

DIN Consumer Council

(DIN-Verbraucherrat)

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Study

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Online marketplaces from the consumers' perspective: problems, barriers and solutions

Final report

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DIN-Verbraucherrat

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Abstract

Trade via online marketplaces accounts for almost half of total online retail sales. Online marketplaces – i.e. Internet platforms on which a large number of third-party sellers offer their products – have **many advantages** for consumers, in particular a wide range of products and standardised, simple transaction processes. At the same time, however, there are also **numerous diverse consumer problems** with transactions carried out via online marketplaces.

Against this background, **ConPolicy was commissioned by the DIN-Verbraucher-rat** (DIN Consumer Council) to **investigate consumer problems in transactions via online marketplaces** by means of a **literature analysis** and a **representative online survey** and to derive **recommendations for action for consumer policy and standardisation** from the results.

The key findings of the analysis are as follows:

- For the most part, **consumers do not have a clear understanding of the divided responsibility between online marketplaces and third-party sellers.**
- **Consumers face a variety of problems** when making transactions via online marketplaces. The focus is on the quality of the products supplied, their relevance for the customers' interests and the customer service provided by online marketplaces and third-party sellers.
- **Consumers expect online marketplaces to take responsibility** with regard to the transparency of their business model and the prevention of dubious business practices.

This leads to the following consumer policy recommendations:

- **Before making a decision**, consumers should be **clearly informed** that it is not the online marketplace but the **third-party seller who is the contractual partner** and, as such, the addressee of cancellation and warranty rights.
- From a consumer perspective, it makes sense for online marketplaces to have a **general subsidiary liability**, which always applies if consumers are harmed in the course of transactions with third-party sellers brokered by them and if the third-party seller fails to honour the liability.

The following recommendation for action is derived for consumer-oriented standardization:

- **Standardisation** can help to **clarify the definition of online marketplaces**, to **clearly communicate the division of responsibility** between online marketplaces and consumers and to **specify the design and testing obligations of online marketplaces** – either through a specific standardisation for online marketplaces or through additions to the general standards for online retail.

Abstract (German)

Der Handel über Online-Marktplätze macht fast die Hälfte des Gesamtumsatzes im Onlinehandel aus. Online-Marktplätze – also Plattformen, auf denen eine Vielzahl von Dritthändlern ihre Produkte anbieten – haben **für Verbraucher:innen viele Vorteile**, insbesondere ein **breites Produktsortiment** und **standardisierte, einfache Transaktionsprozesse**. Gleichzeitig zeigen sich aber auch **vielfältige Verbraucherprobleme** bei Transaktionen über Online-Marktplätze.

Vor diesem Hintergrund hat **ConPolicy im Auftrag des DIN Verbraucherrats Verbraucherprobleme bei Transaktionen über Online-Marktplätze** durch eine **Literaturanalyse** sowie durch eine **repräsentative Online-Befragung** untersucht und aus den Ergebnissen **Handlungsempfehlungen für Verbraucherpolitik und Normung** abgeleitet.

Die zentralen Ergebnisse der Bestandsaufnahme sind folgende:

- **Verbraucher:innen** haben großenteils **kein klares Verständnis von der Verantwortungsteilung zwischen Online-Marktplätzen und Dritthändlern**.
- **Verbraucher:innen** begegnen bei Transaktionen über Online-Marktplätze **vielfältigen Problemen**. Im Vordergrund stehen die Qualität der gelieferten Produkte, ihre Passung zu den Kundeninteressen, und der Kundenservice von Online-Marktplätzen und Dritthändlern.
- **Verbraucher:innen** erwarten, dass **Online-Marktplätze** mit Blick auf die Transparenz ihres Geschäftsmodells wie auch mit Blick auf die Verhinderung unseriöser Geschäftspraktiken **Verantwortung übernehmen**.

Für die Verbraucherpolitik folgen hieraus folgende Handlungsempfehlungen:

- **Vor der Entscheidungsfindung** sollten Verbraucher:innen deutlich **darauf hingewiesen werden**, dass nicht der Online-Marktplatz, sondern der **Dritthändler Vertragspartner** ist und als solcher Adressat von Widerruf und Gewährleistungsrechten.
- Aus Verbrauchersicht ist **eine generelle Auffanghaftung von Online-Marktplätzen** sinnvoll, die immer dann greift, wenn Verbraucher:innen im Verlauf der von ihnen vermittelten Transaktionen mit Dritthändlern geschädigt werden und wenn der Dritthändler als Adressat der Haftung ausfällt.

Für die verbraucherorientierte Normung leitet sich folgende Handlungsempfehlung ab:

- **Normung** kann zu einer **Begriffsklärung von Online-Marktplätzen**, zu einer **klaren Kommunikation der Verantwortungsteilung** zwischen Online-Marktplätzen und Verbraucher:innen sowie zu einer **Konkretisierung der Design- und Prüfpflichten der Online-Marktplätze** beitragen – entweder durch eine spezifische Normung für Online-Marktplätze oder durch Ergänzungen der allgemeinen Normen für den Onlinehandel.

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List of abbreviations

BEUC	European Consumer Organisation
bevh	German E-Commerce and Mail Order Association
B2B	Business-to-business
B2C	Business-to-consumer
C2C	Consumer-to-consumer
CEN	Comité Européen de Normalisation (European Committee for Standardisation)
DIN	German Institute for Standardisation
DIN-VR	DIN Consumer Council
DSA	Digital Services Act
GDPR	General Data Protection Regulation
FTC	Federal Trade Commission
ISO	International Standardisation Organisation
SME	Small and medium-sized enterprises
UGP policy	EU Directive 2005/29/EC against unfair commercial practices
UWG	German Law against Unfair Competition
vzbv	Verbraucherzentrale Bundesverband (German association of consumer advisory boards)

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1 Introduction

1.1 Background

In recent years, online retail has become increasingly important in the everyday lives of consumers. While sales in 2000 totalled 1 billion, they rose to over 90.4 billion in 2022.¹

In addition to traditional online sellers who sell their products via their own web-sites, online marketplaces are becoming increasingly important. Today, 87% of consumers in Germany already order regularly via online marketplaces.² Online marketplaces are online platforms on which a large number of third-party sellers offer their products via a platform. Online marketplaces accounted for around 48% of online retail sales in Germany in 2020. The remaining share of e-commerce sales was shared by traditional sellers, pure internet companies and traditional mail order companies.³

In the DACH region (Germany, Austria, Switzerland), the number of online marketplaces almost tripled between 2015 and 2022 to a total of 214. Between 2020 and 2022 alone, the number of marketplaces grew by 40%.⁴ Worldwide, more than half of the online retail volume now takes place via marketplaces. In 2022, goods worth 3.25 trillion US dollars were traded there.⁵

For consumers, online marketplaces offer important advantages over traditional e-commerce models. By aggregating numerous different third-party providers on a central platform, consumers can access a large selection of products and sellers with little effort and a high level of convenience. They also benefit from competition between sellers and economies of scale with large marketplace companies which in turn lead to lower product and distribution costs.⁶

At the same time, the rapid spread of marketplace offerings is accompanied by consumer protection-related challenges. Consumers primarily complain about counterfeit, damaged or incorrect goods, problems with returns and unjustified payment and collection claims.⁷ The intermediary position of marketplace operators means that it is more

¹ Statista (2023), E-commerce revenue from goods in Germany from 2000 to 2022. Retrieved from <https://de.statista.com/statistik/daten/studie/71568/umfrage/online-umsatz-mit-waren-seit-2000/> (18 July 2023).

² E-commerce-magazin (2022), Online marketplaces. Purchase decision depends on shipping quality. Retrieved from www.e-commerce-magazin.de/online-marktplatze-kaufentscheidung-hangt-von-der-versandqualitaet-ab/ (30 March 2023).

³ Næss-Schmidt, H., Basalisco, B., Gallagher, N., Poulsen, K., May Hansen, M., Ehmann, H., Virtanen, L. (2021), The importance of e-commerce for the German economy. Copenhagen Economics.

⁴ ecom consulting & gominga (2022), Study: The Marketplace World 2022. Online marketplaces and their success factors. Retrieved from <https://gominga.com/marketplace-world-2022/> (30 March 2023).

⁵ Conley, P. (2023, 17. February), US ecommerce in 2022 tops \$1 trillion for the first time, Digital Commerce 360. Retrieved from www.digitalcommerce360.com/article/us-ecommerce-sales/ (30 March 2023).

⁶ Burdon, T. (2021), The role of online marketplaces in enhancing consumer protection, Going Digital Toolkit Note, No. 7. Retrieved from https://goingdigital.oecd.org/data/notes/No7_ToolkitNote_ConsumerProtection.pdf (30 March 2023).

difficult for consumers to recognise who they are entering into a sales relationship with and who they can contact in the event of queries and complaints. In addition, the heterogeneity on marketplaces provides fertile ground for dubious and criminal offers such as dangerous and counterfeit products, scams and fake customer reviews. At the same time, law enforcement is made more difficult, as marketplaces generally only act as intermediaries what makes it difficult and costly for consumers to prosecute individual suppliers who act illegally.⁸

In a test conducted by the European consumer organisation BEUC, 66% of the products tested from relevant online marketplaces did not comply with the applicable EU safety regulations.⁹ Complaints made at consumer advisory boards were directed, for example, against fake information on FFP2 masks for infection protection.¹⁰

Legislators have taken various measures, particularly at EU level, to better protect the rights and interests of consumers in transactions via online platforms. Some of the resulting legal requirements have already come into force, while others are still in the negotiation or implementation phase. It is not certain that the consumer problems outlined above will be solved by the legislative measures already in force or those in preparation.

⁸ Burdon, T. (2021), loc. cit. (fn. 6).

⁹ Bureau Européen des Unions de Consommateurs (2020), Two-thirds of 250 products bought from online marketplaces fail safety-test, consumer groups find. Retrieved from www.beuc.eu/sites/default/files/publications/beuc-x-2022-029_products_from_online_marketplaces_continue_to_fail_safety_tests.pdf (30 March 2023).

¹⁰ Verbraucherzentrale Bundesverband (German association of consumer advisory boards) (2022), Consumer problems with online marketplaces. Retrieved from www.vzbv.de/sites/default/files/2022-02/Erkenntnis-Online-Marktplätze.pdf (30 March 2023).

1.2 Objective and questions

Against this background, the aim of this study commissioned by the DIN-Verbraucherrat (DIN Consumer Council, DIN-VR) is to describe the requirements that exist from the consumers' point of view for transactions on online marketplaces and to identify the problems and barriers that consumers currently encounter on online marketplaces.

1.2.1 Definition of online marketplaces in the context of this study

The study focuses on online marketplaces that mediate transactions between commercial sellers and private consumers (B2C online marketplaces).

Definition of "online marketplaces"

Online marketplaces are defined as electronically supported institutions for the exchange of services and physical goods that bring together supplying merchants and buyers and coordinate their transaction processes in a virtual trading space.¹¹ Suppliers, also known as third-party sellers, bear both the risk of the goods and the price sovereignty, while the marketplace only generates revenue through marketplace fees, commissions and services.¹²

Differentiation between online marketplaces and online shops

Online marketplaces shall first be distinguished from online shops or online sellers who offer their own products for direct sale on their website. However, the lines between them are not clear-cut. Some marketplaces are pure marketplaces, i.e. the operating company does not itself act as a seller (e.g. [ebay.de](https://www.ebay.de) and formerly [ebay-kleinanzeigen.de](https://www.ebay-kleinanzeigen.de)). Other marketplaces are hybrid companies that operate as both a marketplace and a seller. The latter applies to e.g. Amazon, Zalando and Otto.¹³

Differentiation between online marketplaces and comparison platforms

Online marketplaces must also be distinguished from comparison platforms such as Idealo, Check24 or Verivox:

Online marketplaces are characterized by a characteristic triangular relationship that implements itself between consumers, online sellers and the intermediary marketplace operators. The online marketplace selects the online sellers operating under its umbrella and enters into a contractual relationship with them. The online sellers bound by contract in this way design their offers under the umbrella of the online marketplace according to the specified conditions. The marketplace benefits

¹¹ Kollmann, T. (2023), E-Marketplace. Gabler dictionary of economics. Retrieved from <https://wirtschaftslexikon.gabler.de/definition/e-marketplace-51868> (18 July 2023).

¹² ecom consulting & gominga. (2022), loc. cit. (fn. 4).

¹³ Niederprüm, A., Junk, P. (2022), New delivery services, effects on market structures and competition policy implications. Wissenschaftliches Institut für Infrastruktur und Kommunikationsdienste (Scientific institute for infrastructure and communication services), p. 8. Retrieved from www.wik.org/fileadmin/user_upload/Unternehmen/Veroeffentlichungen/Diskus/2022/WIK_Diskussionsbeitrag_Nr_497.pdf (3 March 2023).

from contract conclusions through commissions, but the consumers' contractual partners are the individual online sellers.

Comparison platforms, on the other hand, create a market overview by comparing prices and services without the online shops or manufacturers being compared having to base their offers on the specifications of the comparison platform. The comparison platforms collect information about a large number of offers through their own online research, compile them and create rankings among these offers according to various criteria defined by the comparison website.¹⁴ The comparison platforms' offer is financed through commissions. These commissions are due when consumers conclude a contract to purchase a product or obtain a service after visiting the comparison platform.¹⁵

B2B, C2C and B2C marketplaces

There are various business models among the online marketplaces, which differ according to the addressees on the supplier and buyer side:

- B2B (business-to-business) platforms bring commercial suppliers and buyers together.
- Peer-to-peer or C2C (consumer-to-consumer) platforms mediate between non-commercial suppliers and buyers.
- B2C (business-to-consumer) marketplaces bring commercial suppliers and non-commercial consumers together.¹⁶

Only the latter B2C platforms are the subject of this study.

Focus of the study on the brokerage of goods purchases via B2C marketplaces

Finally, only those B2C online marketplaces that sell goods will be examined below. Online marketplaces in the area of services such as car rentals or booking websites for flights or holiday apartments are not the subject of this study.

¹⁴ Deges, F. (2021), *Bewertungssysteme im E-Commerce (E-commerce assessment systems)*. Springer Books. Retrieved from <https://link.springer.com/book/10.1007/978-3-658-34493-1> (3 March 2023).

¹⁵ Bundeskartellamt (German Federal Cartel Office) 2019, *Sektoruntersuchung Vergleichsportale (sector investigation on comparison websites)*, p. 20 ff. Retrieved from www.bundeskartellamt.de/SharedDocs/Publikation/DE/Sektoruntersuchungen/Sektoruntersuchung_Vergleichsportale_Bericht.html (3 March 2023).

¹⁶ Burdon, T. (2021), loc. cit. (fn. 6).

1.2.2 Key questions

The study is based on the following key questions:

1. **Market situation:** How does the market for online marketplaces look? Which key players are active here? How is the market divided?
2. **Transaction process:** What are the steps involved in transactions where goods are purchased via an online marketplace?
3. **Legal requirements:** Which key consumer law requirements control the market presence of online marketplaces vis-à-vis consumers?
4. **Consumer problems with online marketplaces:** What is the state of research on consumer expectations, problems and challenges? In which areas is there still a research gap that should be closed with the help of the consumer survey?
5. **Consumer experiences and expectations:** To what extent do consumers use B2C online marketplaces today? What problems and challenges have they already experienced? What expectations do they have of online marketplaces?
6. **Recommendations for action:** What conclusions and recommendations for action can be derived from the results for consumer policy and for the work of the DIN Consumer Council in standardisation within this subject area?

1.3 Method and structure of the report

Three methods were combined in the preparation of this report¹⁷:

The survey of sections 1 to 5 (market analysis, description of the transaction process, analysis of the legal position and description of consumer problems) was prepared by means of a **literature review**.

The findings gathered in this way about the current situation with regard to the consumers' position on online marketplaces formed the basis for conducting a **representative online survey** (see section 0). The aim of the survey was to supplement the existing findings on consumer problems and consumer expectations regarding online marketplaces. The survey therefore focussed on those aspects that had been little investigated by existing empirical data.

The questionnaire used in the survey was subjected to a pre-test with two experts to ensure the technical accuracy of the approach. The interview partners for these pre-tests were Carola Elbrecht, a consultant in the digital market observation team at the Verbraucherzentrale Bundesverband (vzbv, German association of consumer advisory boards), and Martin Groß-Albenhausen, Deputy Managing Director at the Bundesverband E-Commerce und Versandhandel e. V. (bevh, German e-commerce and mail order association). We would like to thank them for their contribution to this study.

The survey was conducted by the **market research company OmniQuest**. Details on the composition of the sample are presented in connection with the results of the survey (see section 0, p. 48).

In the final step, the results of the literature research and the survey were analysed (section 0). A **gap analysis** was carried out to compare the expectations of consumers with the established status quo. Consumer-specific policy conclusions were derived from this based on the existing legal and standardisation situation.

¹⁷ The authors would like to thank Leonie F. Herrmann, B.S. in Psychology, who was an intern at ConPolicy at the time this study was conducted, for her contribution to this study, especially in the design and implementation of the literature review and the evaluation of the representative survey.

2 Market situation for B2C online marketplaces in Germany

The market for B2C online marketplaces has become increasingly important in Germany and worldwide in recent years. 57% of German consumers reported in 2021 that they would shop exclusively or a lot on online marketplaces.¹⁸

As a basis for analysing consumer problems on online marketplaces, an overview of the market situation of B2C online marketplaces with regard to the number and the main players and sectors is provided below.

2.1 Turnover on B2C online marketplaces

2.1.1 Growth of online retail in general

Online retail has grown strongly overall. The most important sectors generate more than 40% of their total sales via online retail (see Figure Figure 1).¹⁹ The sectors with the highest turnover in online retail in 2021 included the fashion industry with 16.8 million euros in turnover and electronics and telecommunications with 14.3 million euros in turnover.²⁰

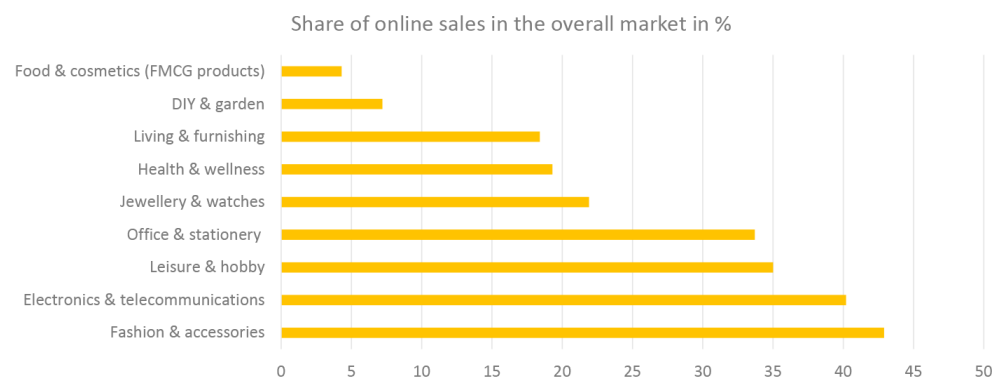


Figure 1: Online Monitor 2023;
Source: HDE German Retail Association

¹⁸ ecom consulting & gominga. (2022), loc. cit. (fn. 4).

¹⁹ IFH Köln (Cologne, Germany). (2023), HDE Online Monitor 2023. HDE German Retail Association. Retrieved from https://einzelhandel.de/index.php?option=com_attachments&task=download&id=10735 (18 July 2023).

²⁰ Bundesverband E-Commerce und Versandhandel Deutschland e.V. (German E-Commerce and Mail Order Association, 2023), Product groups in online retail by turnover in Germany in the years 2020 to 2022. Statista. Retrieved from <https://de.statista.com/statistik/daten/studie/253188/umfrage/umsatzstarke-warengruppen-im-online-handel-in-deutschland/> (18 July 2023).

2.1.2 Market share of online marketplaces

Within online retail, transactions on online marketplaces account for around 50% of sales.²¹ The trend in recent years shows that online marketplaces have become significantly more important compared to other online retail in the DACH region (see Figure 2). Marketplaces are predicted to account for 52% of total online retail in 2024, with an estimated growth rate of 18%. The forecast expects this increase to be driven primarily by further growth of the leading marketplace provider Amazon.²²

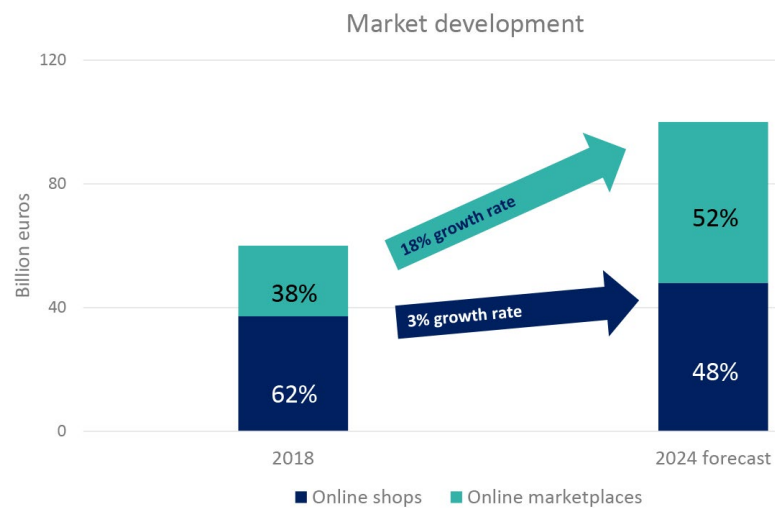


Figure 2: "Die Marktplatzwelt 2022" (marketplace world 2022);
Source: Gominga

Sales on online marketplaces are particularly relevant for small and medium-sized enterprises (SMEs). By definition, these include all companies with up to 249 employees and a turnover of up to 50 million euros.²³ Almost 30% of SMEs' turnover is generated via online marketplaces, while large companies only generate around 20% of their turnover on online marketplaces.²⁴

2.1.3 Specialists and generalists among the B2C online marketplaces

Online marketplaces can be categorised according to how many sectors they cover.

Most marketplaces specialise in one sector and only offer products from this sector for sale. 63% of online marketplaces in Germany follow this "specialist" business model (e.g. Douglas).

²¹ Niederprüm, A., Junk, P. (2022), loc. cit. (fn. 13).

²² ecom consulting & gominga. (2022), loc. cit. (fn. 4).

²³ Statistisches Bundesamt (Federal Statistical Office, 2023), Small and medium-sized enterprises (SMEs). Retrieved from www.destatis.de/DE/Themen/Branchen-Unternehmen/Unternehmen/Kleine-Unternehmen-Mittlere-Unternehmen/Glossar/kmu.html (18 July 2023).

²⁴ Næss-Schmidt, H., Basalisco, B., Gallagher, N., Poulsgaard, K., May Hansen, M., Ehmann, H., Virtanen, L. (2021), loc. cit. (fn. 3).

If products from different sectors are offered in parallel on an online market, this is referred to as a "multi-category" marketplace. The 17% that follow this business model include Zalando and Etsy, for example.

A total of 20% of all online marketplaces, including the three market leaders Amazon, Ebay and Otto, fall into the "everything store" category. These include products from at least seven sectors and therefore have a particularly diverse range.²⁵

2.2 Market shares and concentration of market power on online marketplaces

The US digital company Amazon holds a highly dominant position in online retail in general and among online marketplaces.

Amazon had a market share of 56% in online retail in Germany in 2022. Of this, 17% came from Amazon's online shop and 39% from the sales of third-party sellers under the umbrella of Amazon Marketplace. All other marketplaces together only accounted for 11% of total online sales in 2022 (see Figure 3).

Despite a decline in sales for online retail as a whole, Amazon's power is further emphasised by the fact that the Group was able to show countervailing sales growth of around 3% between 2021 and 2022. This is an indication that Amazon could further monopolise online retail and the marketplace landscape in the future.²⁶

²⁵ ecom consulting & gominga. (2022), loc. cit. (fn. 4).

²⁶ IFH Köln (Cologne, Germany). (2023), loc. cit. (fn. 19).

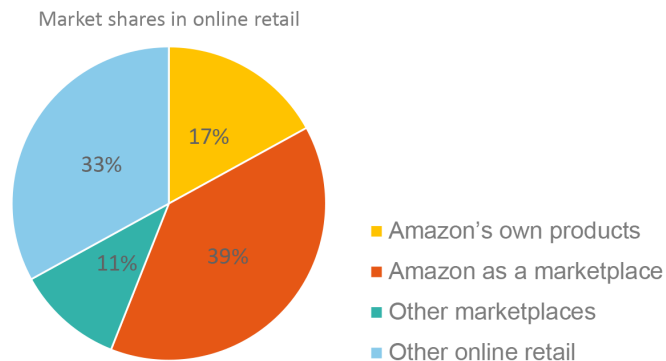


Figure 3: Market shares in online retail;
Source: HDE German Retail Association

In absolute figures, Amazon has a market volume of 46.8 billion euros, of which Amazon Marketplace accounts for around 70% at around 31 billion euros. The turnover of Amazon Marketplace also accounts for 78% of the total turnover generated on online marketplaces.²⁷

Amazon's market power in online retail is also reflected in some other figures: 74% of online purchases begin with an online search on Amazon.²⁸

In Germany alone, Amazon has 17 million Prime members, i.e. customers with a Prime account that is linked to a loyalty programme for customer retention. 93% of Prime members renew their Prime membership after one year, 98% after two years.²⁹ Users of powerful platforms seem to take on a more passive consumer role, which makes them vulnerable in the long term. Amazon also makes it difficult for its Prime members to cancel their membership³⁰, which has led to a lawsuit against Amazon by the Federal Trade Commission (FTC) in the US.³¹

However, not only customers but also third-party sellers are becoming dependent on Amazon. For small and medium-sized enterprises in particular, marketing under the Amazon umbrella is both an opportunity and a risk: on the one hand, Amazon gives companies broad customer access. On the other hand, they shall pay high commissions for this, they accept that they are less able to distinguish themselves on the market and lose direct customer contact. Moreover, they run the risk of their business model being copied by Amazon with their own offers and being squeezed out of the market in the longer term.³²

²⁷ Niederprüm, A., Junk, P. (2022), loc. cit. (fn. 13).

²⁸ ecom consulting & gominga. (2022), loc. cit. (fn. 4).

²⁹ ecom consulting & gominga. (2022), loc. cit. (fn. 4).

³⁰ Myrstad, F., Kaldestad, Ø.H. (2022, 14 January), Amazon manipulates customers to stay subscribed, Forbrukerradet. Retrieved from www.forbrukerradet.no/news-in-english/amazon-manipulates-customers-to-stay-subscribed/ (18 July 2023).

³¹ Sokolov, D. (2023, 22 June), FTC sues for imposing Prime subscriptions, *heise*. Retrieved from www.heise.de/news/FTC-verklagt-Amazon-weil-es-Prime-Abo-aufdraengt-9194422.html?wt_mc=nl.red.ho.ho-nl-daily.2023-06-22.ansprache.ansprache (18 July 2023).

³² The New York Times (2023), *Prime* Power: How Amazon Squeezes the Businesses Behind Its Store. Retrieved from www.nytimes.com/2019/12/19/technology/amazon-sellers.html (18 July 2023).

In order to counteract the “Amazonisation of consumption”, various proceedings have been initiated by the Bundeskartellamt (German Federal Cartel Office) and the European Commission.³³ In 2019, the Bundeskartellamt (German Federal Cartel Office), together with the Austrian Federal Cartel Office, took action against the terms and conditions that were unfavourable to sellers. The proceedings ended in July 2019 with some improvements, for example in the areas of liability, returns and cancellation.³⁴ Immediately afterwards, the European Commission also launched an in-depth investigation into Amazon’s dual role as a marketplace service provider and seller. A number of concerns were investigated in relation to the usage of data taken from the Buy Box and Prime, which put third-party sellers at a disadvantage compared to Amazon’s own online shop. This procedure was declared closed in December 2022, when the commitments offered by Amazon were accepted by the Commission.³⁵ Another ongoing proceeding by the Bundeskartellamt (German Federal Cartel Office) against Amazon Marketplace has two parts and addresses behaviour by Amazon that puts competition at risk. Firstly, it is investigating price control mechanisms that have the potential to penalise offers from third-party sellers on the basis of pricing. Secondly, brand gating is being investigated – i.e. the possibility offered by Amazon for brand manufacturers to exclude third-party sellers from selling their products via the German Amazon Marketplace if they authorise Amazon as a seller.³⁶

³³ Heide, D., Hofer, J., Kapalschinski, C., Kolf, F., Weishaupt, G. (2018), So mächtig ist Amazon in Deutschland (This is how powerful Amazon is in Germany), Handelsblatt. Retrieved from www.handelsblatt.com/unternehmen/handel-konsumgueter/e-commerce-so-maechtig-ist-amazon-in-deutschland/23578310.html (18 July 2023).

³⁴ Gassler, M. (2019), The Austro-German proceedings against Amazon and its online marketplace, Journal of European Competition Law & Practice, Vol. 10, 9. <https://doi.org/10.1093/jeclap/lpz061>.

³⁵ European Commission (2022), Antitrust: Commission accepts commitments offered by Amazon. Retrieved from https://germany.representation.ec.europa.eu/news/kartellrecht-kommission-akzeptiert-verpflichtung-sangebote-von-amazon-2022-12-20_de (18 July 2023).

³⁶ Bundeskartellamt (German Federal Cartel Office) (2022), Extension of ongoing proceedings against Amazon to also include an examination pursuant to Section 19a of the German Competition Act (GWB). Retrieved from www.bundeskartellamt.de/SharedDocs/Meldung/DE/Pressemitteilungen/2022/14_11_2022_Amazon_19a.html (18 July 2023).

3 Transaction process for purchases via online marketplaces

Transactions via online marketplaces are complex processes that begin with companies' advertisements and consumers' search activities even before the actual purchase and have consequences beyond the purchase through the right of cancellation, warranty rights and user reviews.

The overall process that the customer goes through in the course of a transaction, including the pre-purchase and post-purchase phases, is known in marketing as the customer journey.³⁷ The intention of marketing here is to make the points of contact ("touch points") between consumers and a company as user-friendly as possible so that users progress to the next step of the customer journey up to the purchase and so that they report on their positive experience after the purchase and thus bring more customers to the seller.

At the same time, however, these touchpoints are where consumer problems become apparent when dealing with online shops and online marketplaces. Seen from this perspective, the customer journey is used as a structuring aid for the following analysis of consumer problems; models taken from marketing activities are adapted for this purpose. The technical steps of the transaction process, as described in the ISO 32111 standard for transaction security in online retail³⁸, are used for this purpose. They are described from a consumer perspective, i.e. limited to the central aspects that are perceptible and relevant for consumers.

³⁷ For general information on the customer journey and the individual phases and steps described below, see Lemon, K.N., Verhoef, P.C. (2016), Understanding customer experience throughout the customer journey, *Journal of Marketing*, Vol. 80, 6, S. 69–96. <https://doi.org/10.1509/jm.15.0420>; Zinkann, R., Mahadevan, J. (2018), Zukünftige Customer Journeys und deren Implikationen für die Unternehmenspraxis (Future customer journeys and their implications for business practice), *Marketing Weiterdenken: Zukunftspfade für eine marktorientierte Unternehmensführung* (Thinking ahead in marketing: future paths for market-oriented corporate management), pp. 157–169.

³⁸ ISO/TC 321 (2023), ISO 32111:2023, Transaction assurance in E-commerce — Principles and framework. Retrieved from <https://www.iso.org/standard/80876.html> (10 December 2023).

3.1 Actors involved in the transaction process via online marketplaces

From the consumer's point of view, shopping via an online shop is comparable to shopping in an analogue shop – apart from the digital communication channels: The consumer selects the right goods from the online shop's product range and then concludes a purchase contract with the online shop. Even if difficulties arise later, the online shop and its staff are the consumer's point of contact (see Figure 4 below).

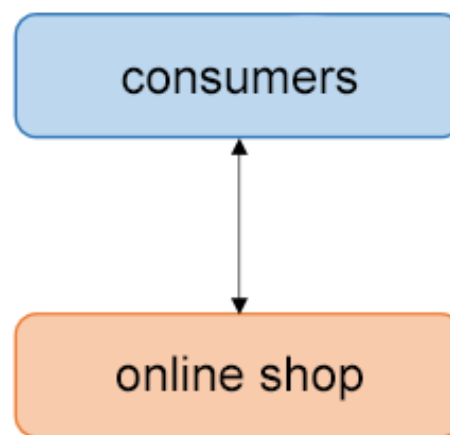


Figure 4: Customer relationships when purchasing via an online shop;
Source: ConPolicy (their own illustration)

The situation is different when purchasing via an online marketplace: Here, consumers are always faced with two players, i.e., the online marketplace and third-party sellers. It is often unclear who has which tasks and responsibilities in this three-party relationship (cf. Figure 5 below).

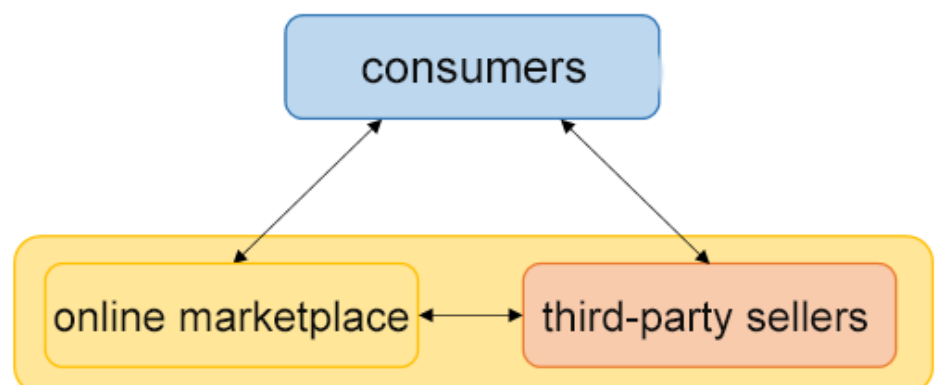


Figure 5: Customer relationships when shopping via an online marketplace;
Source: ConPolicy (their own illustration)

In addition, consumers have points of contact with a large number of players, from advertisers and payment service providers to freight forwarders. The online marketplace provides the umbrella for the entire process.

In this respect, the following description of the individual transaction steps also includes the interaction of the online marketplace with other players (see Figure 6 below).

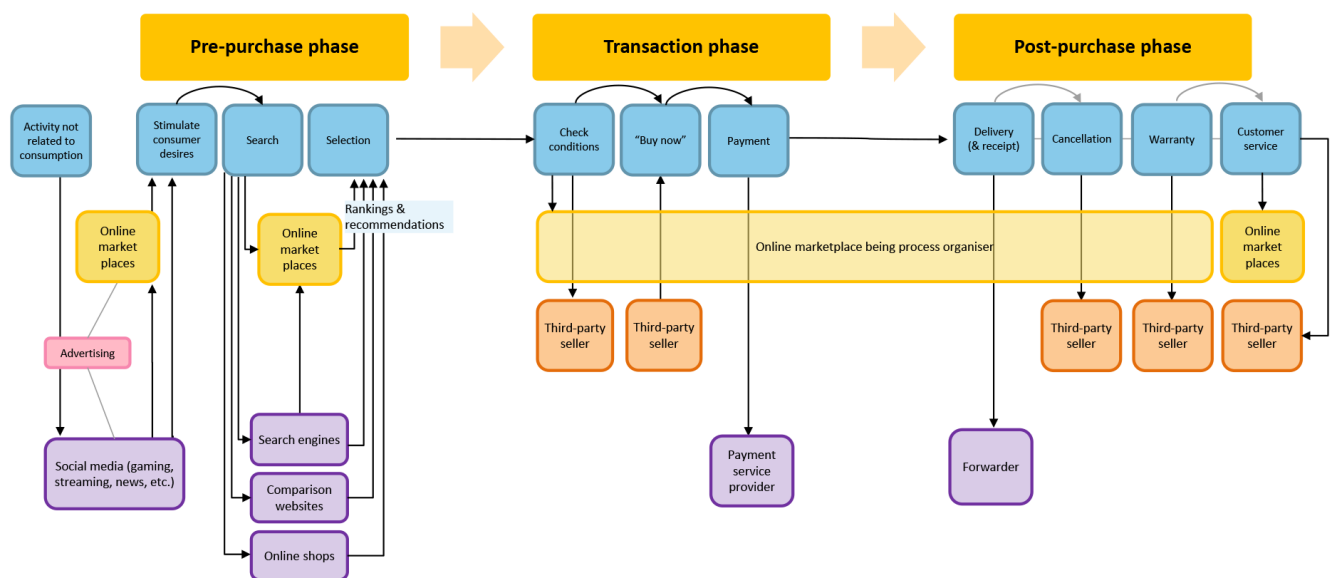


Figure 6: Customer journey when shopping via online marketplaces when other players are involved;
 Source: ConPolicy (their own illustration)

3.2 Pre-purchase phase

The pre-purchase phase comprises those consumer contact points with the product category, the brand and the sales environment that precede the actual transaction.

This phase is initially characterised by personalised advertising on the internet, which is used to stimulate consumer desires. Digital players who are not themselves active in online retail but offer other services such as gaming, streaming, information and communication via messenger services and email play a major role here. Consumers spend over 75% of their time online on such attention platforms³⁹. This means that these services have extensive opportunities to influence consumer wishes.⁴⁰ Online shops and online marketplaces use this opportunity through personalised advertising.

The second stage within the pre-purchase phase begins as soon as a consumer desire exists that can be satisfied by a purchase. Consumers then begin to search for specific offers. To do this, consumers use search engines and comparison websites, but increasingly also the offers on online marketplaces directly. All of these platforms allow consumers to choose from a variety of potentially suitable offers based on recommendations and various ranking criteria.

Steps in consumer behaviour	Contact points for digital services
<p>Not primarily consumption-related Internet activities (gaming, streaming, communication via social media and information media)</p> <p>→ Sometimes, stimulation of a desire to consume</p>	<p>Advertising-financed offers from attention platforms</p> <p>Personalised advertising from online marketplaces and online shops</p>
<p>Preparation of a transaction</p> <ul style="list-style-type: none"> • Search for suitable offers • Selection of an offer 	<p>Ranking and recommendations from search engines, comparison websites, online marketplaces</p>

Table 1: Steps of the customer journey in the pre-purchase phase

³⁹ Andree, M., Thomsen, T. (2020), Atlas der digitalen Welt (atlas of the digital world).

⁴⁰ cf. Lell, O. (2023), Nachhaltigkeits- und verbraucherorientiertes Systemdesign für digitale Plattformen (sustainability and consumer-oriented system design for digital platforms). Short study in the Governance Innovation Labs research line, retrieved from <https://codina-transformation.de/wp-content/uploads/2023-Systemdesign-fuer-Plattformen-vF.pdf> (18 July 2023).

3.3 Transaction phase

Once consumers have made their selection decision, the transaction phase begins. This includes the interactions with the seller and the sales environment (here: online marketplace), which come about through a final selection, order and payment. In this phase, a large number of process steps are compressed into a tight time frame. Data is exchanged in a triangle between consumers, third-party sellers and the online marketplace; other players such as payment service providers or shipping companies are often also included in the data exchange.

The most important steps in the transaction phase are bringing all product specifications and contract terms to the consumer's attention, often customer registration, and conclusion of the contract with the third-party seller. This is concluded by clicking the "Buy now" button on the online marketplace website, followed by payment and delivery of the goods to the customer.

From the merchant's perspective, the individual steps leading up to the conclusion of the contract always harbour the risk that the customer will cancel the transaction because the process is too lengthy, the product does not meet expectations after all or the customer does not agree with the contract terms. The efforts of online marketplaces to reach the "conversion", i.e. to conclude a contract, are concentrated here.

Steps in consumer behaviour	Contact points for digital services
Acknowledgement of all contract terms and product specifications	Product specifications, general terms and conditions, delivery terms, payment terms, returns modalities of the third-party seller
Customer registration, if applicable	Registration with the online marketplace
Conclusion of contract	"Buy now" button on the website of the online shop with confirmation of all previously displayed contract terms
Payment	Payment service providers (banks, credit card companies or specialised online payment services)

Table 2: Steps of the customer journey in the transaction phase

3.4 Post-purchase phase

The post-purchase phase describes the customer's interaction with the product and his/her environment after the purchase has been completed. The product itself becomes the main point of contact here. A decisive aspect of the post-purchase phase is therefore the extent to which the customer is satisfied with the product or may decide to return the product or purchase a replacement product. Contacting customer service with questions or dissatisfaction also falls into this phase.

From the consumer's perspective, the most important steps in the post-purchase phase are the delivery and receipt of the goods, the assertion of consumer rights such as cancellation, warranty and guarantee rights, the use of customer service if the product should be repaired or serviced, as well as repeat orders and the rating of the product.

Steps in consumer behaviour	Contact points for digital services
Receipt of the goods	Delivery by forwarding agent or third-party seller or online marketplace
Cancellation	Exercising the right of cancellation against third-party sellers with return and refund of the purchase price
Warranty	Assertion of defect rights (repair, replacement delivery, return)
Service	Maintenance and repair by manufacturer or by repair service provider
Repeat order	Purchase of another product on the online marketplace, possibly from the same third-party seller or on the marketplace's associated online shop
Rating	Communication of experience via forums, review portals, online shops and online marketplaces

Table 3: Steps of the customer journey in the post-purchase phase

3.5 Summarising the customer journey

According to the detailed analysis presented in the previous sections, transactions when purchasing via online marketplaces are complex processes. They begin with the stimulation of a desire to consume even before contact is made with the online marketplace itself and continue with the selection process up to purchase and delivery of the product.

For the following analysis of consumer problems in the course of the transaction process, the transaction process is broken down into the pre-purchase phase, the transaction phase and the post-purchase phase. Within these individual phases, the problems shown in the following Figure 7 are analysed in more detail.

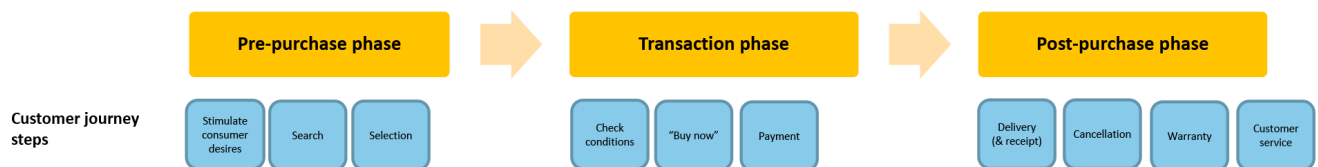


Figure 7: Steps of the customer journey for transactions via online marketplaces;
Source: ConPolicy (their own illustration)

4 Consumer law requirements for transactions on online marketplaces

As a background for the following description of consumer problems in the area of online marketplaces, the basic relevant consumer law requirements are presented in this section. On the one hand, these are the general requirements of the fair trading law, which apply equally to all phases of the customer journey (hereinafter section 0), as well as specific legal requirements for individual aspects of the pre-purchase phase, the transaction phase and the post-purchase phase (see sections 0, 0, and 0).

4.1 Requirements of the fair trading law for transactions on online marketplaces

Transactions on online marketplaces, like all forms of competitive behaviour, are subject to the requirements of the fair trading law. The fair trading law describes the rules of fair economic behaviour that every company shall comply with when competing for the supply and purchase of economic services. It serves to protect competitors and consumers as well as the public interest in undistorted competition. Its legal basis is the EU Directive 2005/29/EC against Unfair Commercial Practices (UCP Directive) and the German Law against Unfair Competition (UWG, Gesetz gegen unlauteren Wettbewerb), which implements the UCP Directive in German law.

The basic requirements of competition regulations are the prohibition of misleading advertising pursuant to Section 5 of the German Law against Unfair Competition (UWG, Gesetz gegen unlauteren Wettbewerb) and the general prohibition of unfair commercial behaviour pursuant to Section 3 UWG. This is substantiated by numerous examples of unfair business practices. Some of these also relate to specific cases in online retail, as explained below using the individual steps of the customer journey. At the same time, Section 3 UWG, as a general requirement of fair competition, also offers the opportunity to prevent new, previously unknown forms of unfair competitive behaviour.

For the relevant case of online platforms, the Digital Services Act (DSA) further specifies and concretises the requirements of the fair trading law. Accordingly, providers of online platforms shall not design, organise or operate their online interfaces in such a way that users are deceived, manipulated or otherwise significantly impaired or hindered in their ability to take free and informed decisions. The EU Commission is authorised to issue guidelines for the further specification of this provision (Art. 25 DSA). However, these DSA provisions do not apply until 17 February 2024 (Art. 93 DSA).

4.2 Pre-purchase phase

4.2.1. Requirements for personalised advertising

In the pre-purchase phase, online marketplaces and online shops try to attract the attention of consumers and stimulate consumer desires through personalised advertising. According to the General Data Protection Regulation (GDPR), the associated data collection is only permitted on the basis of the consumer's prior voluntary consent. Cookies are usually set for data collection, which also require consent in accordance with the ePrivacy Directive. The cookie banners used to obtain consent are usually designed in such a way that consumers are induced to give their consent wherever possible. The extent to which this is legally permissible is controversial. In particular, the limited accessibility of "decline" buttons and button designs in general are criticised, as they use colour or contrast, for example, to encourage users to give their consent rather (Noyb, 2021). Such practices deliberately make it more difficult to refuse tracking authorisation. At the same time, it is accepted that the authority to store and process data without the explicit wish of consumers is obtained.

4.2.2 Requirements for the display of ranking results

Like all commercial activities, the communication of ranking results on online marketplaces shall not be misleading. For example, if products are listed according to price, then the offer shown as the cheapest shall actually be the cheapest and not ultimately more expensive than competing offers due to the subsequent addition of additional fees or additional prices.

Recent EU legislation has also established further legal requirements for the communication of ranking results. According to the Modernisation Directive implemented in the UWG, the main parameters for determining the ranking of the advertised goods or services as well as the relative weighting of the main parameters for determining the ranking compared to other parameters shall be provided (Section 5b para. 2 UWG).

The Digital Services Act supplements these provisions. Accordingly, users shall be given the opportunity to select and change their preferred option for selecting the ranking parameters at any time (Art. 27 para. 3 DSA).

4.2.3 Requirements for user reviews

Fake user reviews, i.e. user reviews that do not originate from the alleged author, and manipulated user reviews are generally illegal due to a violation of the prohibition of misleading advertising under competition legislation.⁴¹ However, the prohibition of mis-

⁴¹ Bundeskartellamt (German Federal Cartel Office) (2020), Sektoruntersuchung Nutzerbewertungen (Sector enquiry into user ratings). Final report. Retrieved from www.bundeskartellamt.de/SharedDocs/Publikation/DE/Sektoruntersuchungen/Sektoruntersuchung_Nutzerbewertungen_Bericht.html (19 July 2023).

leading advertising has obviously not been able to adequately prevent such infringements to date.

Since May 2022, additional EU law-based⁴² transparency regulations for user reviews have applied, which have been implemented in the German Law against Unfair Competition. According to these regulations, online shops and websites shall provide information on whether all reviews are published or according to which rules reviews are deleted. They shall also provide information on whether the published reviews originate from consumers who have actually purchased or used the rated products. If so, they shall provide information on how they ensure this. However, online shops and websites can continue to publish reviews where the actual use of the reviewed products is not a prerequisite for the rating.

To a certain extent, these transparency obligations can make it easier to provide evidence of competition law infringements in the case of user ratings, for example if the deletion of posts does not appear at first glance to comply with the reported rules and a reversal of the burden of proof can be derived from this. However, other manipulations of user reviews are at best only partially covered by these transparency obligations.⁴³

4.3 Transaction phase

4.3.1 Dark Patterns

If consumers are urged into concluding a contract during the transaction phase, the provisions of the UWG apply, which prohibit aggressive business practices (Section 4a UWG). These provisions are supplemented by the prohibition of manipulation under the Digital Services Act (Art. 25 para. 1 DSA, see section 0 above).

4.3.2 Contractual division of liability between online marketplace and third-party seller

The triangular relationship between the online marketplace, the third-party seller and the consumer leads to the following legal division of roles: There is an intermediary contract between the online marketplace and the consumer. Its object is the mediation of the conclusion of a contract between the third-party seller and the consumer. A purchase contract is concluded between the third-party seller and the consumer after successful mediation.

This means that only the relationship between the third-party seller and the consumer shall be decisive for the fulfilment of the purchase contract, the payment of the purchase price, the delivery of the goods, the cancellation of the purchase contract and the assertion of warranty rights.

⁴² Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules.

⁴³vzbv (2023), Kein Verlass auf Online-Bewertungen (no reliance on online ratings). Retrieved from www.vzbv.de/pressemitteilungen/kein-verlass-auf-online-bewertungen (19 July 2023)

As a result, it can be difficult for consumers to enforce their rights if the contractual partner, i.e. the third-party seller, is based in a non-EU country and is therefore difficult to prosecute.

The basic model of separating contractual responsibility between online platforms and third-party sellers will continue to apply after the Digital Services Act (DSA) comes into force. However, it will be modified: According to the DSA, consumer liability for breaches of consumer law by third-party sellers also applies to online marketplaces if an average consumer can assume that incorrect information or a defective product that triggers liability is provided by the online marketplace itself or by a third-party seller subject to the supervision of the online marketplace (Art. 6 para. 3 DSA). However, it is questionable what requirements the Digital Services Act places on the attention and the legal understanding of consumers in this respect. The reason is that while third-party sellers are certainly recognisable on the online presence of a marketplace, they are not particularly highlighted.

4.3.3 Information obligations under the Consumer Rights Directive and the Digital Services Act

The Consumer Rights Directive regulates the conclusion of contracts for online purchases. According to this, before the contract is concluded, the consumer shall be provided, in a clear and comprehensible form, with key information relevant to the conclusion of the contract, such as the characteristics of the goods, the identity and address of the supplier, the total price, the right of cancellation and its modalities (Art. 6 of Directive 2011/83/EC).

The contract is concluded when the consumer activates a button labelled with the words "order with obligation to pay" or a corresponding clear formulation (Art. 8 (2) of Directive 2011/83/EC).

Since the contract is concluded between consumers and third-party sellers as described above, the information obligations under the Consumer Rights Directive apply to the third-party seller.

However, the DSA also introduces corresponding obligations for online marketplaces: Firstly, online marketplaces shall design the input fields and requirements for third-party sellers in such a way that the third-party sellers can fulfil their legal obligations, including under the Consumer Rights Directive (Art. 31 (1) DSA). Furthermore, they shall ensure that third-party sellers can at least provide information to identify the products, a sign to identify the company and, if necessary, the labelling and marking of the product as required by EU law (Art. 31 para. 2 DSA). They shall also "make every effort" to assess whether the above information is actually provided by third-party sellers before allowing them to offer their products on an online marketplace, and they shall carry out random checks on the basis of publicly available information to determine whether the products offered have been classified as being unlawful (Art. 31 para. 3 DSA).

Furthermore, online marketplaces shall also ensure that third-party sellers provide information that is necessary for their identification. They shall also "make every

effort" to verify the accuracy of the information using generally accessible data sources (Art. 30 DSA).

If there are sufficient grounds for suspicion, online marketplaces shall request third-party sellers to correct or update the information. If third-party sellers do not comply, online marketplaces shall remove the third-party sellers concerned from the offer without delay until they have fully complied with the request (Art. 30 para. 3 DSA). This obligation also means that online marketplaces are obliged to a certain extent to take precautions against fake suppliers. The extent to which this will in fact change the situation for consumers will depend on the actual implementation.

4.4 Post-purchase phase

4.4.1 Sales law and warranty law

The purchase contract between the consumer and the third-party seller initially entitles the consumer to the delivery of goods that are free of defects and in conformity with the contract. If the third-party seller does not fulfil this claim, the consumer's claim to fulfilment continues to exist.

If the third-party seller delivers goods but they are defective, the consumer has legal rights accruing from defects in accordance with Section 437 of the German Civil Code (BGB). According to this, the consumer can choose between various rights, i.e.

- subsequent performance, i.e. rectification of the defect or delivery of a defect-free item,
- withdrawal from the purchase contract with the consequence of unravelling the contract of services already rendered,
- reduction of the purchase price or
- compensation for damages or reimbursement of futile expenses.

4.4.2 Consumer Rights Directive

The provisions of contract law also continue to apply to the post-purchase phase. In particular, the Consumer Rights Directive 2011/83/EC gives consumers the right to cancel the purchase contract within 14 days of receiving the ordered goods and have the purchase price refunded. The law assumes that consumers have to bear the costs of returning the goods. The seller may bear the costs of returning the goods on their own initiative, but is not obliged to do so (Art. 14 para. 1 sentence 2 of Directive 2011/83/EC).

4.4.3 Product safety legislation

Product safety requirements in Germany are regulated by the Product Safety Act (ProdSG). The EU legal basis for the Product Safety Act to date has been the General Product Safety Directive 2001/95/EC. Product safety legislation has been reorganised at EU level with the adoption of the new General Product Safety Regulation. This will come into force on 13 December 2024.

The Product Safety Regulation will also impose obligations on providers of online marketplaces. For example, they shall designate a central point of contact through which the market surveillance authorities can communicate with them, independently of other obligations of economic operators. Providers shall also register with the Safety Gate portal and provide details of this point of contact (Art. 22 para. 1 GPSR). Furthermore, they are obliged to offer a comparable contact point through which consumers can communicate directly and quickly with the online marketplace provider on questions relating to product safety (Art. 22 para. 2 GPSR). In addition, they shall meet organisational obligations (Art. 22 para. 3, 10 GPSR) as well as extensive notification and cooperation obligations towards the market surveillance authorities (Art. 22 para. 4 et seq. GPSR) in order to contribute to ensuring product safety.

However, further demands from consumers that online marketplaces should be seen as an integral part of the supply chain and should therefore bear full responsibility for ensuring that only legally compliant products reach the EU market⁴⁴ were not taken up in the legislative process.

⁴⁴vzbv (2023), Neue Vorschriften für Produktsicherheit haben Lücken beim Online-Handel, Europäisches Parlament verabschiedet allgemeine Produktsicherheitsverordnung (New product safety rules have gaps in online retail, European Parliament adopts general product safety regulation). Retrieved from www.vzbv.de/meldungen/neue-vorschriften-fuer-produktsicherheit-haben-luecken-beim-online-handel (18 July 2023).

4.5 Summarising key consumer law requirements for online marketplaces

To summarise, consumer law contains a wealth of legal requirements for the transaction process when shopping via online marketplaces.

The requirements of the fair trading law in accordance with the German Law against Unfair Competition (UWG) apply throughout all phases of the transaction process and are supplemented and concretised in part by the DSA.

According to sales contract law, the sales contract is concluded between the third-party seller and the consumer. The consumer can therefore only claim delivery of the goods and his/her right of cancellation with the third-party seller. Under DSA, however, the contractual obligations also apply to the online marketplace under certain conditions.

The DSA also establishes design obligations for online marketplaces so that third-party sellers can fulfil their information obligations under the Consumer Rights Directive. Furthermore, the DSA obliges online marketplaces to request information from third-party sellers regarding their reliable identification and to remove offers from third-party sellers from the network in cases of suspicion.

The new provisions of product safety law also establish reporting and cooperation obligations for online marketplaces in their cooperation with market surveillance authorities (cf. Figure 8).

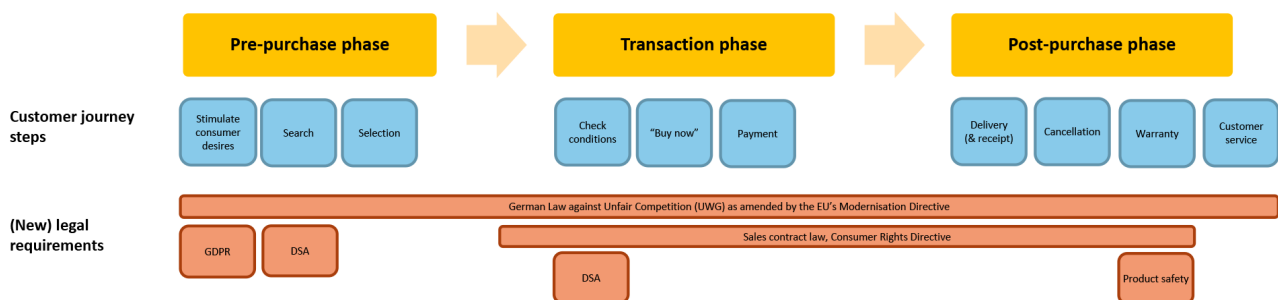


Figure 8: Consumer law requirements for transactions made via online marketplaces;
Source: ConPolicy (their own illustration)

5 Consumer problems and complaints data

The aim of this section is to determine the data available on consumer problems and complaints. This step serves as the basis for the subsequent consumer survey (see section 0), as the survey is intended to supplement the existing empirical findings with further issues that have not yet been investigated in depth.

5.1 Methodology of the literature analysis

For the literature analysis, the **first step** was to define the relevant search terms and identify suitable databases. In order not to overlook any potential consumer problems, both German-language sources and English-language sources were considered. The search terms defined were *"online marketplaces"* (*"Online-Marktplätze"*) AND *"consumer problems"* / *"consumer issues"* (*"Verbraucherprobleme"*) OR *"consumer complaints"* (*"Verbraucherbeschwerden"*). To further specify the search if necessary, *"Germany"* (*"Deutschland"*) AND/OR *"Amazon"* OR *"Ebay"* OR *"Otto"* was optionally added. The databases identified as relevant for the search were Google Scholar, Academic Search Premier (via EBSCO-host), Business Source Premier, ERIC, and Web of Science.

In a **second step**, a search was carried out for relevant sources in the aforementioned databases and on the websites of relevant consumer organisations (in particular of the vzbv and of consumer advisory boards). From the search results, a total of 44 sources were identified for more detailed analysis on the basis of a screening of titles and abstracts. The content analysis of these 44 sources led to a concentration on 17 main sources in which the relevant information on consumer problems with regard to online marketplaces was found.

5.2 Data on general consumer problems with online marketplaces

For Germany, a representative population survey commissioned by the vzbv in 2020 provides a comprehensive overview of consumer problems with online marketplaces (hereinafter referred to as the "2020 vzbv Survey"). According to this survey, 23% of respondents had experienced problems when purchasing within Germany or the EU, while the number of problems with orders from non-European sellers totalled 41%.⁴⁵ The most important problems related to late and completely cancelled deliveries and poor product quality. Other problems included (in order of frequency of problems) returns or refunds, customer service, unexpected charges for customs or shipping, unclear contact persons, order cancellation, confusion about contractual partners and delivery of unsafe products.⁴⁶

⁴⁵vzbv (2020), Verbraucherfrust statt Einkaufsglück. Erkenntnisse aus der Marktbeobachtung (Consumer frustration instead of shopping happiness. Findings from market observation). Retrieved from www.vzbv.de/sites/default/files/downloads/2020/11/24/ergebnisbericht-globaler-onlinehandel.pdf (27 March 2023).

⁴⁶ vzbv (2020), loc. cit. (fn. 45).

From an international perspective, consumer problems on online marketplaces were comprehensively analysed by the OECD in 2022 (hereinafter referred to as "2022 OECD Survey").⁴⁷ In this study, 15 online marketplaces and consumer protection authorities from 28 countries were surveyed. The consumer complaints received by consumer protection authorities mainly concerned misleading marketing practices, fraud and settlements of disputes. Other reasons for complaints included (in order of frequency of problems) counterfeit products, unsafe products, unfair terms and conditions, delays in delivery of goods, and fake ratings and reviews. Among the complaints received by the online marketplaces themselves, the most important reasons for complaints were late or non-delivery and deviation of the actual product condition from the product description (incomplete or damaged products, poor product quality or significant differences between the product and the description).

The vzbv's market observation reports a significant increase in complaint cases at the three dominant online marketplaces Amazon, Ebay and Otto from 2018 to 2021. At Amazon, the number of complaints increased fivefold to 1,600 in 2021. There were between 500 and 600 complaints each about Otto and Ebay in 2021. The consumer complaints related to a wide range of concerns from product safety to problems with delivery and returns, fraud and fake shops, incorrect information and many more.⁴⁸

Compared to the volume of sales and the number of transactions carried out via online marketplaces, these complaint figures remain low. It should be noted though that only a small proportion of aggrieved or dissatisfied consumers address consumer advisory boards. Whether consumer problems actually result in a complaint depends on many factors, such as the extent of dissatisfaction⁴⁹ and the presumed likelihood that the complaint will lead to a solution to the problem.

More specific findings on consumer problems on online marketplaces are presented below according to the steps of the customer journey developed in the previous section.

⁴⁷ OECD (2022), The role of online marketplaces in protecting and empowering consumers: Country and marketplace survey findings. OECD Digital Economy Papers No. 329. Retrieved from www.oecd.org/publications/the-role-of-online-marketplaces-in-protecting-and-empowering-consumers-9d8cc586-en.htm (29 October 2023). Summarising this, Burdon, T. (2021), loc. cit. (fn. 6).

⁴⁸ vzbv (2022), loc. cit. (fn. 10).

⁴⁹ Lee, S., Cude, B.J. (2012), Consumer complaint channel choice in online and offline purchases. *International Journal of Consumer Studies*, Vol. 36, 1, pp. 90–96.

5.3 Consumer problems in the pre-purchase phase

5.3.1 Interference with privacy and freedom of choice through personalised advertising

Online marketplaces and the third-party sellers operating on them use personalised advertising to draw consumers' attention to their offers and stimulate consumer desires. Personalised advertising is associated with interference in the privacy and freedom of choice of consumers and is therefore increasingly being criticised.⁵⁰

When consumers are specifically asked whether they consent to their personal data being used to target advertising, a clear majority reject this: In a representative survey of over 2,000 social media users, 57% agreed with the statement: "I do not want my personal data to be used to target advertising to me, whether for business or political purposes."⁵¹

Since the majority of consumers reject the use of their data for advertising purposes, but the General Data Protection Regulation requires consent to the data collection and data processing required for this, users are persuaded to give their consent using so-called dark patterns. 90% of consumers consent to the use of personal data by clicking "Accept" in cookie banners, although only 3% of consumers actually agree to their personal data being collected and processed by companies.⁵² The request for consent to data storage and processing is designed in such a way that users' behavioural tendencies are exploited to persuade them to give their consent (Fourberg et al., 2021).

5.3.2 Ranking in favour of the marketplace operator's own products

Given the wealth of information on the internet, consumers are reliant on filtering information about available products to find out which offers suit their needs. For this purpose, consumers use search engines and comparison websites, but increasingly also the offers on online marketplaces directly, which also allow searches and rankings according to certain criteria.

However, from a consumer perspective, there is a risk that consumers searching on an online marketplace will not be recommended the products that best match their wishes and interests. Rather, there is a possibility that products will be particularly recommended if a third-party seller pays an increased commission for this. Online marketplaces also have an interest in emphasising products from their own shop if they have their own shop offering in addition to the marketplace offering. On Amazon, products that carry the "Amazon's Choice" label are particularly recommended in the search, as are "Amazon Basics" products, i.e. products manufactured and sold by Amazon itself. A random investigation carried out by the Ver-

⁵⁰ Cf. Lell, O. (2023) loc. cit. (fn. 40).

⁵¹ Noyb (2021), Noyb aims to end "cookie banner terror" and issues more than 500 GDPR complaints. Retrieved from <https://noyb.eu/en/noyb-aims-end-cookie-banner-terror-and-issues-more-500-gdpr-complaints> (23 June 2023).

⁵² Noyb (2021), loc. cit. (cf. fn. 51).

braucherzentrale Nordrhein-Westfalen (North Rhine-Westphalia, Germany, consumer advisory board)⁵³ has shown that products with the “Amazon’s Choice” quality label are often neither particularly good value nor of high quality.

5.3.3 Insufficient information about products

Although a wealth of information can in principle be conveyed via digital media, the information available in online shops and online marketplaces is often not sufficient to guarantee a match between the product and consumer requirements. Specific information such as material composition, sustainability aspects or durability is often not available, as this would require sellers to carry out time-consuming detailed work. This problem arises in particular with online marketplaces, as the marketplace operator often only provides sellers with general specifications regarding the required product information.⁵⁴

Accurate information is essential when shopping for a child car seat, for example, to ensure that the orientation, size and safety features match personal preferences. If consumers lack information about the product’s features or the satisfaction of past buyers, this increases their uncertainty as to whether the product meets their preferences and needs.⁵⁵ This can lead to consumers either refraining from making a purchase on an online marketplace or realising afterwards that the product they purchased was a bad buy and cancelling the purchase.

In order to reduce cost-driving returns, online sellers are looking for ways to avoid incorrect purchases. The most important measures here include concrete and standardised product descriptions. Sizes and fits, for example, should be standardised for all textiles; details such as patch pockets, embroidery or logos should also be shown. High-resolution photos and zoom views are necessary for this. In addition, the option of personalised advice and virtual dressing tools (digital tools for determining the fit) should also be offered. Finally, the display of customer reviews is also recommended to give potential buyers the opportunity to compare their own expectations with the experiences of other customers.⁵⁶

⁵³ Verbraucherzentrale Nordrhein-Westfalen (North Rhine-Westphalia, Germany, consumer advisory board) (2020), Stichprobe zum Gütesiegel “Amazon’s Choice”: Amazons fragwürdige Empfehlungen. Pressemitteilung vom 05.02.2020 (Random sample for the “Amazon’s Choice” quality label: Amazon’s questionable recommendations. Press release from 5 February 2020). Retrieved from www.verbraucherzentrale.nrw/pressemitteilungen/presse-nrw/stichprobe-zu-amazons-choice-amazons-fragwuerdige-empfehlungen-44212 (18 July 2023).

⁵⁴ O’Rourke, J. (2017), Improving Product Information on Amazon. Retrieved from <https://medium.com/improving-product-information-on-amazon-92dfc37a6f17> (19 July 2023).

⁵⁵ Hong, Y., Pavlou, P. A. (2014), Product fit uncertainty in online markets: Nature, effects, and antecedents, *Information Systems Research*, Vol. 25, 2, pp 328–344.

⁵⁶ Heinemann, G., Mulyk, A. (2023), bevh-Retourenkompendium (bevh return handbook), 2nd edition, bevh. Retrieved from <https://bevh.org/daten-studien/retourenkompendium> (27 October 2023).

5.3.4 Fake user reviews

In addition to rankings and purchase recommendations, customer reviews are also an important guide for consumer decisions. On the one hand, reviews can influence the order in which products are presented; on the other hand, good and very good reviews also give a feeling of security.

However, the usefulness of customer reviews is considerably limited by the fact that operators of online shops and portals systematically influence them. The aim of this influence is to improve the appearance of the products or services being reviewed. To this end, negative reviews are deleted or obstructed, for example by forcing reviewers to retract bad reviews with letters from lawyers or claims for damages. In contrast, vouchers are issued to encourage the highest ratings, or dubious review brokers are used to achieve the desired positive ratings. Users of the affected online shops are harmed by this. Customer reviews are a key decision-making criterion for them. If customer reviews are manipulated, they lead to purchasing decisions that are not in the users' interests.⁵⁷

5.4 Transaction phase

5.4.1 Conclusion of contracts with fake suppliers

Fake suppliers refer to fake third-party shops under the umbrella of an online marketplace. This means that the shop website was only set up for the purpose of getting consumers to place an order and pay. The alleged seller usually does not have a real shop infrastructure or the products ordered and has no intention of delivering them.

Real-looking online shops can be created with little technical effort, especially under the umbrella of an online marketplace, as there are freely accessible modular systems on the Internet for this purpose.

There are features that can be used to distinguish fake shops from genuine web shops, such as spelling mistakes or misspelled brand names, conspicuously low prices, a missing legal notice and, in particular, that the web shop only offers payment in advance – because advance payment is the easiest way to induce consumers to make payments without consideration.

⁵⁷ Bundeskartellamt (German Federal Cartel Office) (2020), Sektoruntersuchung Nutzerbewertungen (Sector enquiry into user ratings). Final report. Retrieved from www.bundeskartellamt.de/SharedDocs/Publikation/DE/Sektoruntersuchungen/Sektoruntersuchung_Nutzerbewertungen_Bericht.html (23 June 2023); Verbraucherzentrale Bundesverband (vzbv, German association of consumer advisory boards) (2019), Sektoruntersuchung Nutzerbewertungen (sector enquiry into user ratings). Statement by the Verbraucherzentrale Bundesverband (vzbv, German association of consumer advisory boards) on the consultation paper about the Bundeskartellamt's (German Federal Cartel Office's) sector enquiry into user ratings. Retrieved from www.vzbv.de/sites/default/files/downloads/2020/08/14/20-08-13_vzbv_stellungnahme_bkarta_sektoru_nutzerbewertungen.pdf; www.verbraucherzentrale.de/wissen/vertraege-reklamation/kundenrechte/was-ist-von-onlinebewertungen-zu-halten-13724 (retrieved on 18 July 2023).

For independent online shops with their own URL, the German consumer advisory board⁵⁸ and the Online-Gütesiegel Trusted Shops (Trusted Shops quality label organisation)⁵⁹ have set up the Fakeshop Finder app. It is used to check online shops for suspicious features and compare them with a list of reported fake shops. However, these verification services do not show suspicious third-party sellers under the umbrella of an online marketplace. Apart from this, caution when selecting contractual partners is important. However, it is not sufficient to prevent cases of fraud, as fake shops and fake offers on online marketplaces now operate professionally. They publish similar fraudulent offers under other domains or third-party merchant profiles after an online shop has been blocked.

This raises the question of the responsibility of marketplaces to identify and take action against fake shops under their umbrella. Marketplaces appear to differ greatly in terms of the strictness of registration as a third-party seller. For example, some operators only require a name and an email address to register. In the 2022 OECD Survey, only three of the 15 online marketplaces surveyed stated that they carry out a screening process in which the details in a third-party seller's application are checked against existing accounts to ensure that sellers who have previously been banned cannot return to the platform under a new alias.⁶⁰

The vzbv also reports cases in which consumers have reported fake shops to online marketplaces, but the online marketplace has not taken any action even upon request.⁶¹

5.4.2 Dark patterns in the purchasing process

Dark patterns are manipulative designs or processes that are intended to induce consumers to make decisions that they would not have made if they were fully informed and able to choose alternatives.⁶² Such dark patterns are also used on online marketplaces to trick consumers into concluding a contract. According to the 2022 OECD Survey, both national consumer protection authorities and the online marketplaces surveyed agree that misleading marketing practices are the most important reason for consumer complaints.

One example of dark patterns in online retail is the use of urgency or shortage notices ("only 3 items left") to persuade consumers to make a purchase. Another ex-

⁵⁸ vzbv (2023), Fakeshop-Finder – Ist dieser Online-Shop seriös (is this online shop trustworthy)? Retrieved from www.verbraucherzentrale.de/fakeshopfinder-71560 (18 July 2023).

⁵⁹ Trusted Shops (2023), Fake-Shops – Nicht jeder Shop, der gut aussieht, ist auch vertrauenswürdig (not every shop that looks good is trustworthy). Retrieved from www.trustedshops.de/fake-shops/ (18 July 2023).

⁶⁰ OECD (2022), loc. cit. (fn. 47).

⁶¹ vzbv (2022), loc. cit. (fn. 10).

⁶² Burdon, T. (2021), loc. cit (fn. 6).

ample is the practice of displaying unfavourable conditions such as chargeable returns or additional fees not until shortly before payment.⁶³ Such unpleasant surprises either lead to consumers cancelling the purchase process⁶⁴ or to them buying the goods despite the less favourable conditions.

It is even more serious for consumers if they are not informed about costs and fees during the sales process at all, but are charged afterwards. When ordering from outside the EU, unexpected fees for customs or shipping are a problem for 18% of consumers.⁶⁵ One complaint reported to the Verbraucherzentrale (German consumer advisory board), for example, was about a consumer who had not been warned about the amount of import taxes levied on a delivery from abroad.⁶⁶

5.4.3 Unclear legal obligations of online marketplaces and third-party sellers

By pressing the "Buy now" button, a purchase contract is concluded between the third-party seller and the consumer. As a result, the third-party seller is also the addressee for warranty claims. The third-party seller is also the correct address for returns and is obliged to refund the purchase price in the event of cancellation. The online marketplace is only obliged to generally ensure compliance with legal provisions by the third-party sellers operating on its platform.

However, this division of roles is not always clear to consumers. According to the 2020 vzbv Survey, 9% of respondents had already experienced the problem of the contractual partner being unclear when making online purchases outside the EU; 6% of respondents had had this experience when making online purchases within the EU.⁶⁷

There is a risk that consumers' trust in the online marketplace will lead them to also trust the third-party providers operating on the marketplace⁶⁸ and overlook indications of their lack of trustworthiness. If the purchased goods do not meet expectations, problems arise. According to the 2020 vzbv Survey, 60% of consumers have already encountered difficulties contacting the third-party seller when making purchases outside the EU.⁶⁹ If an amicable solution to the problem is not possible, consumers have little opportunity to enforce their rights against third-party sellers in non-EU countries.

⁶³ OECD (2022), loc. cit. (fn. 47), p. 18; Mathur, A. et al. (2019), Dark Patterns at Scale: Findings from a Crawl of 11K Shopping Websites, <https://doi.org/10.1145/3359183>.

⁶⁴ For example, in 40% of the cases, where, at the time of checkout, returns turn out to be subject to charges; cf. Heinemann, G., Mulyk, A. (2023), loc. cit. (fn. 56)

⁶⁵ vzbv (2020), loc. cit. (fn. 45).

⁶⁶ vzbv (2022), loc. cit. (fn. 10).

⁶⁷ vzbv (2020), loc. cit. (fn. 45).

⁶⁸ Hong, I.B., Cho, H. (2011), The impact of consumer trust on attitudinal loyalty and purchase intentions in B2C e-marketplaces: Intermediary trust vs. seller trust. *International journal of information management*, Vol. 31, 5, pp. 469–479.

⁶⁹ vzbv (2020), loc. cit. (fn. 45).

5.5 Consumer problems in the post-purchase phase

5.5.1 Non-delivery and excessive delivery times

According to the 2020 vzbv Survey, consumer problems most frequently complained about with respect to online marketplaces are excessive delivery times and non-deliveries.

For goods ordered from outside the EU, 57% of consumers surveyed complained about long delivery times, compared to 33% for orders within the EU.

48% of consumers have already experienced non-delivery for orders outside the EU, compared to 47% for orders within the EU.⁷⁰

Non-delivery was another main reasons for complaints received by consumer advisory boards about the online retail platforms Amazon, Ebay, and Wish.⁷¹ In this context, deliveries of entirely wrong goods (e.g. cat food instead of a MacBook Pro) count among non-deliveries.⁷²

According to the 2022 OECD Survey, too, non-deliveries and excessive delivery times are the most important reasons for consumer complaints about online marketplaces.⁷³

5.5.2 Poor product quality

According to the 2020 vzbv Survey, poor product quality is the third most important problem, after late and cancelled deliveries, that consumers complain about when shopping via online marketplaces. When shopping outside the EU, 44% of respondents had already experienced poor product quality, compared to 36% of respondents when shopping within the EU.⁷⁴ Accordingly, the consumer centres also report complaints about non-functioning, damaged and incorrectly delivered goods.⁷⁵

This finding is supplemented by the complaint statistics of the online marketplaces surveyed by the OECD. According to these, one particular aspect of poor product quality, that is counterfeiting, is a central reason for complaint.⁷⁶

In legal terms, the cases of poor product quality that frequently occur here are for the most part product defects within the context of warranty legislation, i.e., when the product does not correspond to the contractually agreed target quality. This is the case if the product arrives damaged, if it has functional defects, but also if it is counterfeit, i.e. was not produced by the alleged manufacturer. A product defect within the context of warranty legislation also exists if the product does not have

⁷⁰ vzbv (2020), loc. cit. (fn. 45).

⁷¹ vzbv (2022), loc. cit. (fn. 10).

⁷² vzbv (2022), loc. cit. (fn. 10).

⁷³ OECD (2022), loc. cit. (fn. 47), p. 12.

⁷⁴ vzbv (2020), loc. cit. (fn. 45).

⁷⁵ vzbv (2022), loc. cit. (fn. 10).

⁷⁶ OECD (2022), loc. cit. (fn. 47), p. 12.

the characteristics (material, origin, functionality, technical specifications) that were stated in the product description on the shop's website.

The data sources analysed as part of this study thus indicate that poor product quality is an important consumer problem when purchasing via online marketplaces. However, it is not possible to determine how frequent the various possible causes of poor product quality are in detail (e.g. damage, functional defects, counterfeiting, deviation of the quality from the product information).

5.5.3 Failure of delivered products to meet consumer expectations

It takes more for the delivered product than being free of defects in the legal sense to meet consumer expectations. As explained above in connection with the product information available at the time of selection, the accordance of the expected product quality that is suitable in the specific situation with the actual product quality is a demanding goal that is often not achieved in practice (see 0 above).

The fact that the products delivered often do not meet consumer expectations can be seen indirectly from the high returns rate. Between 2017 and 2021, an average of 8% to 10% of customers benefited from their right of cancellation of an online purchase. For fashion products, this is even between 20% and 25%.⁷⁷

However, the data sources analysed as part of this study do not identify the lack of conformity of the delivered products with consumer expectations as a pressing consumer problem. The reason for this may be that the right of cancellation gives consumers the opportunity to cancel the purchase if the product does not fit.

In view of the time consumers spend on returns and the environmental impact of delivery traffic and the destruction of returns, it should nevertheless be clarified how serious consumers perceive incorrect purchases to be and what the specific reasons are for the mismatch between product expectations and product quality.

5.5.4 Unsafe, non-compliant products

Online marketplaces give consumers access to third-party sellers from all over the world – and therefore also from countries where product safety is not warranted or is only warranted to a lesser extent than in the EU.⁷⁸ An investigation into the safety gaps of 250 products from online marketplaces revealed that 66% did not meet EU safety standards.⁷⁹ Examples of this include smoke detectors that do not trigger an alarm in the event of a fire, toys with individual parts that children can swallow and hazardous chemicals in a large number of products.⁸⁰

⁷⁷ Heinemann, G., Mulyk, A. (2023), loc. cit. (fn. 56)

⁷⁸ vzbv (2023), loc. cit. (fn. 44)

⁷⁹ Bureau Européen des Unions de Consommateurs (2020), Two-thirds of 250 products bought from online marketplaces fail safety-test, consumer groups find. Retrieved from www.beuc.eu/sites/default/files/publications/beu_c-x-2022-029_products_from_online_marketplaces_continue_to_fail_safety_tests.pdf (30 March 2023).

⁸⁰ Bureau Européen des Unions de Consommateurs (European Consumer Organisation) (2020), loc. cit. (fn. 79).

In the perception of consumers, security deficiencies tend to play a minor role. In the 2020 vzbv Survey, 5% of consumers stated that they had experienced problems when purchasing products from non-EU countries on online marketplaces, and 3% of consumers when purchasing EU products. However, these figures should take into account that safety deficits are often not recognisable to consumers – for example, if a product contains dangerous chemicals that do not directly lead to health problems.

According to the vzbv survey, 84% of consumers expect products on online marketplaces to be safe and free from risk. 93% of consumers also expect marketplace operators to ensure compliance with EU safety standards; 89% of respondents expect stricter checks in this regard.⁸¹

According to the 2022 OECD Survey, marketplace operators themselves also recognise the problem of product safety as one of the most significant consumer problems for them. Safety deficits ranked fifth in the order of consumer complaints to marketplace operators.⁸²

In this context, there are reports of wide-ranging differences between marketplaces with regard to the obligation to indicate information when offering products. Some marketplaces require clear product identifiers and information on product safety compliance, while others do not ask for any information at all. If product identifiers are incorrect or even completely missing, it is difficult or impossible for the marketplace operator to respond to product recalls due to a lack of product safety and remove affected items from the offer. Marketplace operators also mention the problem of checking the accuracy of existing product identifiers. Some marketplaces also state that it is not possible for them to ensure that their third-party sellers are sufficiently informed about their obligations and the guidelines applicable on the marketplace. Although information material about unauthorised products or product requirements is sent to them via seller portals or emails, it is not possible to ensure that this information actually reaches the third-party sellers in full.⁸³

5.5.5 Difficulties in processing returns

From the consumer's point of view, the right of cancellation in online retail is an important instrument for correcting bad or incorrect buys. However, exercising the right of cancellation is often associated with difficulties in practice. In the 2020 vzbv Survey, 31% of respondents reported difficulties with returns and refunds for purchases from non-EU countries, compared to 23% of respondents for purchases from EU countries.⁸⁴ For example, providers did not provide a return address, they did not provide a return label or they did not even respond to consumers contacting them. In some cases, sellers also offer discounts or vouchers instead of taking

⁸¹ vzbv (2020), loc. cit. (fn. 45).

⁸² OECD (2022), loc. cit. (cf. fn. 47), p. 13.

⁸³ OECD, loc. cit. (cf. fn. 47).

⁸⁴ vzbv (2020), loc. cit. (fn. 45).

back the goods or try to deter customers from exercising their right of cancellation by imposing high return costs and long waiting times.⁸⁵

At 88.7%, the proportion of free returns in Germany is significantly higher than in other EU countries (52.4%) – a key reason why Germany is the European leader in returns rates at 6.5%. From a legal perspective, free returns are a voluntary offer from online sellers. In Germany, however, this voluntary offer has developed into an expectation on the consumer side. For 92% of consumers, the option of free returns is important to very important and thus determines their purchasing decision. From an environmental perspective, however, free returns should be viewed critically because they are seen as an incentive for careless ordering. From a consumer perspective, free returns are also less positive than they appear at first glance. This is because the expected costs for returns are already factored into sales prices. In this respect, returns are a cross-subsidy, as customers who rarely return items are also paying for the customer group with a high returns rate.⁸⁶ Under the impression of rising costs and an increasing awareness of sustainability, a certain trend towards chargeable returns is emerging (Spiegel, 2022). A survey by the market research institute Civey suggests that returns costs would have a certain steering effect on the purchasing behaviour of younger customer groups that tend to be more return-intensive.⁸⁷

5.5.6 Customer service and dispute resolution

If there are problems with the goods ordered on online marketplaces or if consumers want to assert their rights against the seller, they often find that customer service and dispute resolution do not meet their expectations. This is particularly annoying for consumers when errors occur in the processes of online marketplaces that can only be corrected manually – for example, when returns are made impossible by an unfounded account blocking or when the online marketplace insists on payment even though the goods were not the ones ordered and have been demonstrably returned.⁸⁸

In the 2020 vzbv Survey, 60% of respondents reported that they had difficulties finding the right contact person when making purchases outside the EU. 40% were ultimately able to find the right contact person via detours and referrals, but 20% of respondents were unable to do so. 36% of respondents who made contact to resolve a problem stated that their problem could not be resolved as a result.

⁸⁵ vzbv (2021), Probleme mit dem Widerruf im Online-Handel (Problems with returns in online sales). Retrieved from www.vzbv.de/pressemitteilungen/probleme-mit-dem-widerruf-im-online-handel#:~:text=Dazu%20liegen%20dem%20Verbraucherzentrale%20Bundesverband,auf%20Widerruf%20macht%20es%20m%C3%B6glich (19 July 2023).

⁸⁶ Heinemann, G., Mulyk, A. (2023), loc. cit. (fn. 56).

⁸⁷ Heinemann, G., Mulyk, A. (2023), loc. cit. (fn. 56), p. 56.

⁸⁸ Examples according to vzbv-Marktbeobachtung (vzbv market survey), vzbv (2022), loc. cit. (fn. 10).

This corresponds to the results of the 2022 OECD Survey, according to which dispute resolution or the lack thereof was an important reason for consumer complaints according to the national consumer protection authorities and the online marketplaces surveyed.

5.6 Summary of the state of knowledge about consumer problems and conclusions for the survey

To summarise, there are comprehensive findings on consumer problems with online marketplaces. These are supported by representative surveys and case studies carried out by the vzbv, consumer advisory boards, the OECD and by other studies.

The studies analysed show the following problems for the pre-purchase phase:

- personalised advertising with profiling and manipulative designs to obtain consent for data collection
- rankings that serve the interests of the online marketplace, but not the interests of consumers
- inadequate or misleading product information and
- fake and manipulated customer reviews.

The following are known from the transaction phase

- purchase transactions with fake dealers
- dark patterns to persuade consumers to make a purchase and
- lack of clarity about the division of roles between the online marketplace and third-party sellers.

The following are documented from the post-purchase phase

- non-delivery or unreasonably long delivery times that were not clearly communicated in advance
- poor product quality
- unsafe, non-compliant products
- lack of conformity of the product quality with consumer expectations
- difficulties with returns and
- poor customer service and lack of dispute resolution.

This means that the data available sufficiently recognise the nature of consumer problems. In addition, the vzbv survey from 2020 in particular also provides data on the frequency of various consumer problems.

However, some of the consumer problems identified here have not yet been fully analysed. In particular, this applies to the question of how consumers, before making a purchase, can gain certainty as to which of the products on offer meets their expectations and suits their individual situation.

Although general data is available on other consumer problems, more specific questions remain unanswered. For example, although there is evidence that poor product quality is a serious consumer problem when buying via online marketplaces, there is no evidence of what the poor product quality consists of in detail – how often counterfeit products occur, how often products are damaged, how often they malfunction or how often the actual product condition deviates from the product information displayed at the time of purchase.

For some other consumer problems, the question still arises as to the extent to which consumers themselves are aware of the problems, whether consumers can protect themselves against the corresponding risks through appropriate knowledge and careful selection of the third-party sellers they visit, and what expectations they have of online marketplaces and policy makers in this respect. For example, it is unclear to what extent consumers are aware of the differences between online marketplaces and the third-party sellers operating there, whether they are informed about the division of responsibility between the two players and whether they would like to see online marketplaces take on more responsibility. There are still few insights into consumers' knowledge and attitudes towards the problems of dark patterns, manipulated product rankings and manipulated customer reviews. It is also unclear to what extent consumers are able to judge the trustworthiness of third-party sellers. Finally, it is still unclear what consumers expect from online marketplaces in terms of customer service and dispute resolution.

The aim of the representative survey conducted as part of this project is therefore to close this research gap, and clarify

- how individual consumer problems, such as the need for information before purchase and the reasons for poor product quality, can be specified in more detail
- how consumers perceive online marketplaces in general and to what extent they are aware of the risks described,
- what expectations they have of online marketplaces and the third-party sellers operating here, and
- the extent to which consumers expect further measures from legislation and standardisation regarding online marketplaces.

The chart below illustrates the results of the literature research on consumer problems and the final considerations on the focal points of the representative consumer survey.

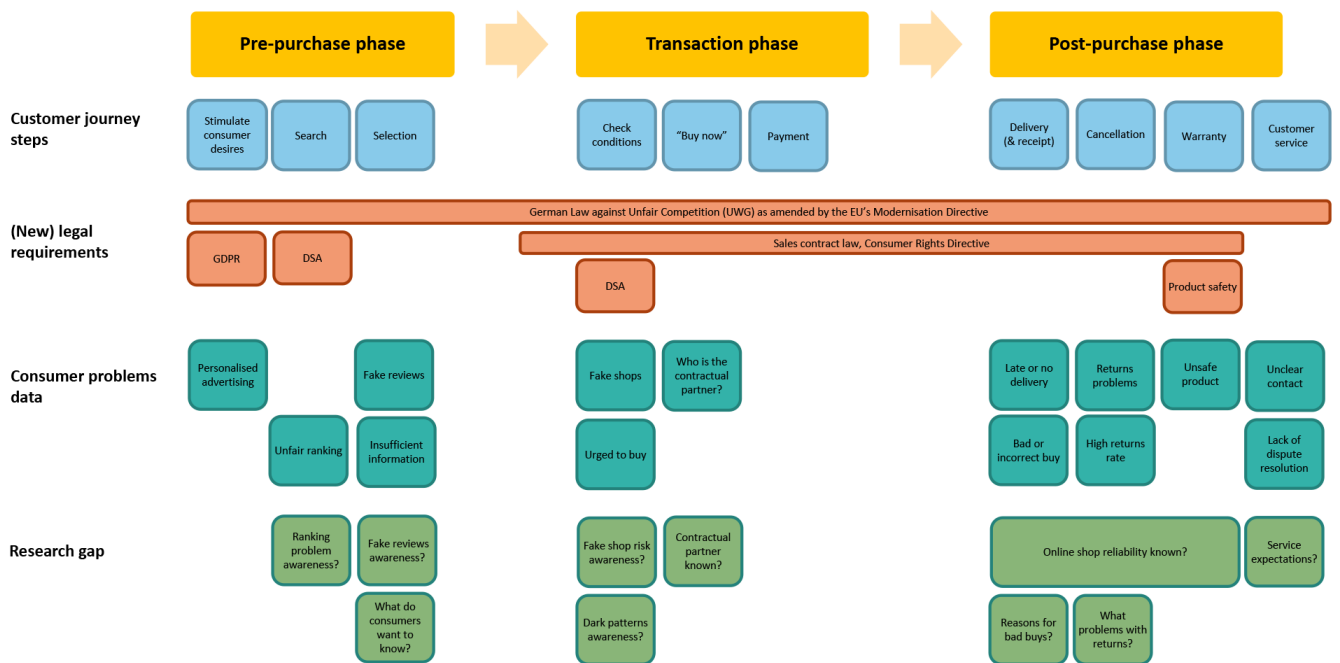


Figure 9: Consumer problems on online marketplaces data and the resulting research gap; Source: ConPolicy (their own illustration)

6 Results of the representative survey among consumers

Based on the evaluation of the literature on consumer problems with online marketplaces, a representative survey among consumers was conducted with the primary aim of gaining empirical findings on issues that have been little investigated to date.

6.1 Overview and procedure

The survey was divided into four parts:

- In the first part of the survey, the **use of online marketplaces and shops** as well as the **level of knowledge** of consumers **with regard to online marketplaces** was analysed. Herein, consumers were asked how often they buy from different online marketplaces and shops, whether they can distinguish between online marketplaces and online shops and what obligations they assign to online marketplaces.
- The second part of the survey focussed on different **problems** and challenges faced by consumers **on online marketplaces**. In order to specifically record the experiences with online marketplaces, the respondents were informed about the difference between marketplaces and online shops at the beginning of this part of the survey. Afterwards, different areas of the customer journey were analysed, in particular the shopping phase, the delivery phase and post-purchase service phase.
- In the third part, the **attitudes and preferences** of consumers **with regard to online marketplaces** were analysed in more detail. For example, consumers were asked whether they expect to see deceptive designs or manipulation when shopping online and what information they consider when making a purchase decision.
- The fourth and final part dealt with **expectations of online marketplaces**. It focussed, in particular, on the prevention of criminal activities, counterfeiting and manipulation on online marketplaces.
- In addition, respondents who had no personal experience of shopping on online marketplaces were asked about their reasons for not using them. These respondents did not answer the above-mentioned sections on their own experiences and attitudes.

6.1.1 Spot check and information about the data set

The **total sample** comprised **N = 1,000 participants** who completed the questionnaire in July 2023. Recruitment was carried out via an actively managed online panel. The participants were selected for the study on a representative online basis (quotas based on age, gender and place of residence).

The average age of the respondents was 50.2 years; the youngest person was 19 and the eldest was 83 years of age. 49% of the respondents were male, 51% female and <1% non-binary. 22% of the respondents had completed a low level of education, 27% a moderate level and 50% a higher level of education. On average, the respondents took 14 minutes to complete the questionnaire (median = 15 minutes).⁸⁹

6.2 Part 1: Use and level of knowledge with regard to online marketplaces

6.2.1 Use of online marketplaces and shops

In the first step, participants were asked about the **frequency of use** of different **shop domains** (Figure 10). Overall, there are **domains that are used more frequently** and those that are used **less frequently**.

64% of respondents stated that they shop on online marketplaces once a month or more frequently, 30% at least a few times a year or less and 6% never. The purchase frequency for online shops (without delivery services and supermarkets) is similar. Among them, 55% stated that they shop once a month or more frequently, 39% at least a few times a year or less frequently and 6% never. Online delivery services and supermarkets, on the other hand, are used less frequently. 32% stated that they order from online delivery services at least once a month or more frequently, 25% at least a few times a year or less frequently and 43% never. 22% reported that they shop at online supermarkets once a month or more frequently, 18% at least a few times a year or less frequently and 60% never.

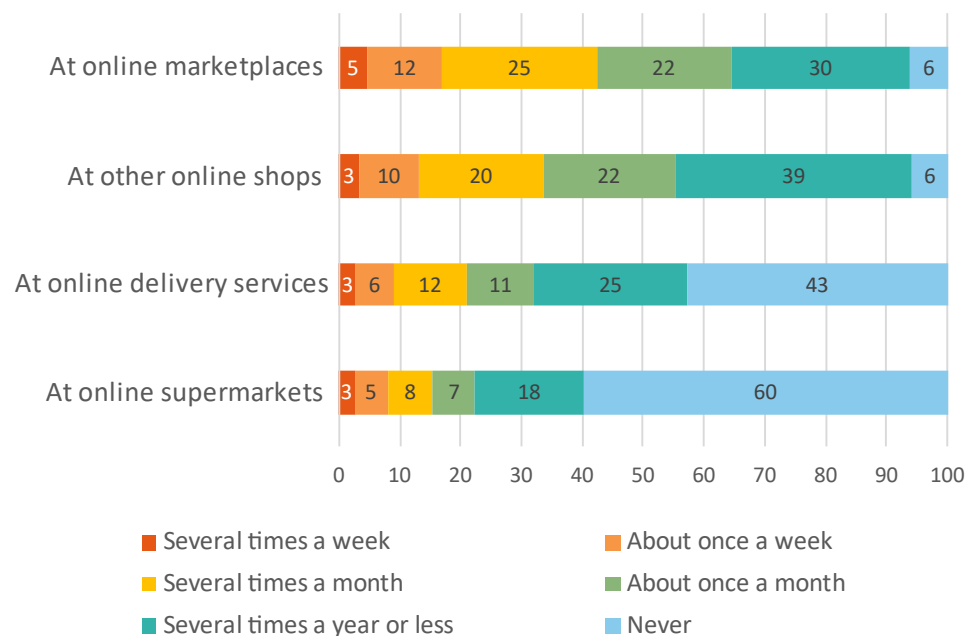


Figure 10: Use of different shop domains and frequency (share in %); N = 1,000

⁸⁹ The questions were analysed with regard to socio-demographic variables in order to identify any differences. For this purpose, correlation analyses (Pearson) and t-tests were calculated for group comparisons, for example. Only statistically significant results with $p < 5\%$ are reported below. These include, in particular, correlations with the age and, in some cases, the gender of the respondents and their shopping behaviour (derived from the question on usage (section 6.2.1)). Non-significant results are not listed separately.

A detailed analysis of the age groups shows that younger people shop more frequently on online marketplaces than older people. Almost two thirds of under 40-year-olds are active on online marketplaces several times a month and more frequently, while this only applies to around a third of over 50-year-olds and around a fifth of over 60-year-olds.

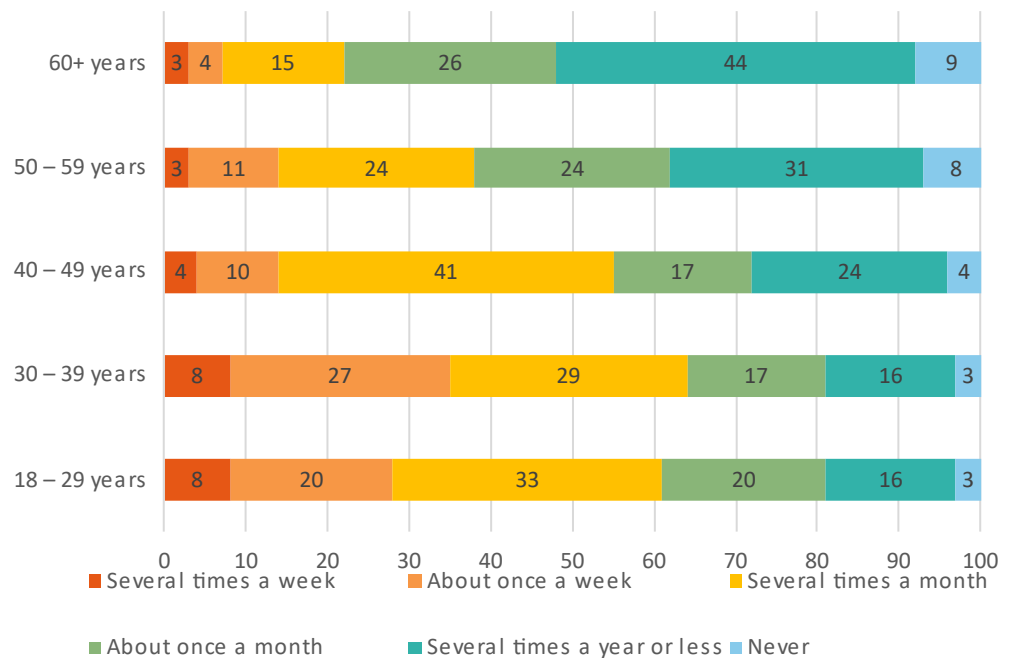


Figure 11: Frequency of use of online marketplaces by age group (share in %); N = 1,000

Result No. 1: Consumers regularly shop on online marketplaces and in online shops. However, they shop less frequently at online delivery services and online supermarkets.

6.6.2 Allocation of different websites to the categories online marketplace versus online shop

In order to ascertain the objective level of knowledge with regard to the **categorisation** of various well-known **websites**, respondents were asked to classify whether they were either an online marketplace or an online shop. Figure 12 shows the proportions per answer category, including “don’t know” / “no answer”. The upper part of the chart lists the nine websites that can be categorised as online marketplaces, while the lower part lists three websites that are clear-cut online shops by definition. **Overall, there is a large discrepancy in the level of knowledge.**

Online marketplaces such as Ebay or Amazon are correctly identified as marketplaces by the majority of respondents (65% and 54%, respectively). However, the majority of respondents incorrectly categorised the other marketplaces as online shops (only between 10% and 30% answered the question correctly). It is striking

that the majority of respondents were unable to categorise Temu's online marketplace, with 61% stating "don't know" / "no answer".⁹⁰

The proportion of correct answers is generally slightly higher for online shops. For example, most respondents correctly categorised the Zara and Apple shops as online shops (55% and 48%, respectively). For Breuninger, on the other hand, 48% gave "don't know" / "no answer".

A comparison of the different age groups shows that younger people are significantly better at categorising most websites (e.g. Otto, Zara, Zalando, etc.) as online shops or online marketplaces. However, there were no age differences for the Amazon and Ebay marketplaces, meaning that the categorisations were comparably correct for the different age groups.

⁹⁰ This high proportion of non-responses is hardly surprising overall, as the provider Temu is a relatively new player that was founded in 2022 and has been supplying the German market from China since 2023. Accordingly, its market share is probably also very low.

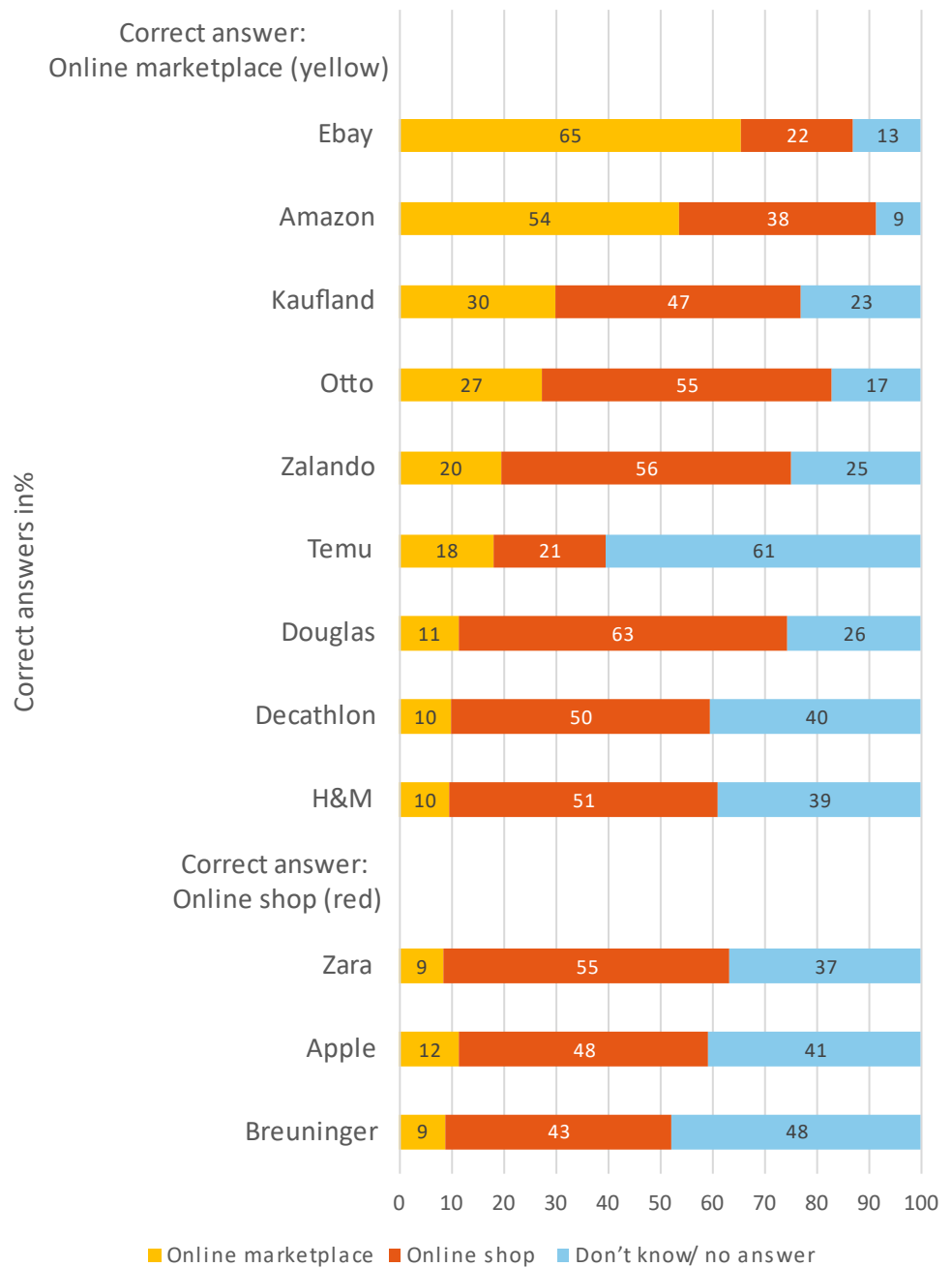


Figure 12: Knowledge of website form – online marketplace versus online shop (share in %); N = 1,000

Since the various websites are known differently by customers and not every respondent has shopped at all marketplaces or shops, the previous question was evaluated again taking into account purchasing behaviour. This was done to check whether **consumers who have already interacted with the marketplace or shop themselves** have a **higher level of understanding** than those who have never shopped on the website.

Figure 13 distinguishes accordingly between customers and non-customers, who are shown in green or orange, respectively. The proportions of correct answers are

shown in each case, with the websites that can be categorised as online marketplaces in the upper area and the websites that belong to the online shop category in the lower area.

Overall, it can be said that **customers are actually in a better position to categorise** online marketplaces or shops than people who have not yet shopped on the corresponding website. However, **their level of knowledge is still not too high**, so it can be assumed that even customers do not always know which category they are dealing with when shopping.

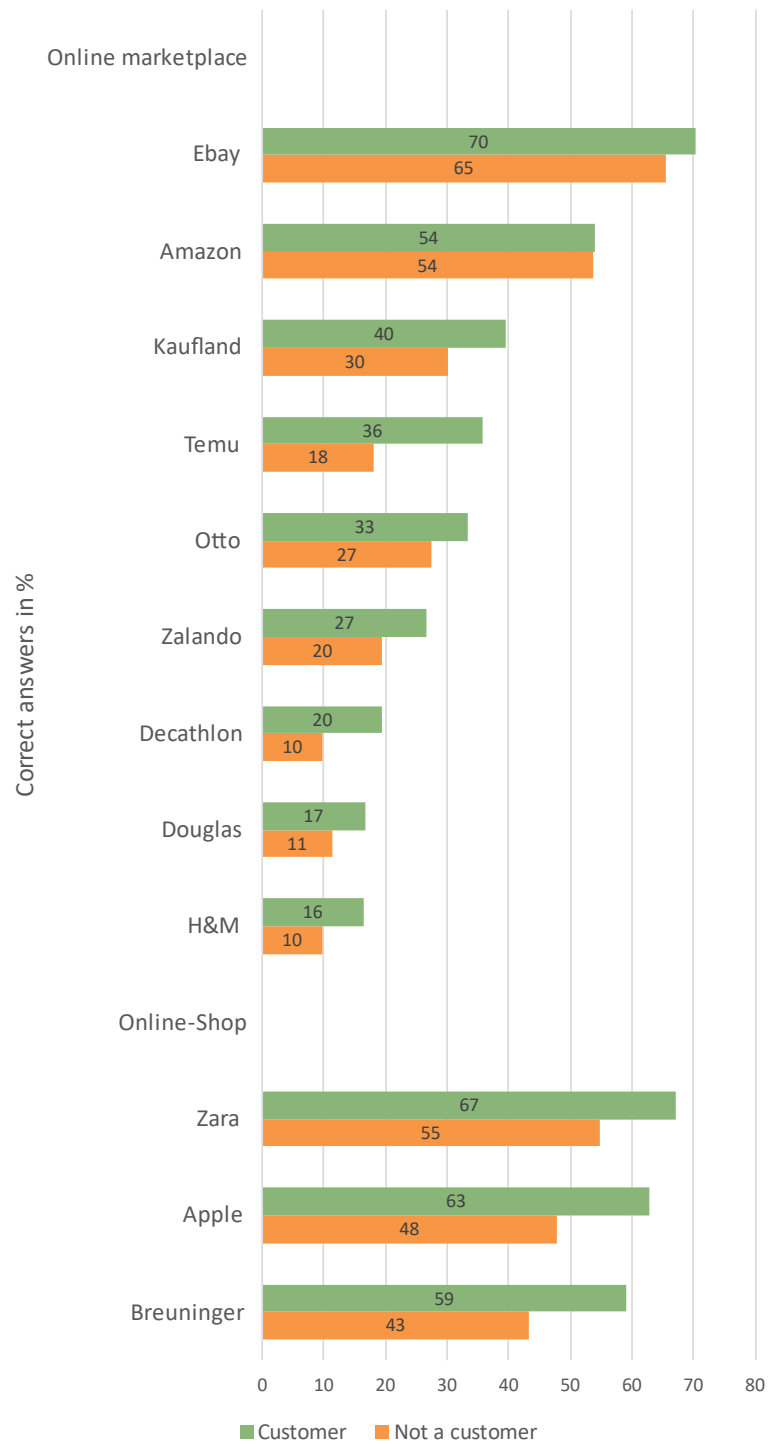


Figure 13: Knowledge of website form – online marketplace versus online shop depending on personal purchasing behaviour (% of correct answers); number of observations depending on response behaviour with regard to purchasing behaviour; (N = 260–941)

Result No. 2: Consumers often do not know whether online sellers are a marketplace or a pure online shop. In many cases, this also applies to consumers who have already been customers on a website in the past.

6.2.3 Areas of responsibility assumed by online marketplaces and/or third-party sellers

The next set of questions related to different **areas of responsibility** for issues that are either assumed by the online marketplace, the third-party seller as an actor on the platform or both. The respondents were presented with nine different tasks and were asked to decide which tasks fall to the marketplace operator and which to the third-party seller.

Figure 14 shows the percentage of correct assignments. Overall, there is some variance between the individual areas of responsibility, but it can be seen that less than half of the respondents were able to answer the question correctly in each case.

41% of respondents knew that **both**, i.e. the marketplace and the third-party seller, are the customer's **point of contact** and a further 38% correctly selected that the **definition of conditions**, such as general terms and conditions, delivery and returns conditions, is one of the tasks of both players.

44% of respondents also knew that the **online marketplace** itself is responsible for **selecting products** according to certain criteria, such as price, customer ratings and features.

In each case, 38% of respondents were aware that the **third-party seller** sets the **price** of the product and shall be **liable for product defects**, i.e. either deliver a defect-free replacement product, cancel the purchase or reduce the purchase price. 31% of respondents knew that the third-party seller is obliged to **take back** the product and refund the purchase price in the event of **cancellation** and 30% were aware that they are obliged to **deliver the product**. 26% correctly stated that the third-party seller becomes the customer's contractual partner when the purchase contract is concluded. Only 18% were aware that the seller shall ensure that the products sold comply with legal requirements, e.g. that the products are safe, that they do not contain banned chemicals and that hazardous substances are labelled.

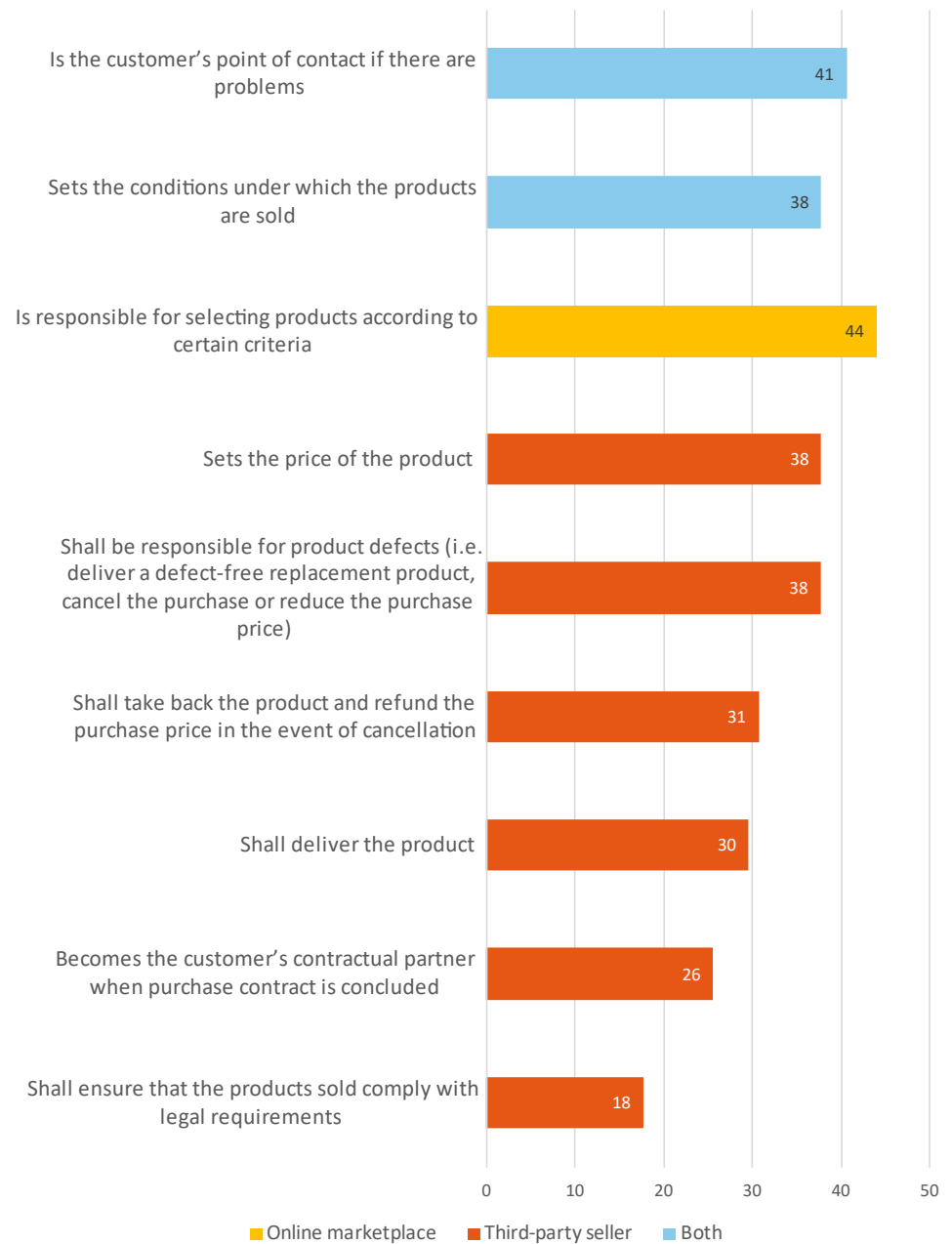


Figure 14: Knowledge of the areas of responsibility assumed by online marketplaces and/or third-party sellers (% of correct answers); N = 986

Result No. 3: The majority of consumers cannot correctly allocate the areas of responsibility to online marketplaces and to third-party sellers.

6.2.4 Subjective assessment of consumers' own level of knowledge

For both the knowledge question about **categorising different websites** as online marketplaces versus online shops and for the knowledge question on the **different areas of responsibility**, respondents were later asked to indicate how certain or uncertain they were about the categorisation.

Figure 15 shows the proportions for each response category, i.e. certain, fairly certain, fairly uncertain and uncertain. Figures of the first question (allocation) are given in orange and of the second question (areas of responsibility) in yellow.

In general, it can be stated that the respondents **overestimate themselves** and their own level of knowledge. With regard to the **self-assessment** in the **categorisation question**, it can be seen that respondents were rather certain. For example, **71%** of respondents stated that they were **certain or fairly certain**. A similar picture results with regard to the question on **areas of responsibility**. Here, **53%** of respondents stated that they were **certain or fairly certain** in their assessment. A comparison of ages also shows that younger people tend to be more certain than older people.

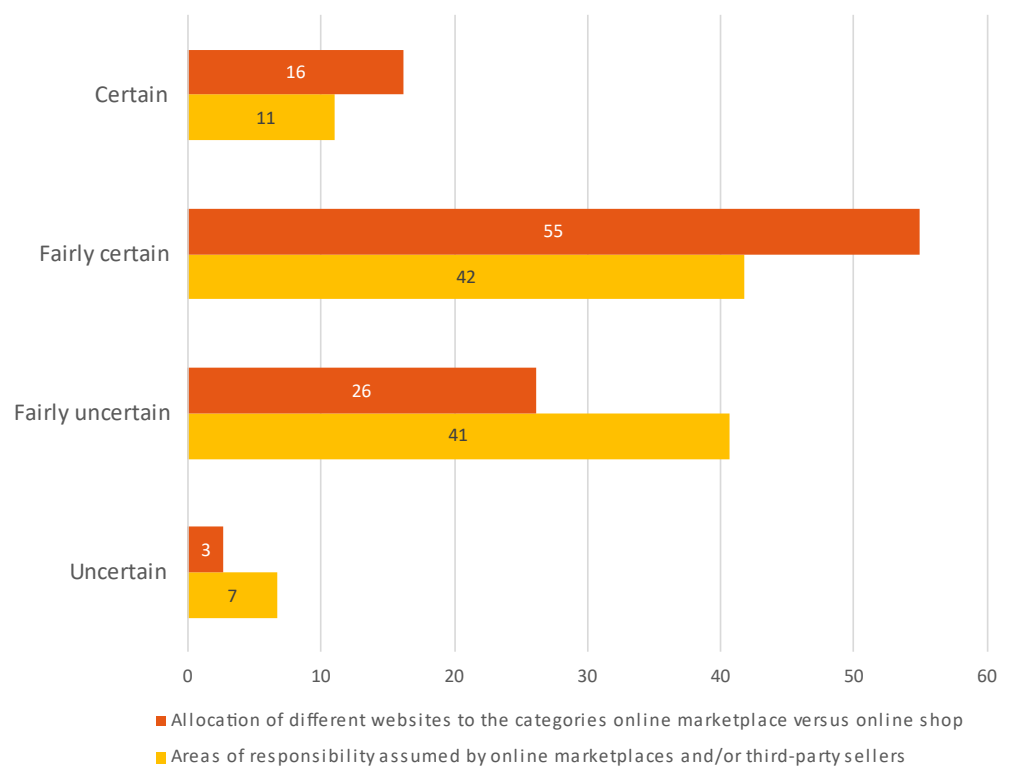


Figure 15: Subjective assessment of respondents' own level of knowledge (share in %); N = 950 (assignment) and N = 986 (areas of responsibility)

Result No. 4: The respondents generally rated their level of knowledge about the properties of online marketplaces and online shops as too high. Although the majority were (fairly) certain in their assessments, the knowledge questions show that knowledge of online marketplaces is not very good.

6.3 Part 2: Various problems with purchasing, delivery and service on online marketplaces

6.3.1 Problems when shopping on online marketplaces

The first question which dealt with **problems** on online marketplaces related to the **purchasing and ordering process phase**. Figure 16 shows the frequency of various problems. Overall, it can be seen that respondents encountered **few problems rather** when shopping.

33% reported being **faced with unexpected charges at the end of the checkout process**. 13% said this had not happened to them in the year before, and 48% said this had never happened to them (5% "don't know" / "no answer"). **31%** felt **urged to buy products** in the last year, while 11% had not experienced this in the last year and 52% had not experienced this at all (5% "don't know" / "no answer"). Only **16%** reported that they had been **taken in by a fake shop**, 12% had at least not had this experience in the last year and 67% stated that they had never been taken in by a fake shop (4% "don't know" / "no answer"). **14%** stated that their **customer account had been deactivated or deleted without prior notice**, 8% had at least not experienced this in the last year and 73% had never had this problem (6% "don't know" / "no answer").

With regard to **socio-demographic variables**, there is also a **negative correlation with age**. The older the respondents, the less frequently they reported challenges when shopping on online marketplaces. An inverse correlation can be found with shopping frequency and challenges. The more frequently respondents shopped online themselves, the more frequently they experienced problems.



Figure 16: Frequency of different problems when shopping on online marketplaces (share in %); N = 986

Result No. 5: In general, consumers tend to have few problems when shopping on online marketplaces.

6.3.2 Problems with the delivery of products purchased on online marketplaces

The second question related to **problems with the delivery or return** of products purchased on online marketplaces. Figure 17 shows the frequency of different delivery problems. Overall, it can also be seen here that the respondents – with two exceptions – have encountered **few problems rather** when shopping.

These exceptions relate to packaging and delivery punctuality. **62%** of respondents stated that their order was **packed far too elaborately**, 9% had not had this problem in the past year at least and 25% stated that they had never experienced this problem (4% “don’t know” / “no answer”). The majority of respondents (**51%**) also stated that they had experienced a **late delivery** in the past year, 14% had not had this problem in the past year and 32% had never had this problem (4% “don’t know” / “no answer”).

The other problems were experienced less frequently. For example, **26%** of respondents stated that their order was **supposedly delivered according to the shipping information** but did **not arrive**. 17% had at least not had this problem in the last year and 54% had never had this problem (3% “don’t know” / “no answer”). Similarly, **26%** reported that their **order was delivered incompletely** last year, 19% did not have this challenge last year and the majority of 51% have never had this problem (4% “don’t know” / “no answer”). **22%** stated that their **order was mixed up or the wrong product was delivered**, 20% had not had this problem in the last year and 55% had never had this problem (3% “don’t know” / “no answer”). A further **22%** responded that their **order was not delivered at all**, 21% had not had this problem at least in the last year and 53% had never had this problem (4% “don’t know” / “no answer”). **19%** reported that they had **not received a refund or only a partial refund** despite returning their order, 25% had not had this problem in the last year and 63% had never had this problem (4% “don’t know” / “no answer”). In addition, **16%** stated that they **had to pay customs duties** when the goods were delivered but were **not informed of this beforehand**. 16% have not had this problem in the last year and 65% have never had this problem (3% “don’t know” / “no answer”). A further 15% stated that they had only placed one order but had received several invoices. 13% had not had this problem in the past year and 68% had never had it (4% “don’t know” / “no answer”).

Correlations with socio-demographic variables are similar to the previous question. Problems relating to delivery were reported in particular by both younger people and people who frequently shop online.⁹¹

⁹¹ As already mentioned in the methodological introduction, non-significant results are not reported separately. It should be noted here that it was explicitly checked whether respondents who live in rural areas experience more challenges with delivery. This could not be confirmed in the data.

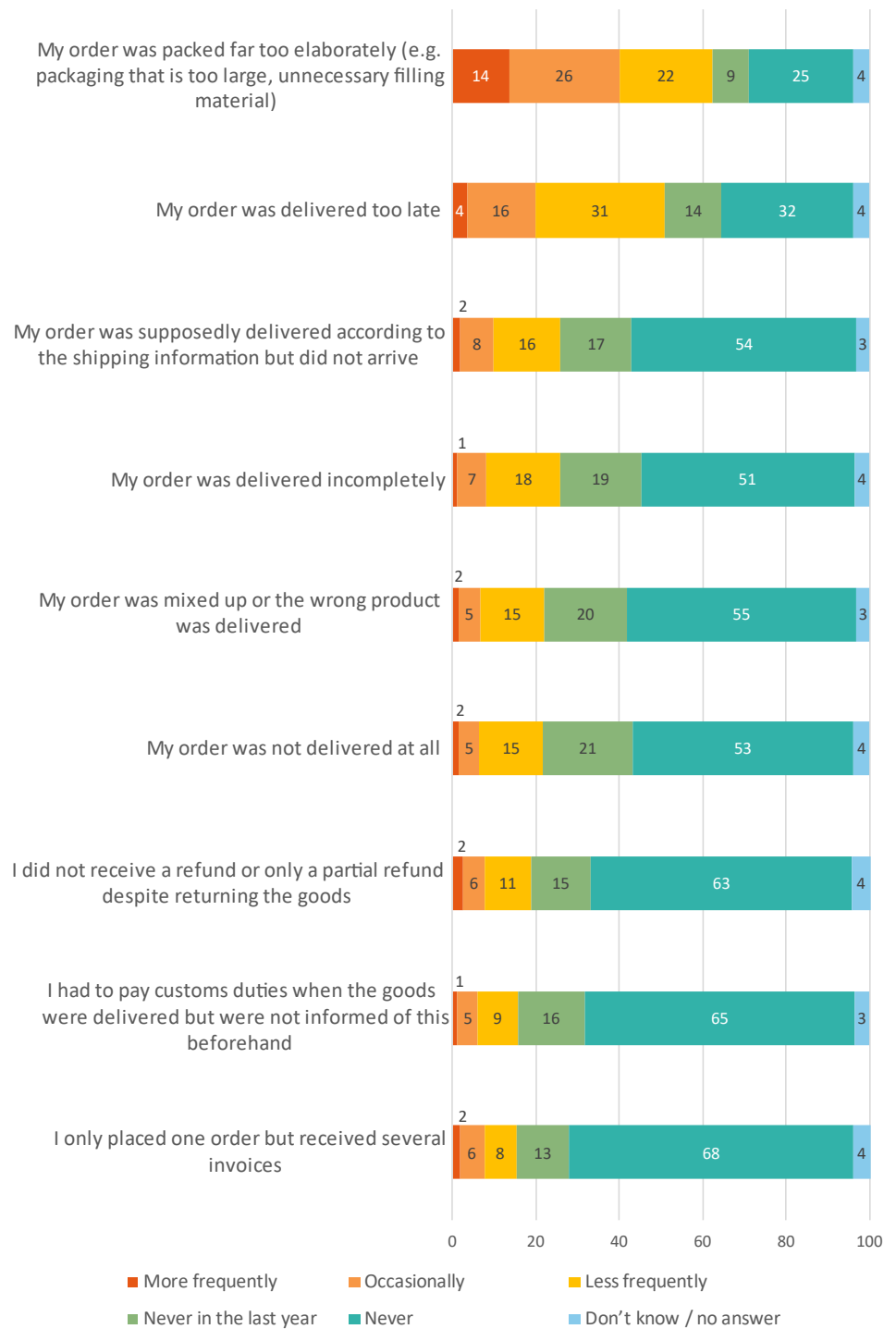


Figure 17: Frequency of different problems with the delivery of purchases on online marketplaces (share in %); N = 986

Result No. 6: In general, consumers tend to have few problems with deliveries from online marketplaces. The exceptions are unnecessary packaging waste and delivery delays, which the majority experienced last year.

6.3.3 Problems with the quality of products purchased on online marketplaces

The third question dealt with **problems with the quality of products** purchased on online marketplaces in the last year. Figure 18 shows the frequency of different types of problems with regard to product quality on online marketplaces. Compared to the previous problems, **problems** with product quality tend to occur **more frequently**.

50% of respondents stated that the **product did not meet their needs** (e.g. was too small / too big / not suitable for the intended use), 16% had not had this problem in the last year at least and 31% had never had this problem (4% "don't know" / "no answer"). **46%** reported that a **product appeared to be of inferior quality** (e.g. due to short-lived materials, poor workmanship). As many as 17% had not had this problem in the last year and 33% had never had this problem (5% "don't know" / "no answer"). Another problem was a **lack of or inadequate operating instructions**. This was reported by **43%** of respondents, with 16% not having had this problem at least in the last year and 35% never having had it (6% "don't know" / "no answer"). **40%** also stated that the **product was different than described**, 19% had at least not had this problem in the last year and 37% had never had this problem (4% "don't know" / "no answer"). **32%** reported a **damaged product** (e.g. due to transport damage), with 23% not having had this problem at least in the last year and 41% never having had this problem (4% "don't know" / "no answer"). A **technical defect or a non-functioning product** was experienced by **28%**, with 22% not having had this problem in the last year and 46% never having had this problem (5% "don't know" / "no answer").

The last two problems have never occurred for the majority of respondents. Although **20%** of respondents reported that they were concerned that the **product might be unsafe** (e.g. fire hazard, toxic chemicals, risk of short circuits in electrical appliances), 17% stated that this had not happened at least in the last year, but **58%** stated that they **had never had** this problem. Similarly, respondents felt they had received a **counterfeit product**. **19%** stated that they had experienced this problem, 17% stated that this had not been the case at least in the past year and **55%** stated that **they had never experienced** this problem (9% "don't know" / "no answer").

Analysing the responses according to socio-demographic criteria showed that **younger people and respondents with high online shopping rates** stated that they experienced **problems more frequently**.

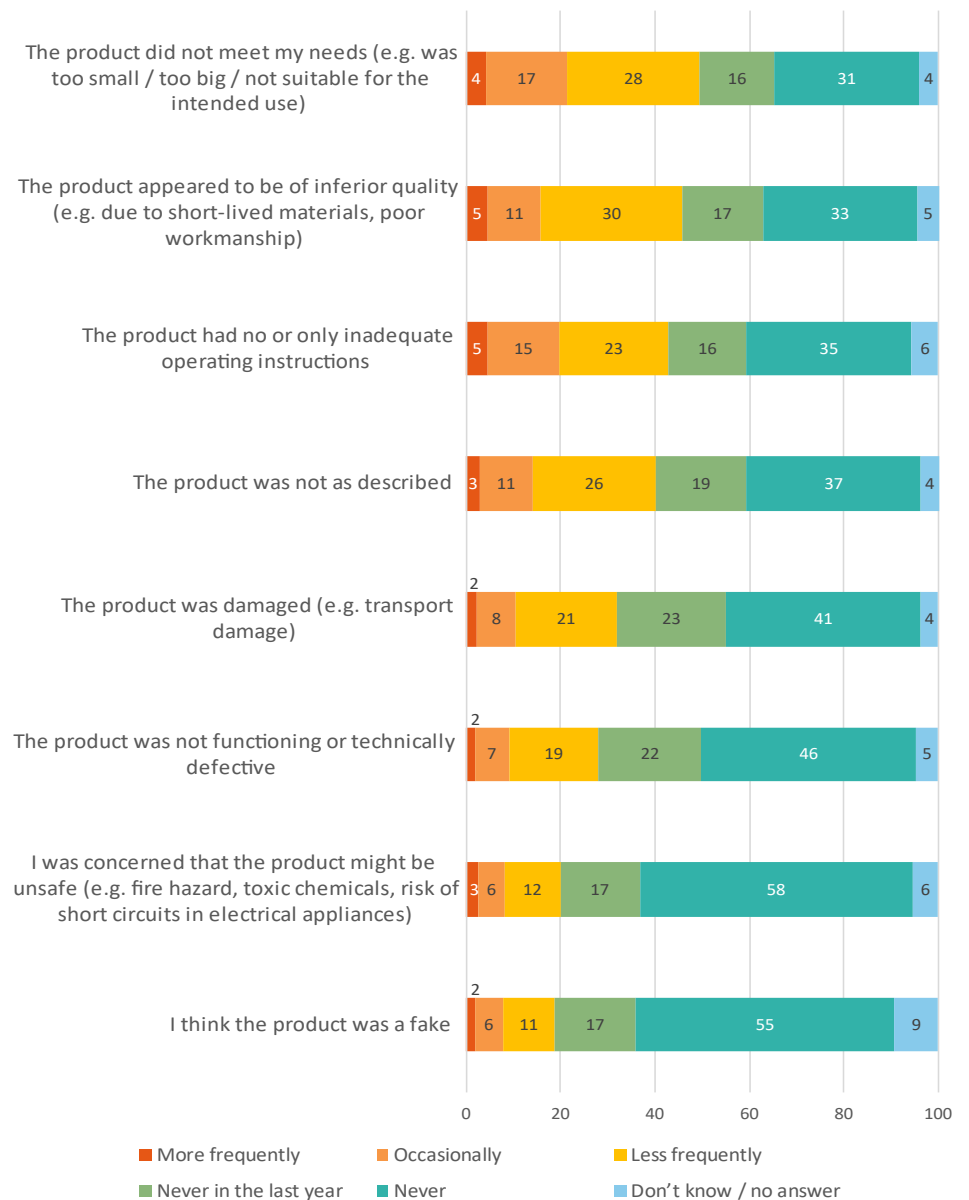


Figure 18: Frequency of different problems regarding the quality of products purchased on online marketplaces (share in %); N = 986

Result No. 7: Problems relating to the quality of products purchased on online marketplaces occur slightly more frequently. However, here too it depends on the type of problem.

6.3.4 Contacting the customer service of online marketplaces

As soon as problems occur during purchasing, it may be necessary to **contact customer service** to solve the problem. For this reason, respondents were asked whether they had needed to contact customer service in the past three years. Figure 19 shows the results from which can be seen that the majority of respondents have not had this need.

For example, **56%** of respondents stated that they had **not contacted** the customer service of an online marketplace in the last three years. **35%** stated that they had contacted the **customer service of the marketplace** themselves, and **21%** stated that they had contacted the **customer service of the third-party seller**.

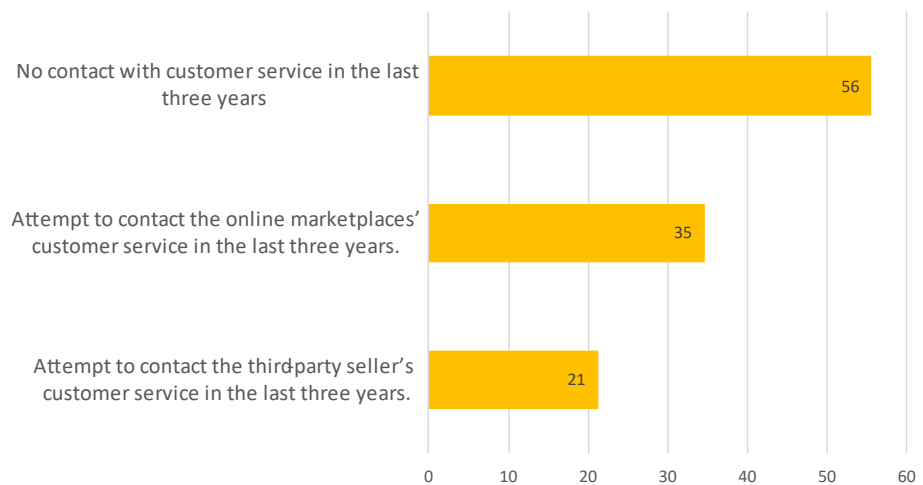


Figure 19: Contact with customer service (share in %); N = 986

Result No. 8: The majority of consumers did not need to contact customer service. If contact was necessary, it was more likely to be directed to the marketplace than to the third-party seller.

6.3.5 Problems with customer service on online marketplaces

Respondents who stated in the previous question that they had contacted customer service were asked about possible **problems with customer service contact**. The sub-sample of responses comprises between N = 205 and N = 340, depending on the problem.⁹² Figure 20 shows the proportions of problem frequencies in per cent. Overall, it can be seen that the **majority** of respondents had **problems** with customer service contact.

66% of respondents reported that the **third-party seller's customer service did not respond to the question**, 12% stated that this had not been the case for at least the last three years and 22% had never had this problem. In addition, **60%** of respondents reported that **customer service on the online marketplace's website was difficult to find**, 13% had not had this problem in at least the last three years and 28% had never had this problem. Similarly, **60%** reported that while the **third-party seller's customer service responded, they did not solve the problem**. For 18%, this has not been the case in at least the last three years and 23% have never encountered this problem. The same challenge was faced by **53%** of respondents who had contacted the online marketplace. They reported that while the **marketplace's customer service responded** they were **unable to solve the problem**. For 20%, this problem had not occurred in at least the last three years and 28% had never had the problem.

Interestingly, the proportion of respondents who found it **difficult to find customer service contact details** on the respective website was lower for **third-party sellers (48%)** than for online marketplaces (cf. 60% above). 19% reported that they had not had this problem in at least the last three years and 32% had never had this problem. In contrast, the proportion of respondents who reported that the online marketplace's customer service did not respond to the question was lower than when contacting third-party sellers, at 46%. 15% stated that they had not experienced the problem in at least the last three years and 39% had never experienced the problem.

For most problems with customer services⁹³, it was also found that these occurred more frequently the more the respondents shopped online. No further correlations with socio-demographic variables were found.

⁹² Respondents who stated in the previous question that they had not contacted the customer service of either the online marketplace or the third-party seller were not asked this question. Respondents who contacted both the online marketplace's and the third-party seller's customer service were asked about all six problems. If respondents only indicated that they had contacted the online marketplace / third party, they were only shown the problems specific to an online marketplace / third-party seller.

⁹³ These include "The online marketplace's customer service did not respond to my question", "Customer service was difficult to find on the third-party seller's website", "The online marketplace's customer service responded to me but did not solve my problem" and "The third-party seller's customer service did not respond to my question".

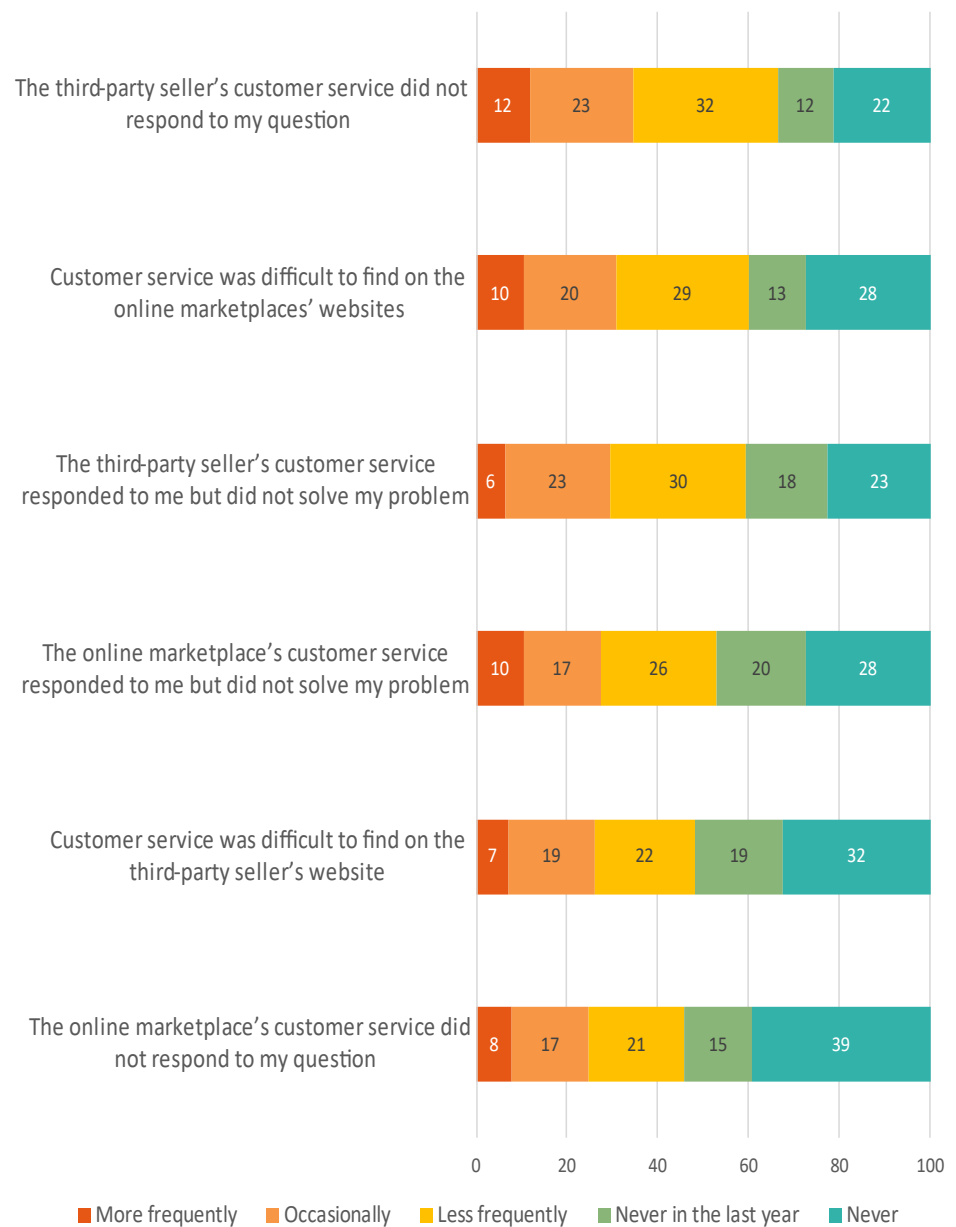


Figure 20: Frequency of different problems with customer service on online marketplaces (share in %); N = 205 and N = 340, respectively

Result No. 9: Consumers who contacted the customer service of a marketplace or third-party seller also mostly reported problems with contacting and solving problems.

6.4 Part 3: Attitudes and preferences with regard to online marketplaces

In order to analyse consumer **attitudes and preferences**, respondents were asked to rate ten different statements about their dealings with online marketplaces and their personal attitudes. The statements were rated on a 4-point scale from "agree" to "disagree". The results are shown in Figure 21.

84% of respondents agreed that **customer reviews could be fake or manipulated**, and 9% disagreed (8% "don't know" / "no answer"). In dealing with this issue, **80%** reported that they take care to **ensure that customer recommendations and customer reviews appear trustworthy** to them, 12% disagreed (8% "don't know" / "no answer"). **73%** also agreed that the **placement of products on online marketplaces** (e.g. order of offers, top sellers, best choice) can be **manipulated**, while 11% disagreed, and 16% selected "don't know" / "no answer". Likewise, **73%** agreed that they pay attention to whether they buy **products from the EU or non-EU countries** and 18% disagreed (9% "don't know" / "no answer"). **68%** said that **reviews from other customers are an important decision-making tool** for them, while 24% disagreed, and 8% selected "don't know" / "no answer". **68%** of respondents agreed with the statement that they **pay attention to whether they buy marketplace products or products from third-party sellers**, while 20% disagreed (12% "don't know" / "no answer"). **62%** also **pay attention to whether they buy from a pure online shop or an online marketplace**, while 26% disagreed with this statement (12% "don't know" / "no answer"). **57%** of respondents also **trust an online shop more than an online marketplace**, while 27% did not (17% "don't know" / "no answer"). As many as 51% also stated that they trust the placement of products on online marketplaces (e.g. order of offers, top sellers, best choice), 36% disagreed, and 14% selected "don't know" / "no answer".

With regard to **socio-demographic differences**, it can also be seen that **women are more likely than men** to agree that customer reviews **can be fake or manipulated**. **Infrequent shoppers** are more likely to agree with this statement than frequent shoppers. The statement that the placement of products on online marketplaces can be manipulated was also more likely to be agreed with by infrequent shoppers than frequent shoppers.

The opposite picture emerges for two statements regarding the **trustworthiness** of marketplaces and their offerings. On the one hand, frequent shoppers were more likely than infrequent shoppers to agree that the reviews of other customers are an important decision-making aid for them. They also expressed greater trust in the marketplace's own products compared to products from third-party sellers.

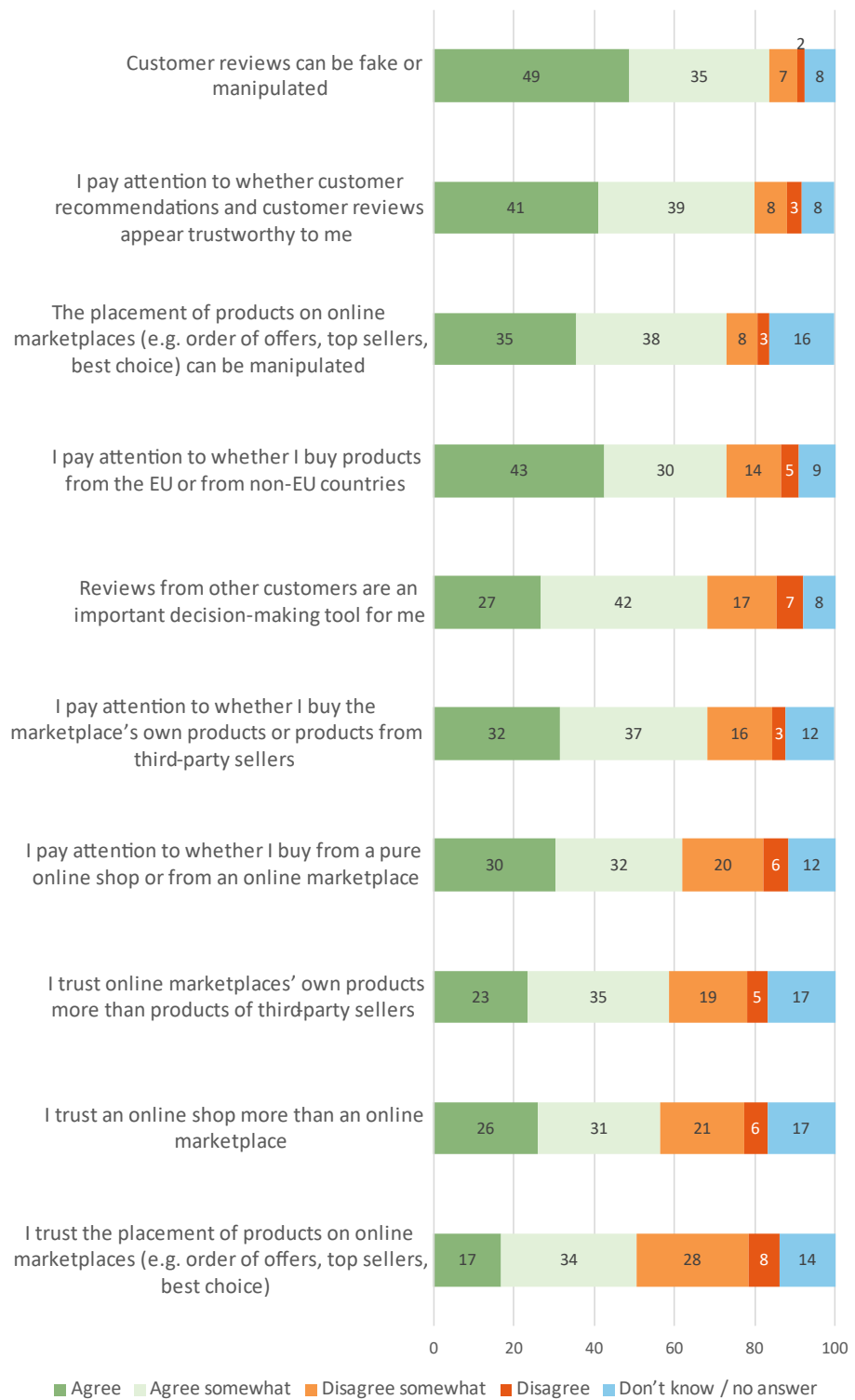


Figure 21: Attitudes and preferences with regard to online marketplaces (share in %); N = 986

Result No. 10: Reviews and rankings are fundamentally relevant for consumers' purchasing decisions, but many consumers also think that these can be manipulated. Trust in pure online shops is generally greater than in marketplaces, and in marketplaces their own products find more trust than those of third-party sellers.

6.5 Part 4: Expectations of online marketplaces

In the final part of the survey, participants were asked about their **expectations of online marketplaces**. They were asked to rate six statements on a 4-point scale from "agree" to "disagree" plus "don't know" / "no answer". The results are shown in Figure 22. In general, all the statements received very high approval ratings.

For example, **90%** agreed that **online marketplaces should prevent fake shops from operating under their umbrella**. Only 4% disagreed, and 4% selected "don't know" / "no answer". Likewise, **90%** agreed that **online marketplaces should take action against fake and manipulated product reviews**, 4% disagreed, and 7% selected "don't know" / "no answer". 89% stated that **online marketplaces should be responsible** for ensuring that **no counterfeit, unsafe or illegal products** are sold on their sites. 5% disagreed (6% "don't know" / "no answer"). **88%** agreed that websites that operate online marketplaces should **make it clear** that they **sell products from third-party sellers** (e.g. by posting a "Marketplace" notice on the website name). 5% voted against (7% "don't know" / "no answer"). **87%** also demanded that online marketplaces should **make it clear when products are being sold by third-party sellers** (e.g. by posting a "Marketplace" notice next to each corresponding product). 6% disagreed, and 7% selected "don't know" / "no answer". Similarly, **87%** agreed that it should be **possible to filter products according to certain characteristics** (e.g. delivery from EU or non-EU countries). 5% did not agree (8% "don't know" / "no answer").

In addition, **correlations** can be identified with regard to **socio-demographic variables**. To all statements, the principle "**the older the respondents, the lower the level of agreement**" applies. Furthermore, **the more frequently the respondents themselves shop online, the higher the level of agreement**.



Figure 22: Expectations of online marketplaces (share in %); N = 986

Result No. 11: Consumers demand that online marketplaces take responsibility for the quality of the offer and for the transparency of the business model in various respects.

6.6 Additional question: Reasons for not using online marketplaces

Respondents who stated in the first set of questions that they do not shop at online marketplaces did not answer the previous questions and were taken directly to a final question. Therein, they were asked about the reasons why they never shop on online marketplaces. The sample in this case comprises N = 14 observations.

36% stated that they want to support less powerful players, 29% stated that they do not trust online marketplaces, and 14% stated that they had bad experiences on online marketplaces in the past.

6.7 Summary of the survey results

6.7.1 Knowledge of the "online marketplace" business model

Part 1 of the survey aimed at a clarification of the use of online marketplaces and consumers' level of knowledge about the pertaining business model. It was found that consumers were often unable to **correctly categorise well-known online shops and online marketplaces** and that the majority of consumers were **unaware of the division of responsibility between marketplaces and third-party sellers**. However, the consumers surveyed were obviously largely unaware of these knowledge deficits.

6.7.2 Consumer problems with transactions via online marketplaces

Part 2 of the survey focussed on the problems consumers face when making transactions via online marketplaces.

Consumers only described **a few problematic situations when selecting products and finalising purchases**. The most common incidents were unexpected fees that led to a higher final price than initially displayed (33% last year) and an offer design that made consumers feel urged to buy products, for example because there were supposedly only a few products available at the stated price (31% last year).

Consumers experienced problems with the **delivery of products more frequently. More than half** of the consumers surveyed experienced **unnecessary packaging waste and delivery delays** in the past year. Less common, but also relevant, with rates of over 10% to over 20% in the past year, were deliveries that took place according to the shipping information but did not actually arrive, deliveries of the wrong product, deliveries that were not dispatched at all, incomplete refunds of the purchase price and unexpected customs fees.

Quality problems with the products delivered are widespread. In the past year, **just under half of** the consumers surveyed had to realise that **delivered goods did not meet their needs** because they were too small, too large or otherwise not suitable for their needs, that goods were of **inferior quality**, had no or only inadequate **operating instructions** or were **not as described. Between**

20% and 30% of respondents complained of **damage**, e.g. due to **transport damage, malfunction, safety defects or counterfeits**.

Only a minority of respondents have contacted **customer service** when making purchases via online marketplaces in the past three years. Where such contact had been made, the **majority of respondents reported problems** – both with the contact itself and with the resolution of the problem by customer service. The difficulties concerned customer services of both the online marketplace and the third-party seller.

6.7.3 Attitudes and preferences with regard to online marketplaces

Part 3 of the survey determined **consumer attitudes and preferences with regard to online marketplaces**.

This showed that consumers value the **guidance provided by online platforms, such as product placements or customer reviews**, but that they are also **aware of the associated risks**.

Consumers also claim to pay attention to the extent to which they buy **products from the EU or from non-EU countries**. To a certain extent they differentiate between **online shops and online marketplaces** and between **marketplace-own offers and offers from third-party sellers** when making consumption decisions. However, the question arises as to whether these answers describe actual consumer behaviour or rather reflect preferences, as the answers from part 1 of the survey show that consumers are often unable to correctly classify online shops and online marketplaces.

6.7.4 Expectations of online marketplaces

Part 4 of the survey determines **consumer expectations of online marketplaces** based on consumer attitudes and preferences.

According to the survey, a **large majority of 90%** of consumers expect online marketplaces to take **measures against criminal and dubious business practices** on their sites (fake shops, fake and manipulated customer reviews and fake or unsafe products).

With an **equally high majority of just under 90%**, consumers expect online platforms to take **measures to increase the transparency of their business model** (indication that the business model consists of brokering products from third-party sellers; indication of the responsibility of the third-party sellers for specific transactions; filter options for product selection).

7 Recommendations for action

Based on the literature review and the new findings from the empirical survey conducted as part of the study, the final question is what **conclusions can be drawn from this with regard to the responsibility of online marketplaces towards consumers.**

To this end, the **findings gained** in the course of the project **on consumer problems** in transactions via online marketplaces are first compared with the status quo of **legal requirements** (section 0). From this comparison, **recommendations for action for consumer policy** (section □) and for **consumer-oriented standardisation work** (section 0) are derived.

The recommendations for action primarily relate to those aspects that are **specific to the business model of online marketplaces.** General consumer policy issues relating to digital business models, such as the permissibility of tracking and personalised advertising, as well as issues that are just as relevant to online shops as they are to online marketplaces, such as customer reviews, are therefore not dealt with in depth.

7.1 Comparison of empirical findings with the status quo of legal requirements

The consumer survey highlighted the following **key points**:

- Consumers are largely **unclear about the business model of online marketplaces** and the **division of responsibility between online marketplaces and third-party sellers.**
- Consumers face a **variety of problems** when making transactions via online marketplaces. The focus is on the **quality of the products supplied, their relevance for the customers' interests and the customer service provided by online marketplaces and third-party sellers.**
- Consumers expect online marketplaces to take responsibility with regard to the **transparency of their business model** and the **prevention of dubious business practices.**

A comparison of the **statutory and normative framework with respect to these requirements** leads to the following **results**:

- **To date, there has been no transparency obligation** to clarify the business model of online marketplaces to consumers.
- With the entry into force of the DSA and the new Product Safety Regulation, **online marketplaces will be held more accountable to consumers.** However, the new EU regulations do not adequately address the realisation, confirmed by the survey, that consumers largely do not cor-

rectly classify the business model of online marketplaces and the legal division of responsibility between online marketplaces and third-party sellers and are therefore **unable to assess the risks of this business model**.

7.2 Consumer policy recommendations for action

7.2.1 Transparency of the business model of online marketplaces

Online marketplaces emphasise their own brand image in their market presence. In the case of marketplaces that also sell their own products (such as Amazon or OTTO), it is often **impossible to recognise whether a particular product is being sold by the marketplace itself or by a third-party seller unless on closer inspection**.

The business model of the online marketplace and the division of roles between the online marketplace and the third-party seller could be clarified here by means of **information obligations**. Online platforms may already have to provide such an explicit notice without an explicit requirement **under the DSA** if they do not want to be comprehensively liable for the contractual obligations of third-party sellers (Art. 6 para. 3 DSA, cf. section 0).

It is questionable **how a corresponding notice can be specifically designed**.

It would be conceivable for the online marketplace to clarify the business model the moment consumers access the online marketplace's website.

In practice, however, it would probably be more effective if the third-party seller were clearly identified as the relevant contractual partner and addressee of cancellation and warranty rights **during the transaction process**. It could also be pointed out in which country the third-party seller has its branch. The relevant information should be **integrated into the transaction process at an early stage** so that consumers take the information into account when deciding whether to conclude a contract with the respective third-party seller.

Result No. 12: Online marketplaces should indicate that they are a marketplace. During the transaction process, it should also be clearly indicated that it is not the online marketplace but the third-party seller who is the contractual partner upon conclusion of the contract and, as such, the addressee of cancellation and warranty rights.

7.2.2 Responsibility of online marketplaces towards consumer interests

Numerous problems that consumers encounter in transactions via **online marketplaces** are in principle also familiar from transactions via **online shops**. Examples include fake or manipulated customer reviews, poor product quality, cancellation, warranty rights and customer service. However, there are **three key differences**:

- Firstly, the often **unclear division of roles** between the online marketplace and the third-party seller from the consumer's perspective leads to **unclear responsibilities**. Consumers often do not know who to contact in the event of problems and who is the addressee of consumer rights. Claims against third-party traders, which are often legally justified, regularly come to nothing, especially in business relationships with providers from non-EU countries. Online marketplaces benefit from brokering these business relationships with non-EU countries and use their brand image to create trust in the third-party providers they broker. However, when problems arise, they reject responsibility for them with the argument that they are not contractual partners, but only intermediaries.
- Secondly, online marketplaces give consumers **direct access to third-party traders in non-EU countries**. This increases the likelihood of **violations of EU consumer protection and environmental protection rules**.
- Thirdly, online marketplaces also offer a rich field of activity for **dubious and criminal actors** due to the extensive **anonymity of third-party sellers**. As a result, **fake third-party sellers** operate under the umbrella of online marketplaces, and customers are lured in with **fake and manipulated customer reviews** – sometimes both in combination.

Against the background of the survey results, the **responsibility of online marketplaces** for consumer interests established by EU law (see 0 above) should be assessed as follows:

- With regard to the general contractual situation, **according to the DSA, online marketplaces are liable** for breaches of law by the third-party seller if consumers can **reasonably rely on the fact** that relevant information or products originate from the online marketplace or from a third-party seller under the supervision of the online marketplace. However, this liability rule will **fall short** in practice because, according to the results of this study, consumers will **not be able to adequately identify their contractual contacts** even if the online marketplaces provide the relevant information. To a certain extent, the proposed emphasising of third-party sellers (see 0 above) can provide a remedy. Going further, however, a regulation that does not place high demands on consumers' legal knowledge and attentiveness from the outset appears to be more appro-

priate: **Online marketplaces should always be liable without further restrictions in the event of damage caused during the course of the transaction if no other party is available.**⁹⁴

- In view of the potential safety risks posed by imports from non-EU countries, the EU legislator introduced a reform of product safety legislation when they requested **reporting and compliance obligations for platforms**. Online marketplaces, however, are not liable if consumers are harmed despite adherence to these obligations. In addition to these obligations, **online marketplaces should therefore generally assume responsibility for ensuring that only legally compliant products reach the European Single Market.**⁹⁵
- To protect consumers against **fake offers** from criminal third-party sellers, the DSA has established **obligations to check suspicious offers** and the obligation to remove those from the Internet. These regulations promise increased precautions against fake offers; their practical effect will depend on their actual implementation. However, a liability gap remains **if a fake offer escapes the scrutiny of the online marketplace**. Here, too, a **general liability regulation** would make sense, **whereby online marketplaces are always liable for consumer damage if no other actor is available.**

Result No. 13: From a consumer perspective, it makes sense for online marketplaces to have a general subsidiary liability, which always applies if consumers are harmed in the course of transactions with third-party sellers brokered by them and if the third-party seller fails to honour the liability.

This subsidiary liability should minimise the specific risks arising from the business model of online marketplaces: Online marketplaces should be included in the contractual obligations of third-party sellers, they should take responsibility for ensuring that only legally compliant products reach the European market. Moreover, they should be liable for damage caused by fake sellers.

An extended liability obligation on the part of online marketplaces would not least provide a considerable economic incentive for online marketplaces to consistently fulfil the inspection obligations established by the DSA and the Product Safety Ordinance.

⁹⁴ vzbv (2022), Notwendiges System-Update: Produkthaftung. (Product liability as a necessary system update) Retrieved from https://www.vzbv.de/sites/default/files/2022-12/22-12-08_Stellungnahme%20zum%20Kommissionsentwurf%20Produkthaftungs-RL.pdf (9 December 2023)

⁹⁵ vzbv (2023), Produktsicherheit (product safety). Retrieved from <https://www.vzbv.de/produktsicherheit> (29 October 2023)

7.3 Recommendations for action for consumer-oriented standardisation

7.3.1 Significance of standards for the concretisation of consumer law

The consumer law framework for online marketplaces discussed so far usually only sets out fundamental assessments, but no technical measures or procedures. In this respect, the laws are designed to be **supplemented by technical standards and sets of rules**.

This also corresponds to this **DSA control technology**: the European Commission supports the development of standards that concretise various obligations of online platforms (Art. 44 DSA). Among the legal obligations discussed in this study, explicit reference is made here to the presentation of the main parameters of recommendation systems (Art. 27 DSA, cf. section 0).

However, standards are also relevant beyond these explicit references whenever legal requirements refer to **due diligence obligations or compliance with the state of the art**. In this respect, standards are also relevant for the other areas of responsibility of online marketplaces described in this study, such as for the description of the business model, for the fulfilment of due diligence obligations under product safety law or for due diligence obligations in connection with user reviews or to prevent fake offers.

Standardisation work takes place at German (DIN), European (CEN) and international (ISO) level. As the responsibility of online marketplaces can only be meaningfully guaranteed in cross-border cooperation, in view of international business models, the European and international levels are particularly important here.

7.3.2 Content-related tasks for standardisation in the context of online marketplaces

The first task of standardisation in the area of online marketplaces is to **clarify the concept of online marketplaces** and to differentiate online marketplaces from other business models in online retail such as independent online shops, search engines and comparison websites.

Standards for business processes and user guidance should then be developed that are suitable for solving the difficulties identified by consumers in this study when shopping via online marketplaces.

The first step is to clearly emphasise the **division of responsibility between the online marketplace and the third-party seller** during the course of the transaction so that consumers exercise the necessary care and caution when choosing a third-party seller.

Standardisation should then also **concretise and further develop the various obligations** established by recent EU legislation in the area of online retail (see section 0 above). In particular, the **design obligations** for online marketplaces shall be mentioned here, so that third-party sellers can fulfil their information obli-

gations under the Consumer Rights Directive. Furthermore, this refers to the **inspection obligations** of online marketplaces to check on the accuracy of the information provided by third-party sellers. And finally the **reporting and cooperation obligations** of online marketplaces in cooperation with market surveillance authorities established by product safety law.

7.3.3 Consideration of consumer interests in current standardisation projects with significance for online marketplaces

There are currently numerous standards and standardisation projects for online retail, but no standards specifically for online marketplaces. Some of the existing standards in online retail are already suitable for improving the situation of consumers in the area of online marketplaces. For example, the standard **DIN ISO 20488 “Online consumer reviews — Principles and requirements for their collection, moderation and publication”** can help to ensure that customers in online shops and on online marketplaces can rely on the authenticity of the reviews displayed.⁹⁶

Specific standardisation for online marketplaces would be the most direct way to **address the particular consumer problems in the context of online marketplaces**. Due to the international dimensions of online retail, standards for online marketplaces should be developed at the international level of ISO and then implemented in the EU and Germany through corresponding European and German standards.

As long as there is no specific standardisation project for online marketplaces, the consumer-related issues arising from the special business model of online marketplaces can also be addressed in **general e-commerce standardisation projects**.

The **standardisation projects** under the responsibility of the **ISO/TC 321 standardisation committee** are particularly important here.⁹⁷ **Standards on transaction security in e-commerce** are being developed there.

⁹⁶ DIN (2019), DIN ISO 20488:2019-03. Retrieved from <https://www.beuth.de/de/norm/din-iso-20488/300183899> (10 December 2023). Cf. DIN Consumer Council (2019), Gegen gefälschte Bewertungen: DIN-Verbraucherrat empfiehlt neue Norm zu Online-Kundenbewertungen, Presseinformation (Against fake reviews: DIN Consumer Council recommends new standard on online customer reviews, press release) dated 26 February 2019. Retrieved from <https://www.din.de/resource/blob/324526/f5612898fc0a9ec2a20fcbd740298794/presseinfo-din-verbraucherrat-empfoehlt-neue-norm-zu-online-kundenbewertungen--data.pdf> (10 December 2023)

⁹⁷ ISO/TC 321. Retrieved from <https://www.iso.org/committee/7145156.html>

The standards cover the following aspects:

- Securing the transaction process in e-commerce (including easier access to e-platforms and online shops);
- Protection of online consumer rights, including the prevention of online disputes and the resolution process;
- Interoperability and admissibility of inspection result data on the quality of goods in cross-border e-commerce;

Two standards have already been developed within the area of responsibility of ISO/TC 321: **ISO 32110:2023 on terms and ISO 32111:2023 on principles and framework**.⁹⁸ These standards would be particularly suitable for a **definition** of online marketplaces. However, this would not be possible until the regular revision of the standards five years after their publication.

In addition, ISO/TC 321 is currently developing three more standards: **ISO 32122**, "Transaction assurance in e-commerce — Guidelines for online dispute resolution"; **ISO 32120**, "Transaction assurance in e-commerce — Guidelines on sharing of goods quality assurance related traceability information in e-commerce supply chains"; and **ISO 32112**, "Transaction assurance in e-commerce — Relevant factors of evaluation and selection of indicators".⁹⁹ These standardisation projects could be suitable for integrating aspects of the more recent EU legislation, in particular the **design and inspection obligations** in connection with online marketplaces.

Result No. 14: Standardisation can define standards for business processes and user guidance in order to solve the consumers' difficulties when shopping via online marketplaces that were identified in this study. Suitable topics for this are a clarification of the definition of online marketplaces, clear communication of the division of responsibility between online marketplaces and consumers, and a concretisation of the design and inspection obligations in connection with online marketplaces.

A specific standardisation for online marketplaces at ISO level would be conceivable in this context. However, the topics mentioned can also be addressed as part of ongoing ISO standardisation projects in the context of online retail, primarily as part of the work of ISO/TC 321.

⁹⁸ Both standards are available at <https://www.iso.org/committee/7145156/x/catalogue/p/0/u/1/w/0/d/0> (10 December 2023).

⁹⁹ All standardisation projects mentioned are available at <https://www.iso.org/committee/7145156/x/catalogue/p/0/u/1/w/0/d/0> (10 December 2023).