life. Online platforms help SMEs to sell online and approach customers across the EU.

Digitisation is changing the retail sector in many ways. However, the regulatory frameworks have often been put in place decades ago and have not been adapted for the new reality created by e-commerce. Setting best practices for facilitating retail establishment and reducing operational restrictions in the retail sector must take into account the new retail reality which combines brick-and mortar and e-commerce in a multi-channel environment.

The purpose of this Public Consultation is to seek input from stakeholders for identifying best practices in the retail sector in the context of the above-mentioned follow-up actions of the Single Market Strategy. Commission services have already conducted extensive fact-finding on national retail legal frameworks and the public policy objectives behind these frameworks (detailed information can be found in the Roadmap available at https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2131884_en). This Public Consultation is intended to complete this fact-finding exercise in particular on:

- The implications of the growing importance of e-commerce and changing consumer habits for the retail sector and its regulatory framework;
- Opportunities and obstacles for the integration of the EU retail market.

The European Commission is interested in views from all relevant stakeholders, in particular from retailers, relevant public authorities and consumers. As per the Better Regulation principles the results of the Public Consultation will be duly published as well as the responses provided the respondents agree to publicly disclose their contributions.

[1] Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Upgrading the Single Market: More opportunities for people and business, COM(2015) 550 final.

II. Information about respondent

* Please indicate who you are

- Company providing retail services
- Retailers' association
- Consumer association
- Other business organisation (e.g. associations or chambers of commerce)
- National public authority
- Local public authority
- Other public authority
- Trade union

- Research institution/Think tank
- Citizen
- Other

* Please indicate your place of residence or establishment (main headquarters in case of multinational companies)

- 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
- Country from the EEA
- Non-EU country

III. Contact information and publication

Note that submissions that are sent anonymously will neither be published nor taken into account.

* Name of organisation and/or personal name

500 character(s) maximum

UNI Europa

* Address

500 character(s) maximum

rue Joseph II 40, 1000 Bruxelles

* Email address

500 character(s) maximum

barbara.bindner@uniglobalunion.org

* Would you agree to be contacted by the European Commission for possible follow-up questions on the basis of your responses?

- Yes
 No

Where relevant, please indicate your organisation's registration number in the Interest Transparency Register. To verify your registration number, click on this [Link](#).

Note: If your organisation/institution responds without being registered, the Commission will consider its input as that of an individual and will publish it as such.

200 character(s) maximum

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* Received contributions may be published on the Commission's website, with the identity of the contributor. Please state your preference with regard to the publication of your contribution below.

Please note that, whatever option chosen, your answer may be subject to a request for access to documents under [Regulation 1049/2001](#) on public access to European Parliament, Council and Commission documents. In this case, the request will be assessed against the conditions set out in the Regulation and in accordance with applicable [data protection rules](#).

- The contribution can be published including information on me or my organisation.** I consent the publication of all information in my contribution in whole or in part (which may include quotes or opinions I express) including the name of my organisation, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication.
- The contribution can be published provided that my organisation or I remain anonymous.** I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent the publication.

IV. The changing retail landscape: adapting to a multi-channel environment

The retail sector is undergoing structural changes through digitalisation. The main driver is e-commerce which is not only influencing the way consumers shop (they can shop online at any moment and from retailers established far away from where they live) but also modifies the landscape of the retail sector:

Brick-and-mortar or "traditional" retailers start selling online to better face competition from the so-called "pure players" (i.e. retailers active only online, without any physical presence on the market). At the same time, some pure players are considering that a physical presence on the market may be necessary to better reach consumers. Trends indicate that the future will be multi-channel implying retailers being active both offline and online (either through their own web shop or via platforms). Another trend is the creation of platforms offering retailers the possibility to sell their products in online "shopping centres". Some of these platforms are not only providing such a virtual shopping centre but have launched their own range of products competing directly with their retail clients.

In this changing landscape the regulatory frameworks should help retailers to adapt and to be able to grasp all the opportunities that e-commerce offers to them.

* What do you see as the most important changes in consumer shopping habits resulting from e-commerce?

3000 character(s) maximum

The rise of digitalisation has fundamentally changed the way products are bought and sold, increasing strongly the market share of internet and mobile device purchases. The frontiers of e-commerce and brick-and-mortar-stores are blurring, setting up a multi- and omnichannel environment. Consumers are enabled to switch easily from one to an other channel.

Innovation and new technologies can be an opportunity for better and more healthier jobs, better qualifications and higher wages.

Instead, the new e-commerce players do not use technologies only, but a large amount of precarious and low-paid work, with insufficient social protection and no social dialogue to get consumers used to rapid delivery, almost anytime and for free. The result is an emerging artificial and unsustainable demand for "anytime and immediately".

These demand puts pressure on the whole retail sector, deregulating social protections.

The cost of the dumping practises are paid by the workers, compagnies with good social practices, social protections systems and society.

V. Facilitating retail establishment in the EU

The existing retail establishment procedures in many Member States are perceived as lengthy and complex by retailers. The information gathered by the Commission's services indicates that the actual length for obtaining the necessary permits to establish can exceed considerably the length laid down by law. In practice, it may take years to establish even after a final positive decision due to factors such as abusive judicial challenges by competitors trying to delay as much as possible the entry on the market of a new competitor.

Finding relevant, accurate and understandable information online as well as being able to access and carry out administrative procedures online is crucial for those willing to use the advantages of the Single Market. To this end, the Commission recently adopted a Proposal for a Regulation to establish a single digital gateway to offer citizens and businesses easy access to information, procedures and assistance and the problem solving services they need for the exercise of their rights in the internal market.

* In which aspects could online procedures help to increase transparency in retail establishment procedures?

3000 character(s) maximum

It is important for companies but also for citizens, workers, consumers, tax payers to get transparent information on criteria for the establishment procedures and their link to sustainable objectives. Online procedures should help to eliminate the establishment of companies that are not in line with these sustainability criteria, facilitate the establishment of innovative more sustainable companies in a transparent and non discriminatory way. Online procedures should also be secure and not open the door to fraudulent practises. Member states should fix in national rules the effective control of identity.

VI. Requirements for the day-to-day operation of retail shops

Building on the [OECD's Product Market Regulation Indicator](#) and the information collected so far through its fact-finding exercise the Commission's services have identified the following requirements affecting the operation of retail shops:

1. Requirements for sales activities (regulations on shop opening hours, sales promotions and discounts and product-specific sales restrictions, e.g. non-prescription medicines).
2. Requirements for sourcing (regulations or private barriers limiting retailers' possibilities to source products from whom and from where they want).
3. Retail-specific taxes.

The ease in which consumers can today in the online environment buy the products and services they wish at any time challenges traditional retailers' setup. Indeed, almost half of the respondents to a recent [survey](#) mentioned that the possibility to order at any time of the day or week is crucial when deciding to shop online. This puts brick-and-mortar shops under pressure to match these consumers' expectations. Consequently, some Member States have recently reviewed their regulations to allow more flexibility on opening hours. This flexibility allows adaptation to actual consumer needs but may be challenging for smaller retailers and employees.

* What measures, if any, taken by national authorities in regulating shop opening hours could be helpful to support retailers and employees in adapting to new consumer shopping preferences and expectations?

3000 character(s) maximum

In a multichannel and omnichannel environment, digital technology enables consumers to order anytime, and at any company. It is an advantage for consumers with no significant impact on workers.

In the same time, work on unsocial hours in shops and in the delivery sector has a huge negative impact on the health of the workers, increasing the risk of physical and psychosocial damages. Authorities should proceed to a sustainable impact assessment, evaluate the benefits and costs for the workers concerned, for society and social cohesion in the long term.

Authorities should communicate about these negative impact and on the benefit of regular synchronized free time for well-being, family life, social activities.

Innovative models based on the respect of quality work and well being should be supported and disseminated. Social partners and in default public authorities should set up clear rules for the respect of healthy work in the whole retail chain including e-commerce.

* How could regulations on shop opening hours take into account the specific challenges for small retailers?

3000 character(s) maximum

Small retailers are undercut by bigger ones, the latest being better equipped with providing work organisation that allow opening for long hours. A clear and strong regulation of unsocial hours creates a level playing field and benefits to small retailers.

Sales promotions and discounts are essential for the commercial strategies of retailers. They provide an opportunity to attract new customers, encourage the use of a specific distribution channel or help to reduce and replenish stock. Sales promotions and discounts seem to be particularly important for online retailers to attract consumers on their websites.

Many regulations on sales promotions and discounts, e.g. time periods for end-of season sales, have been designed for a brick-and mortar environment. As cross-border e-commerce increases, applying such rules which differ between countries to e-commerce is becoming problematic. Consumers are more and more inclined to look for the most favourable offers beyond their national markets and are ready to switch vendors throughout the EU. Therefore, regulatory conditions limiting the possibility for retailers to decide on the right timing for running sales promotions can favour online retailers from Member States with less strict rules on sales promotions and discounts.

* Are sales promotions and discounts influencing shopping decisions?

- Yes
- No
- Not relevant/No opinion

* Has the influence changed because of e-commerce? Please elaborate.

3000 character(s) maximum

E commerce should respect the rules of the country of delivery.

All Member States restrict sales of certain categories of products such as alcohol, tobacco and medicines on health grounds. Some also restrict advertisement or promotions, sales to minors, forbid online sales or require distribution in specialised stores. In all Member States, the sale of medicinal products subject to medical prescription is reserved to pharmacies. In many Member States some non-prescription medicinal products can be sold outside pharmacies, although specific requirements may apply such as specific licenses for the store or nominating a pharmacist to be the person entitled to supply medicinal products to the public.

According to EU legislation, pharmacies can also sell prescription-only medicines online. Some Member States allow pharmacies to sell both prescription and non-prescription medicinal products online. EU legislation allows consumers, under certain conditions, to order non-prescription medicines authorised in their own Member State online from e-shops in other Member States. For example, such conditions ascertain that consumers have the same medicines in their national language from brick-and-mortar pharmacies or when the medicines are offered via distance selling. The measures also allow a rational use of medicines, the prevention of falsified medicines and the reporting of adverse events from the consumers to the public health authorities.

* Are you satisfied with the current possibilities to buy/sell products that are restricted to specific distribution channels?

- Yes
- No
- Not relevant/No opinion

* Do you believe that the existing sales channels for restricted products are appropriate for the health objectives pursued (e.g. rational use, risk of falsification or reporting of adverse events)?

- Yes
- No
- Not relevant/No opinion

* Do you believe that special requirements are justified for the sale of restricted products when considering online sales?

- Yes
- No
- Not relevant/No opinion

* Please state the products concerned (e.g. alcohol, tobacco, medicinal products, food, food supplements or medical devices) and explain.

3000 character(s) maximum

All mentionned

In the last few years, many Member States have adopted rules for promoting short supply chains to reduce retail's environmental impact and to encourage sustainability efforts. Retailers in many ways support such developments. In certain cases these new measures, however, seem to go beyond what is necessary to achieve this legitimate aim resulting in a disproportionate limitation of retailers' possibilities for sourcing products in line with consumers' preferences and preventing cross-border sourcing. These

requirements impede particularly retailers that are active in several Member States and have consequently built up cross-border supply chains to increase efficiencies, achieve more productivity and reduce costs to the ultimate advantage of consumers.

In addition to requirements for sourcing that may come from regulations, there may be private barriers that limit retailers' possibilities to source products from whom and from where they want. These can, for example, be in the form of territorial supply constraints that can be imposed by some multi-national suppliers that impede retailers from sourcing identical or similar goods cross-border and distributing them in the Member State where they are established.

* Are you aware of any restrictions retailers' face in your country regarding the sourcing of products?

- Yes
- No
- Not relevant/No opinion

In several Member States retailers have to pay retail-specific taxes, in other words taxes exclusively levied on retailers (VAT and taxes on products, such as alcohol, tobacco, energy and sugary products are, therefore, excluded from the scope of this Public Consultation). These taxes come in addition to general direct or indirect taxes that all enterprises pay. Specific retail taxes can be based either on floor space or turnover or a combination of both. If turnover is used as a tax base, online retailers might be explicitly excluded from their scope leaving the tax burden involved only on offline retailers.

* What could be done to ensure that the national tax regulatory frameworks provide for equal treatment between online and offline retailers?

3000 character(s) maximum

The national and European level should provide for a level playing field on all aspects that have an impact on competition :tax regulation is a very important element, but we need also a level playing field in social, environmental and consumer protection regulations. We assist to the rise of new players in particular in e-commerce who do not respect tax regulations nor social regulations such as labour law and social dialogue. The extensive use of precarious employment forms affects also negatively the amount of tax paid in the country by the workers and puts increased charges on the social protection system. There should be no market access as long as there are not established effective rules for elimination of dumping practices, and guarantees for equal treatment, on the basis of sustainability criteria.

VII. Compliance burden

In recent years the issue of better regulation and, in particular, the issue of compliance or administrative burden on businesses has gained increasing attention internationally, at EU level and in the Member States. Surveys carried out in a number of Member States have attempted to measure businesses' views on the burden of regulation and concluded that procedures to ensure compliance with regulations represent a significant burden for them. This is particularly true for SMEs - and the majority of retailers are SMEs. However, the Commission has not found any studies dedicated to the compliance burden for the retail sector.

* Which are the specific features, if any, of retail regulatory frameworks mostly affecting the compliance burden of retailers?

3000 character(s) maximum

We see no difficulty in retail establishment as the number of shops has been increasing over the last years, and competition getting fierce, in particular on low prices. Combined with the rise of e-commerce, we assist to a loss of productivity of the squaremeters which puts pressure on the wages. The regulatory framework should be based on clear criteria that enhances effective investment in sustainable retail, quality jobs, respect of collective agreements.

Contact

grow-e4@ec.europa.eu
