The Consumer Option Model for Withdrawal Rights in the EU: Analysis of an Alternative Design

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ABSTRACT

Under EU law, consumers have a mandatory "right of withdrawal" in certain situations. Economic and legal literature raises serious doubts as to its effectiveness and fairness. This article focuses on an alternative design which has been previously discussed in literature: the "consumer option model". Under this model, every online consumer is able to choose between a purchase with the withdrawal right and a purchase without such a right for a slightly lower price. Compared to the removal of all legislative prescription – where the granting of the right would be solely in the discretion of businesses – the consumer option model offers mandatory protection and is more consumer friendly. Within the framework of an experimental study, an interdisciplinary team of researchers at the University of Graz examined this alternative design. The 319 study participants, who were Austrian residents, were divided into three groups and purchased two different products in a simulated online shop with or without the right of withdrawal. For these three groups, the right of withdrawal was presented as an opt-out, an opt-in, or a no default choice. Contracts with a right of withdrawal displayed a higher price than contracts without it. The results indicated that consumers were most likely to choose the right of withdrawal when it was presented as an opt-out option and least likely when it was presented to them as an opt-in option. In addition, many subjects indicated that they were not even aware of the given choice in form of an already set checkmark. Hence, status quo bias as well as framing effects played a role and could influence the consumer decision to conclude the online contract with or without the right of withdrawal, and this independently of any interpersonal differences. Personal dispositions, such as the regulation focus or the willingness of risk-taking, neither played a role, nor did gender or income. Consumer choices differed with the value of the purchased product. The study, thus, revealed the preference of (only) a certain percentage of Austrian consumers to conclude online contracts without a right of withdrawal in exchange for a lower product price (which is currently prevented by EU law). In order to safeguard free and informed consumer choices, the legislative option model would have to be formulated and offered by the trader in a neutral form, void of any defaults.

Keywords: Right of withdrawal, Consumer law, Mandatory right, Option model, Consumer behavior, Framing, Status quo bias

INTRODUCTION

Mandatory "rights of withdrawal" are an essential tool of EU consumer law. The consumer has the right to revoke her consent without giving any reason. The withdrawal right is an instrument of consumer self-protection: The consumer is given a chance to reconsider and to improve the quality of her decision by bringing it in line with her real intention and preferences. The right exists only in certain situations and/or certain types of contracts and not in all consumer contracts. Reasons for granting the withdrawal right include, for example, the absence of the possibility to inspect goods purchased online, haste, surprise or psychological pressure for contracts concluded away from business premises, and the weight, complexity and information overload of some long-term contracts (Kalss & Lurger 2001, pp. 39 et seq.; Lurger 2012, p. 54-55). EU directives provide, for example, withdrawal rights for distance selling and off-premises contracts, life insurance, consumer credit and timesharing.

In principle, one of four regulatory approaches to – or models of – the right of withdrawal can be adopted by a jurisdiction:

- ***Model 1 (freedom model)***: The legislator stays inactive and leaves the granting of the right of withdrawal to the market. Businesses can offer contracts without or with such rights to consumers whenever they please. Examples: Most jurisdictions in the U.S. (see below).
- ***Model 2 (dispositive standard model)***: The legislator decides that the granting of a withdrawal right should be the standard. It, however, allows the parties to opt out of this standard, requiring salient notification of the consumer by the business about the removal of the right. Here, like in model 1, the business makes the initial choice how to offer the product. She, however, has to deactivate a default (legislative standard). Example: New York and California (see below).
- ***Modell 3 (consumer option model)***: In certain situations, and/or with certain contracts, the legislator requires the business to offer a withdrawal right to the consumer and, in addition, to give the consumer the option for a cheaper price without a right of withdrawal. Here, unlike in models 1 and 2, the choice is only on the side of the consumer. Example: This model is examined in our study.
- ***Model 4 (strict mandatory model)***: In certain situations, and/or with certain contracts, the legislator prescribes a right of withdrawal for the consumer. The parties do not have the possibility to conclude such a contract without the withdrawal right. Example: This is the status quo of EU consumer law.

In the U.S., *model 1*, the freedom model, is prevailing among state jurisdictions (Ben-Shahar & Posner 2011, pp. 139 et seq.; Eidenmüller 2011b, pp. 117-118; Fleißner 2018, pp. 204-212). Prescription of a right of withdrawal is a rare exception. For instance, some contracts concluded by consumers outside business premises are subject to a three-day right of withdrawal under federal law (16 C.F.R. § 429.1[d]). *Model 2*, the dispositive standard model, was incorporated into New York law and Californian law: Every retail seller who does not want to offer a right of withdrawal (full refund) for a certain minimum period (= dispositive standard), has to conspicuously inform the consumer of the absence of this right (New York Code, General Business, sec. 218-a; Cal. Civ. Code § 1723). On the basis of *models 1* and *2*, businesses might, under certain circumstances, find an advantage in offering withdrawal rights voluntarily: This special feature may be used as a signal for higher product quality or higher trustworthiness of the seller (Moorthy & Srinivasan 1995, pp. 442-466; Rekaiti & Van den Bergh 2000, pp. 393-394; Eidenmüller 2010, pp. 75 et seq.; Smits 2011, pp. 671-684; Bonifield et al. 2010, pp. 1058-1065; Fleißner 2018, p. 205). However, the problem with *models 1* and *2* is that consumers may be excluded from enjoying such a right when businesses decide – for whatever reason – not to grant it to their consumers in certain markets. Consumers are then completely dependent on that exclusionary choice made by businesses, even though there would be good reasons to protect their decision quality due to "critical circumstances", like in situations of information deficit, surprise, psychological pressure or information overload and complexity.

Model 3, the mandatory consumer option model, has been discussed in literature (e.g., Ben-Shahar & Posner 2011, p. 120; Eidenmüller 2010, p. 74; Eidenmüller 2011a, pp. 11 et seq.; Eidenmüller 2011b, pp. 134-139). Its obvious advantage is that the costs created by some consumers who make (frequently) use of the right of withdrawal or who value the possession of such a right highly, are borne only by them, and *not* by other consumers who do not use or do not want such a right. As compared to the strict mandatory *model 4* of EU law, *model 3* increases the private autonomy of both parties by giving the consumer an additional choice and by offering to the business the possibility to sell its products without a withdrawal right at a lower price. Unlike *models 1* and *2*, *model 3* guarantees the consumer the exercise of a withdrawal right (in critical circumstances) when she herself sees a need to be protected, and not only the legislator sees a need to protect her. The possibility to choose such a right is mandatory in its nature. The active affirmative choice of the consumer can neutralize the paternalistic gesture of the EU legislator of giving mandatory protection. This would make the EU withdrawal regime less paternalistic. The generally rather high level of consumer protection realized by the EU legislator on consumer markets seems to rule out the adoption of a completely business-oriented model in the EU, like the freedom *model 1* and the dispositive standard *model 2*, in which the consumer has no say. Against this background, *model 3* seems to offer the best of all worlds – a high level of protection, less paternalism and more choice (freedom). We, therefore, decided to subject *model 3* to closer examination. The disadvantage of *model 3* is that consumers who would benefit from a right of withdrawal may nevertheless exclude it: possible reasons being the lower price and misperceptions (biases) on the side of consumers. Hence, a key question of every mandatory statutory measure of protection of consumers has to be answered: Is the consumer sufficiently able to assess her need of protection and act accordingly without (more) state support or is she not?

In the following article, we explain the legal, economic and behavioral science background of the right of withdrawal, in general, and of the consumer option *model 3*, in particular (II.), we present our method and study design (III.) and our study results (IV.) which we discuss in part V. at the end. Our study was conducted in 2020 and financed by a grant of the Austrian National Bank (OeNB).

THEORETICAL BACKGROUND

A. The Right of Withdrawal under EU Directive 2011/83/EU and the Austrian Statute FAGG

The consumer's right of withdrawal is comprehensively regulated by various European directives. For distance selling transactions (including online purchases) and contracts concluded away from business premises, the Consumer Rights Directive (Directive 2011/83/EU) adopted on October 10, 2011 contains the relevant standards, which were to be implemented by the Member States by the end of 2013. This is a "maximum harmonization" directive, which means that Member States have no discretion in implementing the protection instruments of the directive, thus leading to a uniform legal standard throughout the EU. The harmonization of consumer information and withdrawal rights realizes the goals of improving the functioning of the EU internal market, of removing any barriers to cross-border trade in goods, and of improving consumer protection (see recital 5 of the Consumer Rights Directive).

In Austria, the Consumer Rights Directive has been implemented in the *Fern- und Auswärtsgeschäftegesetz* (FAGG; Distance Selling and Off-Premises Contracts Statute) and the *Konsumentenschutzgesetz* (KSchG; Consumer Protection Statute). The existence of a distance or away from business premises contract is a prerequisite for the right of withdrawal (§ 3 FAGG). A distance contract, examined in this study, exists if a consumer transaction is concluded without the simultaneous physical presence of the contracting parties, within the framework of a distribution and service system organized for distance sales, and using exclusively means of distance communication (§ 3 para 2 FAGG). However, there are exceptions to the right of withdrawal for certain goods (§ 18 FAGG). For example, there is no right of withdrawal for quickly perishable goods, hygiene articles or goods specially manufactured according to the customer's wishes.

The withdrawal period is 14 calendar days and, in the case of sales contracts, begins on the day on which the consumer receives the goods (§ 11 para 2 FAGG). The seller has a comprehensive duty to provide information (§ 4 para 1 and 8 FAGG), the violation of which results in an extension of the withdrawal period by 12 months (§ 12 para 1 FAGG). If consumers exercise their right of withdrawal, they must declare the withdrawal and return the goods without undue delay (§ 15 para 1 FAGG). The trader must reimburse all payments made by the consumer no later than 14 days after receipt of the notice of withdrawal (§ 14 para 1 FAGG). This also includes the delivery costs, unless the consumer has chosen a delivery other than the standard delivery (§ 14 para 2 FAGG). The consumer has to bear the costs of returning the goods, unless the trader voluntarily assumes these costs (§ 15 para 2 FAGG) and, if applicable, has to pay for any loss in value of the goods due to use beyond the use necessary for inspection (§ 15 para 4 FAGG).

The legal situation just described is mandatory and has been implemented essentially in the same way in all EU Member States. Thus, the study described here which was conducted in Austria uses the same legal background that is present also in all other EU Member States. References to Austrian law can, therefore, be applied also to the respective law in the other Member States.

B. Legal Analysis

The binding force of contracts on both parties, as laid down by contract law and enforced by state authorities, is a tribute to the EU fundamental right of contractual freedom (Art 16 EU Charter of Fundamental Rights), i.e. the freedom of the parties to make their own economic choices. The unilateral right of withdrawal of the consumer is an exception to this binding force, thus, constituting a restriction of the freedom of the other party which has to be justified. It has to be designed as a necessary and effective instrument in view to its goal of protecting endangered consumer rights and interests (Loos 2007, pp. 9-11; Eidenmüller 2010, pp. 67-68, 71 et seq.; Eidenmüller 2011b, pp. 109-114; Kalss & Lurger 2001, pp. 39 et seq.; Lurger 2012, pp. 54-55; Luzak 2014, pp. 91-93). The withdrawal right protects the consumer's right to a free and informed decision that enables her to bring her contract decision in line with her personal preferences, often coinciding with the protection of her life and property interests. Contract decisions which do not reflect the consumers' true preferences and/or harm her life or property interests are *undesirable* from the point of view of consumer protection as well as market efficiency (Lurger 2012, p. 55; Eidenmüller 2011a, pp. 7, 14 et seq.).

As compared to the EU strict mandatory *model 4*, the consumer option *model 3* constitutes only a weaker intrusion into the freedom of contract, as it offers both consumers and businesses additional opportunities and choices, and it is less paternalistic than *model 4* as it protects only those consumers who express their consent to be protected by a withdrawal right. It might, therefore, be considered a milder, yet eventually also effective (see below D.1.), exception to the freedom of contract and binding force of contract principles.

The question whether withdrawal rights *are* effective instruments in view of their protection goals, thus justifying their intrusion into the fundamental right of economic freedom of the business in terms of a legal constitutional analysis, can hardly be answered without having a look at their economic dimension (see C. infra) and at the actual use consumers make of their withdrawal rights, i.e. the behavioral empirical dimension (see D.1. infra).

C. Economic Analysis

The binding force of contracts on both parties, as laid down by contract law and enforced by state authorities, is an important contribution to the efficiency of markets: Without the binding force of contracts, parties were limited to on-the-spot transactions, i.e. immediate exchanges of

mutual performances. Due to the binding force of contracts, parties can safely rely on all kinds of exchange and co-operation agreements for future performances as well (Eidenmüller 2011a, p. 2; Eidenmüller 2011b, p. 109-110; Cziupka 2010, pp. 28-29; Schäfer & Ott 2020, pp. 476-478; Cooter & Ulen 2014, pp. 368 et seq.; Posner 2014, pp. 95 et seq.).

A key justification for granting the right of withdrawal in distance selling is information asymmetry. If consumers lack essential information when concluding a contract, this may result in an economically inefficient contract which does not match their preferences (Eidenmüller 2011a, pp. 7 et seq.; Eidenmüller 2010, pp. 74 et seq.; Ben-Shahar & Posner 2011, pp. 116, 124 et seq.). "Search goods", whose characteristics can be determined easily prior to the conclusion of the contract, do not pose a problem in this respect. This is not the case for "experience goods", where consumers can only determine the characteristics through use or inspection, since here consumers do not have all the necessary information before concluding the contract (Nelson 1970, pp. 311-329). In the case of "credence goods", on the other hand, there is no possibility of testing, which is why the information asymmetry exists permanently, and cannot be remedied even by the right of withdrawal (Darby & Karni 1973, pp. 67-88). Thus, at least for experience goods, there is an information asymmetry, which can, however, be resolved by giving the consumer an opportunity to examine the goods. There are products which become experience goods only by being purchased at a distance, because in that case they cannot be inspected before contract conclusion, unlike in stationary trade.

From an economic perspective, the costs of granting the right of withdrawal have to be lower than the benefits arising from the right of withdrawal, i.e. prevention of unwanted, inefficient contracts. Thus, withdrawal rights should only be prescribed where their benefits outweigh their costs (Eidenmüller 2011a, pp. 3 et seq.; Eidenmüller 2010, pp. 71 et seq.). The costs incurred by distance selling companies for having to offer a right of withdrawal, such as transaction costs in the event of a withdrawal or the costs of legal uncertainty during the cooling-off-period, are, in most cases, passed on to *all* their consumers, irrespective of whether the individual consumer ever uses the withdrawal right or not (Rekaiti & Van den Bergh 2000, p. 374; Bechtold 2010, pp. 92-100; Eidenmüller 2011a, p. 6; Eidenmüller 2010, pp. 71-74). This means that, in the end, the strict mandatory *model 4* imposes additional costs on those it wants to protect, consumers. This particular cost factor only exists in distance sales, not in stationary trade (in which latter sellers does not have to offer a withdrawal right under EU law). In *model 4,* the equal cost burden lying on all consumers could be considered unequitable, since only 10 % of consumers are estimated to cause approximately 40 % of revocations (Borges & Irlenbusch 2007, p. 87), and consumers who never revoke are carrying the same burden as consumers who do so frequently. Here, the consumer option *model 3* has, at least, the advantage that it brings about an overall reduction of costs and, at the same time, shifts these costs to those who – eventually – make use of the withdrawal right.

D. Behavioral Sciences (Empirical Research)

Exercise of an existing right of withdrawal

The effectiveness of a legally prescribed right of withdrawal – whether in the form of *model 4* or *model 3* – depends, among others, on the actual use consumers make of it to protect themselves in an adequate manner in real life. In literature, for instance, assumptions about the over- and under-inclusiveness of the existing EU strict mandatory *model 4* are made – which are, however, not sufficiently verified by corresponding empirical data. This means that the right might be exercised where there is no need for protection and *not* exercised where there *is* a need for protection: i.e. there is suspicion that a certain protection inaccuracy or ineffectiveness can be observed.

a) Over-inclusiveness and over-use: Consumers could use the right opportunistically by ordering a product just for free use within 14 days before returning it to the seller (Ben-Shahar & Bar-Gill 2013, p. 120; Eidenmüller 2011a, p. 21 et seq.; Eidenmüller 2011b, p. 135). *Model 3* would offer an additional opportunity of over-use: The consumer can first buy, inspect and return the product in the more expensive withdrawal right-option, before ordering it once again for the lower price of the no withdrawal-option. However, this type of opportunistic behavior will only occur, if the price difference between the two options is more than minor. A very small price difference would deter consumers from this type of opportunistic use. The actual price difference depends on the development of the respective market or on legal regulation (where assumed necessary by the legislator) (Eidenmüller 2010, p. 70; Eidenmüller 2011a, p. 12; Eidenmüller 2011b, p. 135). In cases of opportunistic use, if verified, consumers would use the right beyond the particular protection goal for which it was prescribed, i.e. the cure of "critical circumstances" like an information deficit.

b) Under-inclusiveness and under-use: Consumers do not act rationally in the sense of the *homo economicus* model, because they are not using all available information for their decisions and are partly acting emotionally (Miller 1956; Simon 1956, 1979; Thaler 1980). Therefore, bounded rationality can be assumed in consumer decisions (Bettman et al. 1998; Simon 1955, 1979). Psychological mechanisms, such as the *endowment effect** or *loss aversion***, may prevent consumers from making use of their right of withdrawal, even though they needed to withdraw in order to protect themselves, thus causing the protection instrument to fail in some cases (Eidenmüller 2011a, p. 7 et seq., pp. 14 et seq.; Luzak 2014, pp. 100-106). And in case of *model 3*, consumers may not be able to predict well enough whether they will benefit or not from a withdrawal right and may, therefore, exclude the right to their own detriment.

*Possession of an object leads to higher appreciation of that object and, as a result, people often demand more money for the sale of an object than they would be willing to pay for the acquisition of the same object.

**Increased pursuit of loss avoidance compared to the pursuit of gain.

For these reasons, a possible design of the right of withdrawal – whether in the sense of *model 4* or of *model 3* – must be examined with the empirical methods of behavioral sciences (for a general behavioral account of EU consumer law see Helleringer & Sibony 2017, p. 607): It must be ensured that the concrete *design of the withdrawal right* takes account of the reality of human decision-making processes. With respect to the consumer option *model 3*, additional attention must be paid to the *design of the option* which is presented to the consumer (see D.2. infra).

Exercise of the choice in the option model

The experimental study described here was designed to offer insight into consumer behavior and decision making in two respects, in particular:

- Use and appreciation of withdrawal rights by consumers: How do consumers make use of and value the mandatory right of withdrawal as an instrument to protect their own interests? Do they appreciate having such a right? Do they make use of the right and when? Are they willing to pay higher prices as a consequence of higher protection? In the experiment, consumers could cast their vote for or against a right of withdrawal, like in a referendum or opinion poll, and were asked for their motivation.
- Use and appreciation of a withdrawal/price-option: The study offered us the possibility to observe the consumers' option decisions in relation to the design of the option (opt-in, opt-out, no default), the value of the goods purchased, prior experience or personal characteristics (like loss aversion, gender, income).

Ad 1): How will consumers react to the option as such? Since they have become accustomed to their automatic right of withdrawal in online purchases over decades, it is doubtful whether they would accept this option at all. Consumers could, for instance, see the option as a loss of legal protection. A right that currently seemingly "costs them nothing" has to be chosen for a higher price under the experimental regime of *option 3*.

Ad 2): The option model can be designed in different ways. In an opt-out model, the right of withdrawal applies, unless the consumer indicates otherwise. In the opt-in variant, the consumer has to actively choose the right of withdrawal, which does not apply otherwise. Depending on their choice, consumers would be charged a surcharge or a discount on the product price. One way of making the choice available to consumers would be the presentation of a check box when the contract is concluded, by which the consumer can select or de-select the right of withdrawal, similar to the current policy for accepting general terms and conditions.

Framing effects: Human decisions are influenced by "framing". Previous research shows that different wording of the same content can strongly influence the recipient's decision making and preferences (Kühlberger 1996; Krüger et al. 2016). In addition to very strong linguistic frames that make use of signal words such as "live" and "die" (Tversky & Kahneman 1981), it has been shown that even subtle linguistic framing of the information influences the decision (Johnson et al. 2002). How framing operates depends, in addition, on a variety of situational and dispositional factors. Personality traits may also play a role (Petty et al. 1997; Lee & Aaker 2004; Haugtvedt & Petty 1992). For instance, people with medium self-esteem are more suggestible than those with low or high self-esteem because they show higher levels of conformity and willingness to change (Rhodes & Wood 1992).

Status quo bias: Another factor influencing the use of the option could be the "status quo bias". This comes into effect as soon as there is a default which has to be changed. Previous research shows that people exhibit a disproportionate preference for decisions that maintain the status quo (Chernev 2004; Kahneman et al. 1991; Samuelson & Zeckhauser 1988). The default option is the one that is automatically offered to consumers or the one that is preset in health plans or retirement programs, for example, and, therefore, requires active consumer action to change (Samuelson & Zeckhauser 1988; Thaler & Sunstein 2009). If a checkmark is already set, many people will keep this preset default option rather than change it (Johnson et al. 2002). The tendency to preserve the status quo is a result of the asymmetry of the value function of prospect theory (Kahneman & Tversky 1979). The disadvantages of change outweigh the advantages (Kahneman et al. 1991).

Personal dispositions and circumstances: The consumer's option decision can also be influenced by "personal dispositions" (= personality traits) or "personal circumstances". We will examine them in our study in order to comprehend the decision made within the opt-in or opt-out design holistically.

According to regulation focus theory (Higgins 1997, 1998), people with a strong prevention focus are motivated to avoid losses as much as possible and show a strong need for protection and security. Since online purchases involve a certain degree of uncertainty, it can be assumed that people with a high level of this personality trait prefer the right of withdrawal, since this is associated with a certain degree of protection.

Closely related to this is the willingness to take risks. Earlier studies have already shown that people with a high prevention focus have a lower willingness to take risks than people with a low prevention focus (Crowe

& Higgins 1997). Thus, it can also be assumed that people with low risk tolerance prefer the safety of the right of withdrawal. Because women are more risk averse than men (Brooks et al. 2019; Keech et al. 2019), this difference could also result in a gender difference in withdrawal choice. Accordingly, women, as more risk-averse individuals, might choose the withdrawal right more often than men, with this decision mediated by the dispositional personality trait of risk-taking.

Another interpersonal difference that may influence the withdrawal option choice is income. Individuals with higher incomes might consider the costs of withdrawal to be lower than individuals with lower incomes and thus choose the right of withdrawal more often.

E. Research questions and hypotheses

The main research questions of our study are:

1) How will consumers react to an option concerning the right of withdrawal with a price effect? Which percentage of study participants will be ready to conclude an online purchase without a right of withdrawal at a lower price and which percentage of study participants will stick to their withdrawal rights for a slightly higher contract price?

   Under *hypothesis 1* we assume that the (huge) majority of Austrian study participants will stick to the protection by a right of withdrawal which they are accustomed to for decades, and will not de-select it.

2) How will the opt-out and opt-in design of the option influence the decision of study participants? For this purpose, we present the right of withdrawal to one group as an opt-out variant (so that a checkmark is already set for the choice of the right of withdrawal and can be removed by a click), to another group as an opt-in variant (in which the choice to conclude the contract *without* the right of withdrawal is preset and can be altered by a click) and to a third group as an open default-free choice. In the third group, a checkmark has to be placed in one of two empty boxes.

   Under *hypothesis 2* we assume that participants of the opt-out group will choose the right of withdrawal more often than participants of the opt-in group and the no default-group.

3) Does the different value of products, the willingness to take risks, the regulatory focus, gender, and average income predict the decision to select or de-select the right of withdrawal?

   Hypothesis 3: Regarding the value of the products, we expect individuals to choose the right of withdrawal less often for low value products than for high value products, as they are more likely to want to protect themselves with high value products.

   Hypothesis 4: In terms of risk taking, we assume that individuals with low risk-inclination should use the right of withdrawal more often than individuals with high risk propensity, because they want to avoid the information deficit risk involved in online purchases.

   Hypothesis 5: We assume that women have a lower risk propensity than men and should therefore make more frequent use of the right of withdrawal.

   Hypothesis 6: We assume that individuals with high prevention orientation should be more likely to choose the right of withdrawal to meet their need for security than individuals with low prevention orientation.

   Hypothesis 7: We expect people with a low net household income to decide *against* the right of withdrawal more often than people with a high income, as the extra costs of the right of withdrawal are more significant for them.

4) In addition, we wanted to record the reasons why subjects chose to opt-in or opt-out of the right of withdrawal in order to better understand the intentions behind the choices. This also includes questions about subjects' experiences with the right of withdrawal, such as whether participants have already had negative experiences with the right of withdrawal. To assess the legitimacy of the critique of over- or under-inclusiveness of the consumer option *model 3* and strict mandatory *model 4* of the right of withdrawal, we also wanted to find out whether consumers used or would use the withdrawal right opportunistically (= over-use) or whether they hesitated to withdraw even though they had reason to return the product (= under-use).

Method and Study Design

Preregistration

Before study implementation, the planned experiment was preregistered and described on *AsPredicted* (https://aspredicted.org/TDX_CC8). Not all the hypotheses from the pre-registration are addressed in this article, since the study was part of a larger project and other issues were included that might receive attention in other publications, for example, but which will not be discussed in detail here.

Sample

319 participants attended this study, of which 63.9 % were female (n = 204), 35.1 % were male (n = 112), and 1.0 % reported another gender (n = 3). A previously calculated *G*Power* analysis (version 3.1.9.4, see Faul et al. 2007) yielded an optimal sample size of N = 215 participants with a power of .95 and an alpha error level of .05 (f^2 = .10) for the main research question. Due to three study groups and the planned evaluation of further moderation and

mediation analyses in a major project, a larger sample of at least 300 individuals (100 per study group) was targeted. Some of the original 394 participants had to be excluded due to missing data.

The mean age of the 319 subjects included in the analyses and calculations was 28 years (M = 28.25, SD = 11.61), with the youngest person being 18 years old and the oldest person being 67 years old. 10 % of the participants had completed an apprenticeship (n = 32), 61.4 % had a high school diploma (n = 196) and 1.9 % had completed a college (n = 6). 18.2 % had a bachelor's degree from a university (n = 58), 6.9 % had a master's degree (n = 22), and 1.6 % had a doctorate degree (n = 5).

The student representation in this study was 69.9 % (n = 223), with 24.5 % (n = 78) studying psychology. 18.5 % reported being employed full-time (n = 59), 15.7 % were marginally employed (n = 50), 14.4 % were employed occasionally or irregularly (n = 46), and 2.5 % of study participants were currently unemployed (n = 8). 6.0 % reported being self-employed (n = 19), 0.9 % were currently caring for children (n = 3), 0.6 % reported being a housewife (n = 2), and 3.1 % were retired (n = 10). In each case, 0.3 % were in vocational training, undergoing retraining or completing their military service (n = 1).

The net household income was less than 500 EUR per month for 20.4 % of the study participants (n = 65), 32.9 % reported a monthly income of 500 to 1000 EUR (n = 105), 14.4 % one between 1000 and 1500 EUR (n = 46), 10.3 % between 1500 and 2000 EUR (n = 33), 11.0 % mentioned a monthly net household income of 2000 to 3000 EUR (n = 35), 5.0 % one between 3000 and 4000 EUR (n = 16) and 6.0 % stated that their monthly net household income was over 4000 EUR (n = 19).

Study Material and Procedure

Participants were asked to purchase two products in a simulated online shop, where they could choose to buy the product with or without the right of withdrawal when they signed the contract. First, participants were instructed to imagine that they need this product and decide to buy it online. Therefore, they should browse the simulated online store to find a suitable one. The two products which were used in this study (backpack and laptop) were already used in a previous experiment (Preising, 2019; Eder, 2020). For the current study, the online shop was expanded by five products in each case to give the participants a larger product selection. The online shop was visually modeled on conventional and well-known online shops, in order to make the purchasing scenario as realistic as possible, and there were 20 products to choose from in each category, one of which the subjects were to select (see Appendix). The number of 20 products was chosen to provide a suitable product for each of the participants, independent of their gender, but so that the product selection would not be too large, and a search would thus take too long and jeopardize the efficiency of the experiment. The high-value product (laptop) ranged in price from 800 to 1000 EUR (including right of withdrawal), whereas the price for the low-value product (backpack) was between 30 and 50 EUR (including right of withdrawal). In the product list, which provided an overview of all products offered, a price range was displayed, with the lower price corresponding to the purchase *without* the right of withdrawal and the higher price corresponding to the purchase *with* the right of withdrawal.

In two of the three experimental groups, a default setting was presented. The participants, who were randomly assigned to one of these three groups, could choose whether they wanted to keep the preset option without the withdrawal right or select the right (opt-in group) or whether they wanted to keep the preset variant with the withdrawal right or de-select the right of withdrawal (opt-out group). The presentation of the online shop for the third experimental group did not provide any default settings: No pre-selection was made, and subjects could choose whether they wanted to put the product in the shopping cart with or without the right of withdrawal (no default group).

Depending on the choice for or against the withdrawal right, the purchase price for the product changed on the product page. For the withdrawal right of the laptop 19.99 EUR and for that of the backpack 3.99 EUR were added or deducted. Whether the price was previously displayed with or without withdrawal costs depended on the experimental group. In the opt-in group, the lower price was initially displayed. In contrast, the higher price was displayed in the opt-out group. A price range including both prices was presented in the no default group. The price – differing with the right – was displayed next to the option as well as directly next to the product image. If subjects changed their choice, the price displayed next to the product image changed accordingly and flashed red for a brief moment to make the price change associated with the choice of the withdrawal right visible. A simple explanation of the right of withdrawal was found when subjects hovered the mouse cursor over the word, so that participants who were not sufficiently familiar with the legal situation could make an informed decision.

In the shopping cart, the choice made regarding the withdrawal right was displayed again, and by clicking on it, participants were taken back to the product page and could change their decisions. Participants could place several products in the shopping cart and compare them, but they had to choose one product in order to conclude the simulated purchase contract. Otherwise, they received a corresponding message. Whether participants had to complete the purchase process first for the backpack or the laptop was randomly assigned.

After purchasing the product, participants were asked *questions (A)* about their reasons and motivation to buy with or without the right of withdrawal, and were able to answer on a six-point scale from "strongly disagree" to "strongly agree". Reasons against the withdrawal right were, for

example, that respondents would never return goods anyway or that the returning costs of the goods were too high. Reasons for choosing the withdrawal right were that products often differ from their presentation in the online shop, or that the withdrawal costs were considered to be low, for example.

After completing both purchase processes and answering the questions about them, the participants in the opt-in and opt-out study group were asked whether they had noticed the check mark set for the cancellation choice at all; subjects in the no default group were not asked this question because no default setting had been made for them.

Thereafter, participants had to answer *questions (B)* about their behavior in connection with contracts. Answers could be given on a six-point scale from "does not apply at all" to "applies completely". Respondents were asked, for example, whether they regularly checked their contracts (e.g., cell phone plan, electricity provider, etc.) and changed them if necessary, or whether they kept or changed the shipping method and shipping agent suggested in online stores. Now, 14 *questions (C)* on experience with online shopping and the right of withdrawal followed, which could also be assessed on this six-point scale. On the one hand, the participants were asked whether they generally ordered frequently in online stores or whether they returned a lot, but also whether they worried that businesses would block them if their returns rate was too high, or whether they might not get their money back, as well as questions on whether they had already kept products in the past that did not meet their expectations or which they would not have bought in stationary retail.

This was followed by three *questions (D)* in a six-stage response format on the reaction of the participants to a possible change in the law to an option model, such as whether they would purchase many products with or without the right of withdrawal, but also whether they would use the withdrawal right opportunistically in the sense that they would first purchase products with the right of withdrawal, then return them and subsequently buy them at a lower price and without the withdrawal right. *Questions (E)* on general and specific risk-taking from the Risk Aversion-SOEP (RA-S) of Dohmen et al. (2011) and the survey of sociodemographic variables, namely age, gender, highest completed education, employment situation, and net household income followed. At the end of the study, the German version (Spies, 2013) of the Regulatory Focus Questionnaire (RFQ) by Higgins et al. (2001) was given. Finally, participants were informed about the purpose and aim of the study and were given contact information for the possibility to contact the investigators for further inquiries.

Study Design

The present study employed a 3 (between subjects: opt-in vs. opt-out vs. no default) x 2 (within subjects: backpack vs. laptop) factorial design. Participants were randomly assigned to one of the three study groups and remained in that assigned group for the conduct of the two simulated online purchases.

The three study groups (between-factor) were:

- ***Opt-in group***: In the opt-in condition, the already marked option (default) is no withdrawal right (with lower price) and participants must actively change this option to choose the right of withdrawal (higher price).
- ***Opt-out group***: In the opt-out condition, the already marked option (default) is the right of withdrawal (higher price) and the persons have to change the default option to waive or "opt-out" of the withdrawal right (lower price).
- ***No default group***: In the no default group there is no marked option, and participants have to actively communicate whether they want to have to right of withdrawal or not (with the respective price consequences).

The two product categories (within measurement) were: a low value product (30-50 EUR), a backpack, and a high value product (800-1000 EUR), a laptop. The key dependent variable of the present study was the decision for the right of withdrawal as a dichotomic variable that is, whether or not participants choose the right of withdrawal when it is offered as an option in distance selling contracts.

Raffle and Certificate of Participation

As an incentive for participation, subjects were able to enter a raffle for a 50 EUR gift certificate. For this purpose, they were redirected to another website after complete completion of the experiment to provide their data for participation, if desired. Psychology students at the University of Graz also had the alternative option of receiving a trial voucher for 45 minutes, which they needed for their studies.

RESULTS

Statistical analyses were conducted using IBM Statistics SPSS (version 25, 2017). As alpha-error level we used the common 5.0-% threshold in the calculations; where appropriate, the *p*-value for statistical tests was adjusted to counteract alpha-error accumulation.

Willingness of Participants to De-Select the Right of Withdrawal (Hypothesis 1)

Our assumption in *hypothesis 1* was that only a few participants would be willing to renounce the protection by a right of withdrawal. Depending on certain factors (see below B.), between 58.5 % (backpack opt-in group) and 21.5 % (laptop opt-out group) participants decided to conclude their simulated online purchase *without* a right of withdrawal. Thus, the unanticipated result was that, under certain circumstances, the clear majority of participants was ready to renounce their right of withdrawal for a (slightly) lower price, rather than stick with it. For the several reasons given for the choices for and against the right of withdrawal see C. infra.

Influence of Different Presentations and of Different Product Categories on the Choice

In order to analyze the influence of the presentation of the choice for the right of withdrawal, as well as of the two different product categories, we used descriptive characteristic values. Afterwards, we examined by means of Chi²-test whether statistically significant differences existed between the choice groups and between the two product categories.

Differences between the conditions (hypothesis 2)

Considering the two products separately, descriptive statistics show that participants assigned to the opt-out group most frequently kept the withdrawal right, while those who belonged to the opt-in group chose the right of withdrawal least frequently. In the no default group, there was no deviation between the observed and expected frequency of concluding with or without the right of withdrawal, respectively; the observed values are intermediate between those of the opt-out and opt-in groups. Specifically, for the backpack, 41.5 % in the opt-in group, 63.6 % in the opt-out group and 56.6 % in the no default group opted for the right of withdrawal (see Table 1). For the laptop, the right was chosen by 63.2 % in the opt-in group, 78.5 % in the opt-out group, and 68.9 % in the no default group. Across the experimental groups, more participants opted for a contract with a withdrawal right for the laptop (70.2 %) than for the backpack (53.9 %).

Table 1: Frequency of the decision regarding the right of withdrawal in the different groups for the two products separately

Product category	Group	with WR	without WR	Total
	Opt-in	44	62	106
Low value (Backpack)	Opt-out	68	39	107
	No default	60	46	106
	Total	172	147	319
	Opt-in	67	39	106
High value (Laptop)	Opt-out	84	23	107
	No default	73	33	106
	Total	224	95	319

Remark. WR = right of withdrawal

Figure 1 shows that the right of withdrawal was most frequently chosen in the opt-out condition for both the low (n = 68) and the high value product (n = 84). Testing whether the presentation of the withdrawal right and the choice of withdrawal were interdependent using a multidimensional Chi²-test showed that the choice for or against the withdrawal right differed significantly across groups (backpack: $\chi^2(2, n = 319) = 10.873$, $p = .004$, $\varphi = .19$; laptop: $\chi^2(2, n = 319) = 6.097$, $p = .047$, $\varphi = .14$), with the reported effects representing small effects according to a Cramér's V interpretation. Post hoc analyses were performed for closer examination.

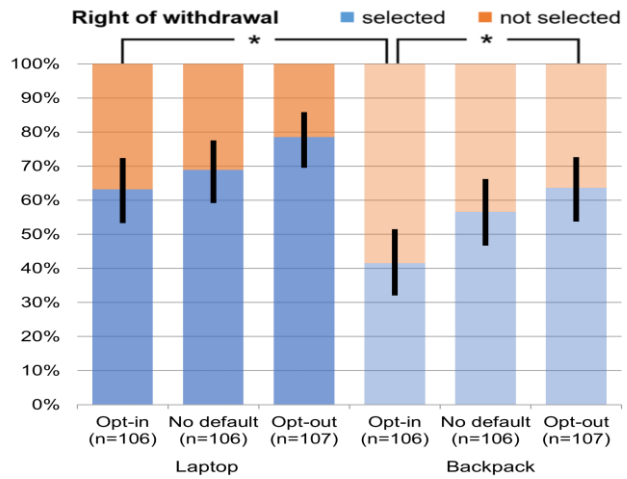

Figure 1. The panel shows that right of withdrawal for the high value product (laptop) and the low value product (backpack) per condition; asterisks show statistically significant differences ($p < .05$) between groups; error bars represent 95% confidence intervals.

For the backpack purchase, significant results emerged in the opt-in condition and in the opt-out condition with respect to the withdrawal decision (see Table 2). In the opt-in condition, the right of withdrawal was chosen significantly less often (n = 44) than the expected value (n = 57.2) indicated. In the opt-out condition, however, the right of withdrawal was chosen more frequently (n = 68) than the expected value (n = 57.7) suggested. In the condition without a default, there were no significant differences.

For the laptop purchase, we received significant results in the opt-out condition with respect to the withdrawal decision (see Table 2). In the opt-out condition, the right of withdrawal was chosen significantly more often (n = 84) than the expected value (n = 75.1) indicated. No significant differences were found between conditions in the opt-in condition and the no default condition. However, in the opt-in condition there is a tendency that the right of withdrawal was chosen less frequently (n = 67) than the expected value (n = 74.4); the results are only just not significant.

Table 2: Post hoc analysis regarding the withdrawal choice for the two products

		Opt-in	Opt-out	No default
Backpack	Count	44	68	60
	Expected Count	57.2	57.7	57.2
	Adjusted Residual	-3.1	2.5	0.7
	Significance level p	.002**	.014*	.497
Laptop	Count	67	84	73
	Expected Count	74.4	75.1	74.4
	Adjusted Residual	-1.9	2.3	-0.4
	Significance level p	.053	.022*	.710

Remark. Significance level: *$p < .05$, **$p < .01$

Different product categories (hypothesis 3)

A McNemar procedure was used to examine whether there were differences in product categories, specifically whether the right of withdrawal was chosen significantly less often for low value products (backpack) than for high value products (laptop). This yielded a significant result ($\chi^2(2, n = 319) = 18.950$, $p < .001$, $\varphi = .251$). Cramér's V according to Cohen (1988), describes a medium-size effect here with $\varphi = .25$. Table 3 shows that subjects were significantly more likely to choose the right of withdrawal for the high value product, while they were more likely not to choose the right of withdrawal for the low value product. On the one hand, these results illustrate that the product category played a role in the decision-making process for or against the withdrawal right. On the other hand, a large proportion of subjects chose the right of withdrawal for both products ($n = 139$). With this finding further analysis was conducted.

Table 3: McNemar test: frequency table of the withdrawal choice for the two products

		High value (Laptop)		
		without WR	with WR	Total
Low value (Backpack)	without WR	62	85	147
	with WR	33	139	172
	Total	95	224	319

Remark. WR = right of withdrawal

Particularly, in the case of backpack purchases, the differences found in the frequency of the withdrawal choice illustrate the influence of the presentation of the choice option. In both the opt-in and opt-out study groups, a check mark was already preset. When asked if they had noticed this default at all, 127 of the 214 participants answered "yes". The other 40.7 % had not noticed the default setting. Figure 2 shows the participants' withdrawal decision split for those who noticed the default and those who did not. Subjects in the opt-out group chose the right of withdrawal significantly more often ($n = 53$) than subjects in the opt-in group ($n = 14$) if they noticed the set checkmark during the backpack purchase. If they did not notice the default, there is no significant difference in the withdrawal choice between the opt-in and opt-out groups. There is only a tendency for more people in the opt-out group than in the opt-in group to choose the right of withdrawal. The same is found for the laptop purchase. Similarly, no significant differences were found here, only a tendency becomes visible. People in the opt-out group tended to choose the right of withdrawal more often than those in the opt-in group, regardless of whether or not they noticed the check mark.

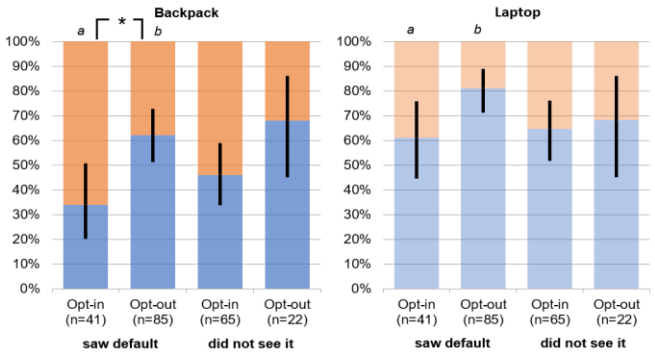

Figure 2. The panels show whether participants recognized their opt-in or opt-out options; asterisks show statistically significant differences ($p < .05$) between groups and similar letters indicate statistically significant differences within groups; error bars represent 95% confidence intervals.

Appreciation of the Right of Withdrawal and Reasons for the Choice

A significant positive correlation was found between the two choices of an individual in the two product categories. Individuals who chose the right of withdrawal for one product are also more likely to choose it for the other product ($r = .25$, $p < .001$). Thus, subjects who value the

withdrawal right, do so regardless of the product category. For both products, subjects were most likely to cite the ability to check at home as the reason for choosing the right of withdrawal (77.2 % for the backpack and 79.3 % for the laptop). The reason for choosing not to use the withdrawal right was most frequently that people were completely satisfied with the selected product (65.1 % for the backpack and 68.4 % for the laptop) and, therefore, did not see a reason to withdraw.

Differences in reasons for not choosing the withdrawal right

Since significantly more people opted for the right of withdrawal for the laptop than for the backpack, the question arises why participants made these decisions (see *questions [A]* for reason and motivation). Therefore, dependent t-tests were calculated to identify differences in the reasons given between the products. Table 4 shows the descriptive statistics related to the reasons against the withdrawal right, as well as the results of the t-tests.

Table 4: Mean values of reasons for not purchasing with the right of withdrawal in the various product categories including the results of the t-tests

Reason against choosing the withdrawal right	Low value		High value				
	M	*SD*	*M*	*SD*	*t*(61)	*p*	Cohen's *d*
costs too high[1]	2.92	1.85	4.02	1.65	-4.64	.00	.63
never return[2]	3.98	1.77	4.16	1.62	-1.01	.32	.10
completely satisfied[3]	4.95	1.09	4.56	1.36	2.42	.02	.32
effort to high[4]	3.00	1.80	2.47	1.38	2.35	.02	.33
product was cheap[5]	2.98	1.58	1.97	1.39	4.69	.00	.68
busy for a very long time[6]	3.73	1.72	4.23	1.73	-2.53	.01	.30

[1]Question: "I waived the right of withdrawal because the costs of the right of withdrawal was too high."
[2]Question: "I waived the right of withdrawal because I never return products anyway."
[3]Question: "I waived the right of withdrawal because I am completely satisfied with the product I chose."
[4]Question: "I waived the right of withdrawal because I wouldn't return products anyway, as the expense of returning them (e.g., printing a return label, going to the post office, etc.) is too great in relation to the price of the product."
[5]Question: "I waived the right of withdrawal because I wouldn't return anyway since the product was cheap."
[6]Question: "I waived the right of withdrawal because I wouldn't return anyway, since I spent a long time choosing the right product before deciding."

For the high value product (M = 4.02, SD = 1.65), participants stated significantly more likely ($t(61) = -4.64$, $p < .001$) as a reason for their decision that the costs for the right of withdrawal were too high for them than for the lower value product (M = 2.92, SD = 1.85). This is a medium to strong effect of d = .63 according to Cohen (1988). Furthermore, for the low value product, subjects mentioned significantly more likely ($t(61) = 2.35$, p = .02) that the expense of returning the product was too great for them in relation to the product price (M = 3.00, SD = 1.80) than for the high value product (M = 2.47, SD = 1.38). Here, the effect was d = .33, which can be interpreted as a small to medium effect. A significant difference between product categories was also found for the reason that participants would not return anyway because the product was cheap ($t(61) = 4.69$, $p < .001$). Participants gave this reason more often for the low value product (M = 2.98, SD = 1.58) than for the high value product (M = 1.97, SD = 1.39). Calculating the effect size here yielded an effect of d = .68, which again can be seen as a medium to strong effect.

In addition, there is a significant difference in satisfaction with the product between the backpack and the laptop ($t(61) = 2.42$, p = .02). There was an effect of d = .32, which corresponds to a small to medium effect. Participants indicated more often for the lower value product that they waived the right of withdrawal because they were satisfied with the chosen product (M = 4.95, SD = 1.09) than for the high value product (M = 4.56, SD = 1.36). A significant result was also found for the last queried reason for concluding a purchase without the right of withdrawal ($t(61) = -2.53$, p = .01). The calculation of the effect size here yielded an effect of d = .30, which again corresponds to a small to medium effect. Participants indicated more often for the high value product (M = 4.23, SD = 1.73) than for the low value product (M = 3.73, SD = 1.72) that they decided not to purchase with the withdrawal right because they spent a long time choosing the right product before making the decision. No significant differences were found only for the reason never to return products anyway (p = .32). If people generally return little or never, they do not differentiate between products.

Differences in reasons for choosing the withdrawal right

As can be seen in Table 5, there were also significant differences between the products in the reasons participants gave for choosing to enter into the contract with the right of withdrawal (see *questions [A]* for reason and motivation). For the low value product, participants indicated significantly ($t(138) = -6.36$, $p < .001$) more often that products frequently deviated from the online shop presentation and that the withdrawal right was chosen for this reason (M = 4.82, SD = 1.32) than for the high value

product (M = 4.02, SD = 1.57). This is a mean effect of d = .55 according to Cohen (1988). Furthermore, for the low value product, subjects were significantly more likely (t(138) = -5.41, p < .001) to mention that they considered the costs of the right of withdrawal to be low (M = 4.76, SD = 1.45) than for the high value product (M = 4.12, SD = 1.53). Here, the effect was d = .43, which can be interpreted as a small to medium effect. No significant differences were found for the two similar reasons to conclude with right of withdrawal, as participants would like to check products at home first (p = .87), as well as being unsure whether the chosen product corresponds to expectations (p = .18). If people value the opportunity to check a product at home first or are unsure whether the product selected in the online shop really matches their expectations, this applies to both high and low value products, regardless of the product category.

Table 5: Mean values of reasons for purchasing with the right of withdrawal in the various product categories including the results of the t-tests

Reason for choosing the withdrawal right	Low value		High value				
	M	*SD*	*M*	*SD*	*t*(138)	*p*	Cohen's *d*
unsure[1]	4.34	1.52	4.68	1.34	2.40	.18	0.24
product deviation[2]	4.82	1.32	4.02	1.57	-6.36	.00	0.55
possibility of testing[3]	5.13	1.17	5.14	1.32	0.167	.87	0.01
low cost[4]	4.76	1.45	4.12	1.53	-5.41	.00	0.43

[1]Question: "I concluded with the right of withdrawal because I am not sure whether the chosen product meets my expectations."
[2]Question: "I concluded with the right of withdrawal because often products do not look as they were presented in the online shop."
[3]Question: "I concluded with the right of withdrawal because I want to check the product at home first before deciding whether I will keep it."
[4]Question: "I concluded with the right of withdrawal because the costs of the withdrawal right are low."

Personal Reasons as Possible Factor Influencing the Choice

In order to explore personality traits as possible factors influencing the choice of the withdrawal right, the influence of regulatory focus or risk-taking were investigated (see *questions [E]*). However, the results showed no significant correlations of risk propensity with the withdrawal choice, neither for the low value product (r = -.018, p = .747) nor for the high value product (r = -.038, p = .501). It can, therefore, be concluded that more risk-averse individuals are not more likely to risk receiving a product that does not match their preferences and therefore forgo the addition of the right of withdrawal at increased costs than individuals with lower risk propensity (*hypothesis 4*).

Also, no significant associations with the withdrawal choice were found with respect to gender neither for the backpack (χ^2(2, n = 319) = 1.381, p = 501, φ = .066) nor for the laptop (χ^2(2, n = 319) = 3.217, p = .200, φ = .100). However, there is a significant relationship between gender and risk taking (r = .176, p = .002). Thus, women are less willing to take risks (M = 4.698, SD = 1.548) than men (M = 5.279, SD = 1.378). However, since no significant relationship between the withdrawal choice and gender was found (*hypothesis 5*), further mediation or moderation analyses are void.

Similarly, regulation focus is not significantly related to withdrawal choice for either the low value (r = .071, p = .203) or the high value product (r = -.018, p = .744). Thus, people with higher prevention focus do not choose the right of withdrawal significantly more often than people with low prevention focus (*hypothesis 6*). For the decision regarding the relationship between the choice of the withdrawal right and household net income, no significant result could be found for the backpack (r = -.04, p = .49), as well as for the laptop (r = -.04, p = .43). Thus, it cannot be assumed that individuals are less likely to choose the right of withdrawal if they have a low household net income (*hypothesis 7*).

Therefore, the results indicate that the personal dispositions as well as the sociodemographic variables co-surveyed in this study (see *questions [E]*) do not influence withdrawal choice and render further moderation or mediation analyses void.

Further Analyses: Possible Over- and Under-Use of the Right of Withdrawal

Furthermore, the present study recorded the subjects' handling of the right of withdrawal, as well as their experiences with it (see *questions [C]* and *[D]*), with the goal of verifying or falsifying current assumptions about the factual use of the right of withdrawal, since these assumptions were frequently put forward as arguments for a change of the legal situation in the EU, i.e. *model 4* (see II.D.1 supra). Their reaction to a possible change in the law towards an option model was also surveyed.

Only 4.4 % of the study participants confirmed opportunistic use of the goods during the withdrawal period. Even in case of a change of the legal situation to the

consumer option *model 3*, only a few (13.3 %) would use it opportunistically in the sense that they would first purchase goods with the right of withdrawal, then return the goods and purchase them again at a lower price without the right of withdrawal. In contrast, 32.5 % reported they had already kept products they would not have bought in the store and 37.5 % claimed this for products that did not match their expectations.

Some respondents (25.9 %) reported that they have already incurred unexpected costs due to returns and 6.9 % have already not received their money back. 51.7 % have already had to cancel a distance selling contract in the past because the product did not correspond to the description on the homepage. People who have already had the experience that a product did not correspond to the description on the homepage choose the right of withdrawal significantly more often than those to whom this does not apply (backpack: r = -.11, p = .047; laptop: r = -.15, p = .009), even though these effects are only weak.

These results suggest that consumers tend to revoke too infrequently. Many have already kept goods that did not fulfill their expectations or that they would not have bought in the store and some have already had bad experiences with the right of withdrawal. Thus, we could find no evidence for frequent opportunistic over-use of the right of withdrawal, but serious evidence for its under-use.

Discussion

The aim of the present study was to conduct an empirical analysis of an alternative design of the right of withdrawal as an option model discussed in the literature (e.g., Ben-Shahar & Posner 2011; Eidenmüller 2010, p. 78; Eidenmüller 2011a, pp. 11 et seq.; Eidenmüller 2011b, pp. 134-139). We wanted to shed light on the consumer behavior und decision making in two respects, in particular: We were interested in the use and appreciation of withdrawal rights by participants in general and in the use and appreciation of a withdrawal/price option. Particular attention was paid to the framing of the option.

In the experimental study, the subjects were asked to make two simulated online purchases and to decide whether to conclude the respective contract with or without the right of withdrawal. The presentation of this choice differed among the three experimental groups. In the opt-in group, the subjects could actively select the right of withdrawal (a contract conclusion *without* withdrawal right was preset as the default variant), while in the opt-out group they had to actively de-select the withdrawal right (a contract conclusion *with* the right of withdrawal was preset as the default variant). In the third group, the choice was presented without preselection (without default). Participants of this group had to actively take or renounce the right of withdrawal. The subjects carried out this process in randomized order for a low value (backpack) and a high value (laptop) product. The price of the product varied depending on whether they bought the product with or without the right of withdrawal. Subsequently, the subjects were asked questions about their decisions, their personal characteristics and their prior experience with withdrawal rights.

The results showed, among other things, that a considerable number of participants was willing to purchase the products without a right of withdrawal for a slightly lower price (*hypothesis 1*). They also revealed that opportunistic use (over-use) of the withdrawal right is rare, whereas under-use of the right seems to be more of a problem in participant's prior experience. Choices differed with the value of the product, but did not depend on personal characteristics, in particular not on gender or income (*hypothesis 3-7*). The results confirmed that the presentation mode of the withdrawal right is a key factor for consumers when deciding whether to conclude an online contract *with* or *without* the right of withdrawal (*hypothesis 2*). They chose the right of withdrawal clearly more often when presented as an opt-out option and less often when presented as an opt-in option. The retention of the preset choice by many consumers may result from the fact that many did not even notice the default. Thus, the study was able to show that well known biases, such as framing effects (Tversky & Kahneman 1981) as well as the *status quo* bias (Samuelson & Zeckhauser 1988), also play a role in the choice to conclude a contract with or without the right of withdrawal. Therefore, a neutral way of presentation of the choice (void of any defaults) seems to offer consumers the largest amount freedom.

Results of Potential Legal Relevance

In contradiction to *hypothesis 1*, a considerable number of participants were ready to conclude the simulated online purchase *without* a right of withdrawal for a lower price. If this was considered a referendum concerning the right of withdrawal, about half of the participants voted against it. This result indicates that Austrian consumers will, like participants did, make use of and appreciate the possibility to choose, in particular the possibility to de-select the withdrawal right, once they are granted this possibility. This choice is not possible under current EU and Austrian law (*model 4*). Apart from the consumers' readiness to de-select the right of withdrawal, the option model would also have two other arguments in its favor: the advantage of a fairer cost allocation (only those who use it have to pay for it) and an increase in private autonomy.

Only if the choice is presented as neutrally as possible, i.e. in the sense that no preselection is made, we can assume that consumers are able to make their decisions free of influences from the framework in which a choice is presented (*hypothesis 2*). Thus, an EU legislator who wanted to offer consumers a free space to decide for they whether or not they want to have a right to withdraw (for a slightly higher or lower price) would have to provide the *no default variant*.

A more paternalistic EU legislator, worried about some consumers not being able to make adequate assessments of their needs, could find the *opt-out variant* attractive for the following reasons: Results show that many participants did not even notice the preset checkmark, many others noticed it and felt comfortable with sticking to the default. If the legislator intended to entrust rather attentive and active consumers with the (potentially dangerous) choice to de-select standard withdrawal protection, which the legislator thinks is needed in the average case, he will want to use the opt-out variant as a "nudge" in the sense of libertarian paternalism (Thaler & Sunstein 2009). Under this arrangement, people who do not care or do not pay attention, will stay with the ordinary protection, which the legislator thinks is generally adequate for critical circumstances of consumer contracts (like information deficit, haste, surprise, psychological pressure, complexity and information overload). This would be the paternalistic side of the arrangement. On the liberal side of the solution, free choice to de-select the protection is offered to those who really care for a lower price and a lower protection, they will be able to actively opt out.

However, another perspective has to be included: The policy spectrum for the right of withdrawal ranges from the completely abstaining liberal legislator (e. g. many U.S. states) who does not impose any rules (*model 1* in the introduction) to the completely prescriptive paternalistic legislator (e. g. the EU) who imposes a mandatory withdrawal right (*model 4*). In that respect, an option model (*model 3* in the introduction) without any default would be more liberal than an option model with an opt-out design. However, this leaves us with the question of whether consumers can adequately protect themselves and make the right choices themselves in any of the option-models examined. The libertarian paternalistic opt-out model seems adequate where the legislator doubts this ability, because this model tries to keep the average consumer in the withdrawal system. In our sections discussing personal characteristics and the over- and under-use results of the withdrawal right (points 2 and 3 below) we will come back to this question.

Product categories

In accordance with our expectations (*hypothesis 3*), consumers did choose the right of withdrawal more frequently for the high value product than for the low value product. We assume that withdrawal regulation should principally be uniform for all (online) products concerned – of high or low value. We, therefore, rule out that different legal rules could apply to different product categories. The fact that participants' choices were different for different product categories can be considered additional evidence for the desirability of consumer choice under the option *model 3*. Where withdrawal and protection preferences differ with product categories, only consumers are able to adjust the law to their needs. They should be, therefore, given the possibility to make these choices.

For the high value product, consumers indicated significantly more often than for the low value product that they did not choose the right of withdrawal because the costs of the withdrawal right were considered too high. From an objective point of view, the costs of 2.99 EUR for the backpack correspond to a price surcharge of 6 to 10 %, whereas the price surcharge for the laptop of 19.99 EUR is between 2 and 2.5 %, which should lead subjects to rate withdrawal costs for the backpack higher in relation to the product price. However, the results show the opposite assessment of the consumers, as the costs for the right of withdrawal were stated to be too high more often for the high value product than for the low value one. Thus, participants did use the product price to assess the costs of the right of withdrawal, but evaluated the costs of the right in absolute terms, and not in relation to the product price. The costs charged by traders for an optional right of withdrawal should, therefore, not be too high even for high value products, as otherwise consumers could be deterred from choosing the right of withdrawal. A legislator concerned to avoid such deterrence would be well advised to set maximum limits to withdrawal price surcharges.

Personal dispositions and circumstances

Contrary to our expectations (*hypotheses 4-7*), no correlations of withdrawal choice with personal dispositions were found. Although a negative correlation of prevention focus with risk taking was present, which corresponds to the tendency of individuals to try to avoid negative events (Crowe & Higgins 1997), neither a correlation of the withdrawal decision with risk taking nor with prevention focus could be shown. Rather, it seems that the framing of the message operates independently of these variables. This suggests that personality-related characteristics matter less than the general design and presentation of the withdrawal option in consumers' decisions to choose or not to choose the withdrawal right. Also, no correlations with gender and household net income could be found, rendering further planned moderation and mediation analyses obsolete. This can be interpreted as good news for the legislator: The uniform design of a consumer option rule for all consumers is not hampered in its effectiveness by personality characteristics of certain groups of consumers. And there seems to be no need to worry about low-income groups motivated to always choose the lower price irrespective of their need of protection. If there is suspicion that, under the consumer option model, consumers with a low income will not be able to make choices which adequately protect their own interests, this suspicion was at least *not* confirmed by our data.

Opportunistic use and non-use of the right of withdrawal

Further analysis showed that only 4.4 % of consumers reported an opportunistic use of the right of withdrawal, and even a change in the law to an option model does not seem to encourage such a use enormously. Slightly more participants (13.3 %) stated that they would use the right of withdrawal opportunistically if the law was changed to the option *model 3*. This study cannot predict whether people will actually behave in this way in reality. In real life, they would, for instance, have to pack and dispatch the return goods, which could amount to an additional obstacle, not considered by participants when predicting their future opportunistic use hypothetically. In addition, we assume that opportunistic use in the framework of an option model would change with different amounts of price surcharges for the right of withdrawal. Further research is needed to examine this price dependency of planned and actual opportunistic use. In general, the aspect of a possible increase in opportunistic use in the case of a change to the consumer option *model 3* should not be disregarded.

Over a third of participants reported that, in the past, they had not made use of the right of withdrawal even though they regretted their online purchase. Particularly in the case of low-priced products, many subjects indicated that the costs of returning the goods were too high for them in relation to the price of the product. This non-use of the right of withdrawal where it should be used to correct a decision that does not match an individual's preferences is problematic (Eidenmüller 2011a, p. 20). A new legislative design should address this concern by reducing return costs and other obstacles for withdrawal. The introduction of the consumer option *model 3* (instead of *model 4*) would encourage consumers to remove the withdrawal right altogether before delivery of the goods. Thus, it would aggravate the problem of the non-use of withdrawal rights where such use seemed necessary to correct an unwanted contract decision not matching the consumer's preferences.

This means that our findings about the use and appreciation of the withdrawal right in general and the option model (*model 3)* in particular have to go with this caveat: In the study, there does not seem to sufficient data, albeit several indications, to puffer an unrestricted recommendation of the option model. Whereas the option model has clear advantages (consumer's freedom to choose, fair allocation of costs) it goes with the danger that consumers might underestimate the benefits of a withdrawal right for various reasons (though we could not find a connection to low income) to their own detriment. Our results showed that many participants were ready to exclude their rights of withdrawal. The European legislator would realize their party autonomy if he allowed consumers to make this choice. But at the same time, we must be aware of the fact that such choices to exclude the right would add up to an already widespread habit of detrimental underuse of the existing right of withdrawal, which latter could also be confirmed in our study.

Summing up, the option model (*model 3)* can be recommended for its advantages listed above, but it should be cast in a design that takes care of its deficits as well. The study shows that participants were ready to accept withdrawal/price options and that opportunistic use is not a big issue. At the same time, the opt-in and opt-out framing of the option appeared very powerful. The framing analysis shows that the opt-out version of model 3 seems to be able to absorb the worries about detrimental consumer choices in the best way. The opt-out-version makes sure that only those consumers will opt out of the withdrawal protection (the default) who are aware of their possibility to choose and who can think of a good reason to make their choice otherwise than suggested by the default. This installs a certain safety belt between the consumer's potential benefit from a having right of withdrawal and her decision to get out of the withdrawal regime. Before getting out of the protective regime the consumer has to open her safety belt.

Limitations and Prospects

Even though it can be assumed that test persons are able to put themselves in an experimental situation very well, and even though the online shop presented was modeled on a very well-known store that exists in real-life, it has to be noted that participants did not actually receive the product and did not incur any actual costs for it. In reality, the familiarity with a specific online store, the trust placed in it, and other experience already gained, will play a role. Unfortunately, all these factors cannot be included in an experimental laboratory study and any potential confounding variables cannot be controlled. Nevertheless, this experimental study was able to show whether consumers would accept a choice regarding the right of withdrawal and how they would decide among different presented options. The study, therefore, represents a further step in the direction of experimental consumer research of withdrawal rights. However, further research is needed to adapt the consumer protection instrument of withdrawal rights as accurately as possible to consumer needs while at the same time accommodating the interests of businesses. To this end, it is particularly necessary to learn still more about consumers' motivations and the processes behind their decisions. Indeed, the assumed correlations with personal dispositions have not been confirmed in the present study.

In the present study, participants chose the right of withdrawal more often for the high value product than for the low value product. This may be due to the financial risk involved in buying a product in this higher price category online (between 800 EUR and 1000 EUR). Beyond the price of the product, however, different characteristics and circumstances of products also entail different framework conditions and evaluation criteria that make on-site testing necessary. Therefore, the results cannot be applied to all products and product categories and further research is necessary to be able to make more differentiated statements here. However, both products tested here have certain characteristics which make testing on site appear less relevant: Both products can be described very well and do not need to be tried on first like clothing, for example.

With regard to the most frequent choice of the laptop withdrawal right, a reservation has to be made: It is not possible to say with certainty whether consumers without any legal knowledge can tell the difference between the right of withdrawal and the right of warranty. Thus, it cannot be excluded that some participants chose the right of withdrawal for high value products only for the reason that they thought they would otherwise not be protected in the event of product defects. We have tried to prevent this error as much as possible by informing the participants about the right of withdrawal by means of a simple definition.

The experimental study conducted does not address the issue of allocation of costs businesses will incur for the granting and the exercise of the optional right of withdrawal. The reduction of businesses' costs involved in an option model as well as the different distribution of costs among consumers (only some pay a higher withdrawal price) are important policy arguments when comparing the advantages and disadvantages of the strict mandatory *model 4* and the consumer option *model 3*. However, further studies are necessary to determine such cost effects, which strongly depend on the behavior of businesses incorporating the option model into their business calculation and strategy and on the competition among businesses on the respective market.

Conclusion

The results of this study indicate that a considerable number of consumers – i.e. about 50 % of study participants – may in principle be ready to make their choice against a right of withdrawal in online purchases for a slight reduction in price. The results further point to the likely influence of framing and status quo bias on a possible consumer option design of the right of withdrawal (*model 3*). If the EU legislator exchanged the strict mandatory *model 4* for a new consumer option *model 3*, he would have to pay particular attention to the defaults or neutrality of the new option design. A neutral no default design stands for a maximum of freedom of choice for consumers, the opt-out variant stands for a libertarian paternalistic "nudge".

Even though consumers might be willing to opt out of the withdrawal right, if they were given the chance by the EU legislator, it is not guaranteed that only those consumers will opt out who are *not* in danger of concluding a contract that contradicts their preferences and interests, or in other words who are *not* in need of protection. It has to be taken into account that there are situations in which a (mandatory) right of withdrawal, from an objective viewpoint, really does a good job in protecting consumers from unwanted contract decisions which do not match their preferences: This might be, for example, the case in situations of strong information deficit (as, for instance, clothes bought online have to be tried on), of haste, surprise and psychological pressure (off-premises contracts), or information overload coupled with complexity (certain long term contracts) – or at least in some of them. In these situations, consumers might get stuck in contracts – without the withdrawal escape – even though these contracts are inappropriate for them and inefficient for the economy (Eidenmüller 2011a, 7, 14 et seq.).

Considering our results on the problematic under-use or non-use of the right of withdrawal when consumers have this right and needed to withdraw from an undesirable contract (see IV.E. supra), the possibility to exclude such a right from the very beginning would create a considerable number of *additional* cases of unwanted and inefficient contracts. We, therefore, believe that the option model (*model 3)* can be recommended for its advantages (in particular consumer autonomy and fair cost allocation), but it should be cast in a design that takes care of its deficits as well. The opt-out version of *model 3* seems to be able to absorb the worries about detrimental consumer choices in the best way. The opt-out-version makes sure that only those consumers will opt out of the withdrawal protection (the default) who are aware of their possibility to choose and who can think of a good reason to make their choice otherwise than suggested by the default. The opt-out model for withdrawal rights seems to be a well-balanced compromise between self-determination and fairer cost allocation for consumers (by opening the choice) and legislative protection against the detriments of bad choices (by setting the default on the withdrawal right).

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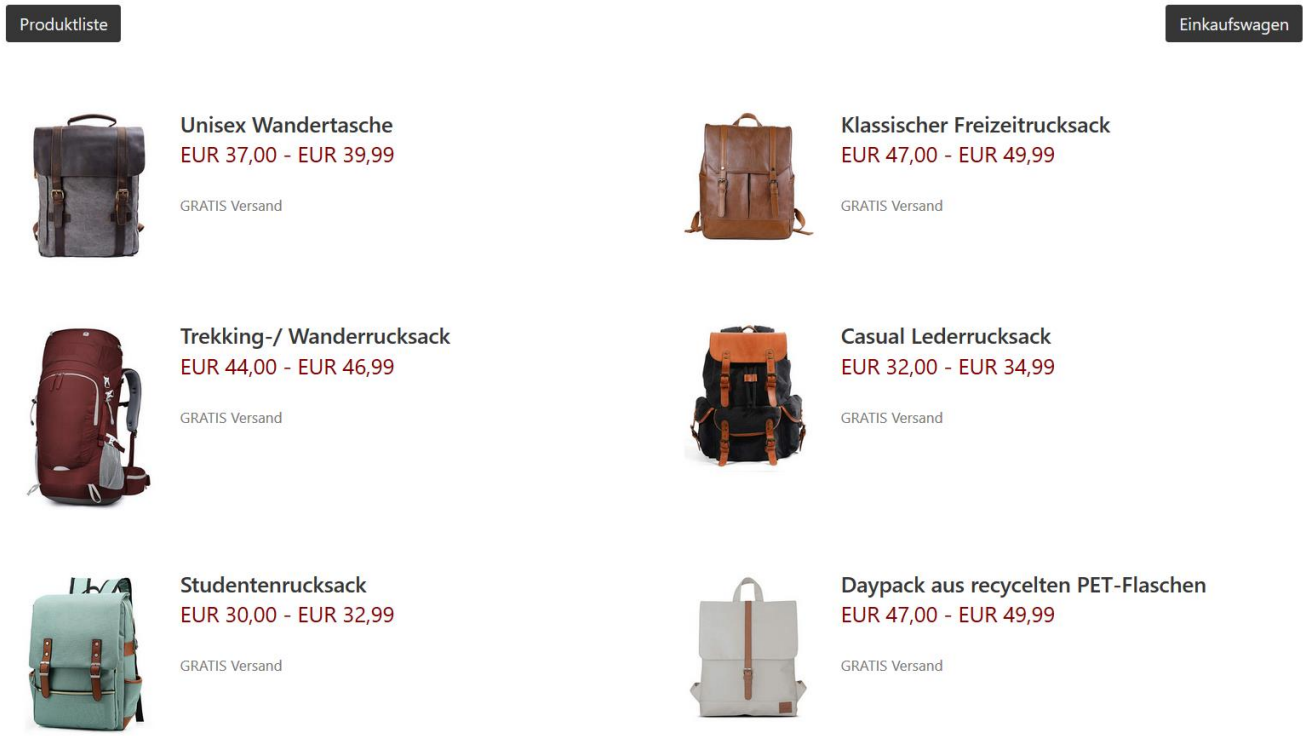
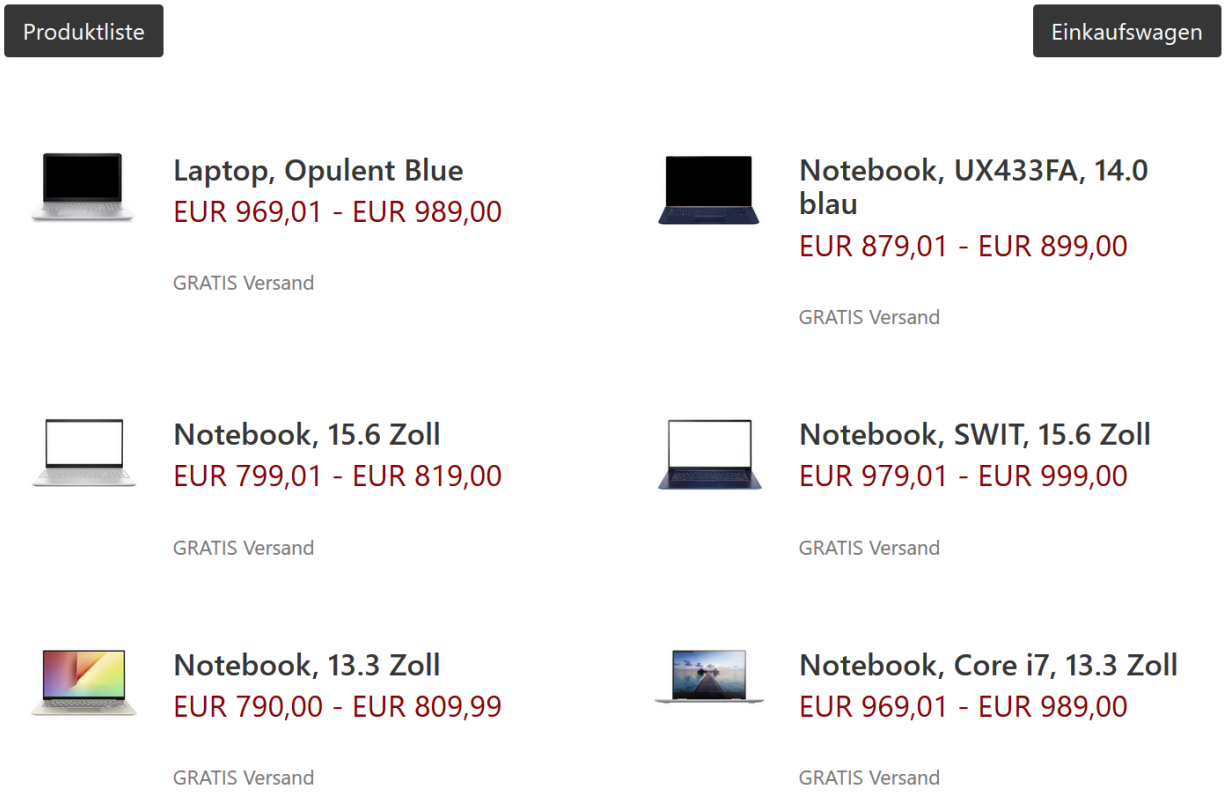
APPENDICES

A.1. View of a part of the online store product list for backpack purchase



A.2. View of a part of the online store product list for laptop purchase



A.3. Example of a product data sheet with option for or against purchase with withdrawal right

Produktliste

Einkaufswagen

Notebook, 15.6 Zoll, Core i5-7200U

EUR 785,00 - EUR 804,99

GRATIS Versand

Beschreibung: Dieser Laptop mit einem 39,6 cm Full-HD-Display sorgt für eine brillante, scharfe Darstellung im 16:9 Breitbildformat. Das Full-HD-Display ist mit AntiGlare ausgestattet und schont die Augen. Leicht und robust. Mit einem Gewicht von unter 1.9 kg und einer Dicke von weniger als 2.3 cm eignet sich dieser Laptop hervorragend für die Arbeit unterwegs. Außerdem verfügt er über eine lückenlose Tastatur. Diese bietet Schutz vor Staub und Schmutz und bewahrt Sie vor einer Leistungsbeeinträchtigung des Modells.

Kostenlose Lieferung

Lieferung: 3-4 Werktage
Bestellen Sie jetzt per **Standard-Versand** an der Kasse.

◯ Ich möchte den Vertrag mit Rücktrittsrecht abschließen. EUR 804,99
◯ Ich möchte den Vertrag ohne Rücktrittsrecht abschließen. EUR 785,00

In den Einkaufswagen

Allgemein	
Gewicht	1.80 kg

Display	
Bildschirmdiagonale	39.6 cm / 15.6 Zoll
Bildschirmauflösung	1920 x 1080 Pixel
Touchscreen	⛔
Bildschirmdiagonale (cm)	39.6 cm
Bildschirmdiagonale (Zoll)	15.6 Zoll
Bildverhältnis	16:09
IPS-Panel	⛔
Multitouch	⛔

Arbeitsspeicher	
Arbeitsspeicher-Typ	DDR4
Arbeitsspeicher-Größe	8 GB
Speichergeschwindigkeit	2400 MHz
max. unterstützter Speicher	8 GB

Grafik	
Grafikkarte	HD Graphics 620

Prozessor	
Prozessor-Generation	7. Gen (Coffee Lake)
Prozessor-Model	i5
Prozessor-Nummer	7200U
Prozessor-Taktfrequenz	2.5 GHz
Anzahl Prozessorkerne	2
Prozessor-Taktfrequenz mit Turbo	3.1 GHz

Festplatte	
Typ	SSD
Anzahl	1
Kapazität (gesamt)	256 GB

Batterie	
Technologie	Li-Ion-Akku, 2 Zellen, 30 Wh

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