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Evaluation of the Consumer Rights Directive

Accompanying the document

Report from the Commission to the European Parliament and the Council on the application of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1991/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council

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CRD Report - SWD

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Acronyms and abbreviations

B2B	Business-to-Business
B2C	Business-to-Consumer
CRD	Consumer Rights Directive 2011/83/EU
CPC	Consumer Protection Cooperation
DCDP	Proposal for a Directive on contracts for the supply of digital content COM/2015/0634 final - 2015/0287 (COD)
DG	Directorate General
DG JUST	Directorate General Justice and Consumers
EC	European Commission
ECC	European Consumer Centre
EESC	European Economic and Social Committee
EU	European Union
ICT	Information and Communication Technology
ID	Injunctions Directive 2009/22/EC
PID	Price Indication Directive 98/6/EC
SMEs	Small and Medium-sized Enterprises
SWD	Staff working document
T&Cs	Terms and Conditions (standard contract terms)
UCPD	Unfair Commercial Practices Directive 2005/29/EC
UCTD	Unfair Contract Terms Directive 93/13/EEC

1. Introduction

Pursuant to Article 30 of Directive 2011/83/EU of 25 October 2011 on consumer rights[1] the Commission is required to report on the application of the Directive to the European Parliament and the Council. The report shall include in particular an evaluation of the provisions of this Directive regarding digital content, including the right of withdrawal. The report shall be accompanied, where necessary, by legislative proposals to adapt the Directive to developments in the field of consumer rights.

To this end, the Commission has carried out an evaluation of the Directive with the aim of establishing whether, and to what extent, the objectives of the Directive have been achieved, with regard, *inter alia*, to the functioning of the internal market. The evaluation sought to assess the overall impact of the Directive by assessing its effectiveness, efficiency, coherence, relevance and EU added value, having particular regard to the rules on digital content[2] as well as on the pre-contractual information and formal requirements (Articles 5(1), 6(1), 7 and 8), and the fully harmonised right of withdrawal (Articles 9-16).

Member States had to transpose the CRD by 13 December 2013 and had to apply their national transposition measures from 13 June 2014. This evaluation has therefore been undertaken based on less than three years of actual application of the CRD provisions in the Member States. Therefore, it is too soon to see the full impact of the Directive in relation to its overall objectives, which – according to its Article 1 – is, "through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market". As further explained in Recital 4 of the CRD, the harmonisation of certain aspects of consumer distance and off-premises contracts is considered necessary for the "promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises".

Due to the limited time of practical application, the evaluation has been mainly focused on assessing how far the Member States, businesses and consumers are implementing and making use of the provisions of the Directive and whether the practical uptake is in line with the objectives pursued.

The evaluation focuses on the effects of the new or modified rules introduced and takes into account the positive and negative impacts of the Directive on businesses (e.g. easier cross-border market access, reduced compliance costs, possible additional burden) and on consumers (e.g. greater choice, reduced detriment, possible lower level of protection).

The analysis focussed on the fully harmonised provisions; it also summarises to which extent the Member States have made use of regulatory choices allowed by the Directive.

The evaluation covered the period since the beginning of the application of the national transposition measures (13 June 2014) and covered all EU Member States.

[1]Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, OJ L 304 22.11.2011 p. 64

[2] See Articles 5(1)(g) and (h), 6(1)(r) and (s), 14(4)(b) and 16(m) of the CRD.

This SWD accompanies the report on the application of the CRD that the Commission needs to submit to the European Parliament and the Council pursuant to Article 30 of the Directive which is based on the evaluation's main findings.

2. Background to the initiative

2.1. The Directive and its main provisions

The Directive replaced two previous Directives (i.e. Directive 85/577/EEC on contracts negotiated away from business premises – "off-premises contracts" – and Directive 97/7/EC on contracts concluded through the means of distance communication – "distance contracts"[3]) and amended certain provisions of Directive 93/13/EEC on unfair terms in consumer contracts and Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees.

The Directive is a horizontal piece of legislation which regulates the main aspects of distance, off-premises and on-premises contracts between consumers and businesses. It covers contracts for the purchase of goods, services, digital content not supplied on a tangible medium and supply of public utilities. Nevertheless, according to its Article 3(3), some contracts are excluded from the scope of the Directive (e.g. contracts concerning social services, healthcare, gambling, immovable property, financial services, package travel, timeshare, supply of foodstuffs or – except for some specific provisions - passenger transport).

Whilst the former Directives of 1985 and 1997 concerning, respectively, off-premises and distance contracts, only provided for a minimum level of harmonisation of consumer protection rules, the Consumer Rights Directive is a full harmonisation Directive (Article 4). In particular, it provides a single set of core rules for distance and off-premises contracts. It aimed at strengthening consumer protection, for example by introducing stricter pre-contractual information requirements and a uniform right of withdrawal period. It sets formal requirements for distance and off-premises contracts, clear rules on delivery of goods and passing of risk and sets limitations to the application of fees for the use of means of payments, communication by telephone between consumers and traders and additional payments. At the same time, the Directive aimed to reduce costs for cross-border traders, for whom the uniform rules across the EU should lead to lower compliance costs.

[3] Article 2(7) CRD reads: "‘distance contract’ means any contract concluded between the trader and the consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded"; while Articles 2(8) and (9) read: (8) "‘off-premises contract’ means any contract between the trader and the consumer: (a) concluded in the simultaneous physical presence of the trader and the consumer, in a place which is not the business premises of the trader; (b) for which an offer was made by the consumer in the same circumstances as referred to in point (a); (c) concluded on the business premises of the trader or through any means of distance communication immediately after the consumer was personally and individually addressed in a place which is not the business premises of the trader in the simultaneous physical presence of the trader and the consumer; or (d) concluded during an excursion organised by the trader with the aim or effect of promoting and selling goods or services to the consumer; (9) ‘business premises’ means: (a) any immovable retail premises where the trader carries out his activity on a permanent basis; or (b) any movable retail premises where the trader carries out his activity on a usual basis".

As mentioned, the Directive generally has a full harmonisation character, meaning that national provisions transposing it may not go below or beyond its provisions (Article 4). However, the Directive allows Member States to impose additional pre-contractual information requirements for on-premises contracts (Article 5(4)). In addition, it gives Members States the possibility to make use of certain regulatory choices under their own national law as analysed under section 5.2. Member States are held to report about the regulatory choices they have made and the Commission has made the information available on its website in accordance with Article 29 CRD[4].

Compared with the previous legal minimum harmonisation framework under Directive 97/7/EC and Directive 85/577/EEC, the new provisions of the Consumer Rights Directive relate to:

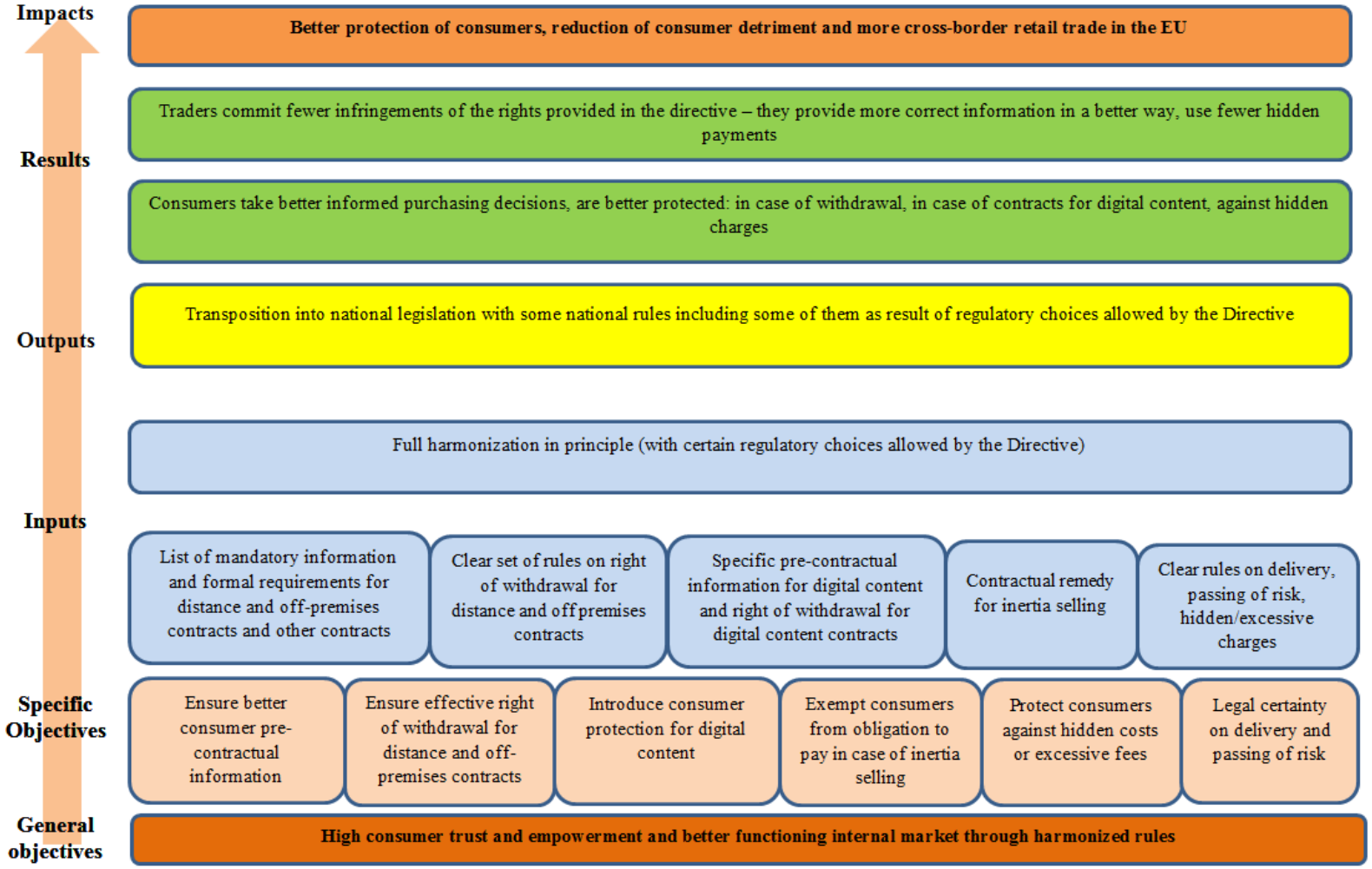
- further harmonisation of pre-contractual information requirements for on-premises (Article 5(1)) and full harmonisation of those applicable to distance and off-premises contracts (Article 6(1));
- inclusion of digital content in the scope with specific provisions related to it, such as information on functionality and interoperability and right of withdrawal (Articles 5(1)(g) and (h); 6(1)(r) and (s); 9(2)(c); 14(4)(b); and 16(m));
- formal requirements for distance and off-premises contracts, e.g. 'button provision' for orders with an obligation to pay (Articles 7 and 8);
- fully harmonised period of 14 days for the right of withdrawal from distance and off-premises contracts - albeit with some exceptions (Article 16) - and clearer refund rights (Articles 9-15);
- new rules on the delivery and passing of risk (Articles 18 and 20);
- ‘basic rate’ requirement for consumer phone-calls to the trader in relation to contracts already concluded (Article 21);
- ban on unjustified charges for payment means (Article 19) and pre-ticked boxes (Article 22).
- exempting the consumer from the obligation to pay for any unsolicited supply of products or provision of services ('inertia selling', Article 27);
- introduction of an EU-wide model withdrawal form.(Articles 6(1)(h) and 11, Annex I(B)).

2.2. Original objectives of the Directive

The overall objective of the Directive is to achieve a high level of consumer protection across the EU and to contribute to the proper functioning of the internal market by approximating certain aspects of Member States' laws, regulations and administrative provisions concerning contracts concluded between consumers and traders.

[4] http://ec.europa.eu/justice/consumer-marketing/files/overview_regulatory_choices.pdf

The **Intervention** logic shows the expected sequence of general and specific objectives, inputs, outputs and the intended results and impacts of the Directive



The Impact Assessment of the CRD proposal noted that the Directive should meet the dual objective of making it easier for traders to sell cross-border and enhancing consumer confidence in cross-border shopping.[5]

Before the adoption of the Directive, surveys showed that, for most traders, compliance costs constituted an important barrier to cross-border trade, which reduced their incentive to sell cross-border, particularly to consumers in small Member States. The majority of respondents to the Green Paper[6] consultation carried out in 2007 called for the adoption of a horizontal legislative instrument applicable to domestic and cross-border transactions, based on full targeted harmonisation.

The Directive was expected to strongly contribute to the better functioning of the internal market through harmonisation and streamlining. As indicated in the Impact Assessment, simplification of the regulatory framework reduces obstacles for traders to conclude cross-border contracts, increasing at the same time consumer confidence in cross-border and domestic shopping, particularly through lower prices and better choice for consumers. The Directive was also expected to strongly improve the quality of national legislation and the level of consumer protection, particularly in distance and off-premises transactions, as it removes inconsistencies and loopholes by setting common rules and definitions.

2.3. How the objectives of the Directive were to be achieved

The objectives of the Consumer Rights Directive were to be achieved by a comprehensive legislative instrument, which fully harmonises the main aspects of off-premises and distance contracts, and regulates some aspects of on-premises contracts. In particular, the Directive sets a fully harmonised list of pre-contractual information requirements for off-premises and distance contracts and harmonises the consumers' right of withdrawal, including its length, modalities for its exercise, its consequences and exceptions; it also stipulates clear rules for delivery of goods and it sets out the moment of passing of risk from the trader to the consumer for loss of or damage to the goods.

The Directive also for the first time laid down specific rules at the EU level on digital content for example as regards pre-contractual information and the right of withdrawal.

Consequently, it was expected that the Directive would remove some of the barriers to the Single Market and facilitate cross-border transactions by ensuring a harmonised contractual regime for businesses and the same rights for consumers across the EU. This should result in traders being encouraged to develop their business cross-border and consumers being able to benefit from extended choice and potentially lower prices.

Together with the Price Indication Directive 98/6/EC (PID)[7] and the Unfair Commercial Practices Directive 2005/29/EC (UCPD),[8] the Consumer Rights Directive sets a

[5] SEC(2008) 2544 Commission Staff Working Document accompanying the proposal for a directive on consumer rights Impact Assessment Report of 8.10.2008

[6] Green Paper on the Review of the Consumer Acquis, COM(2006) 744 final of 8 February 2007

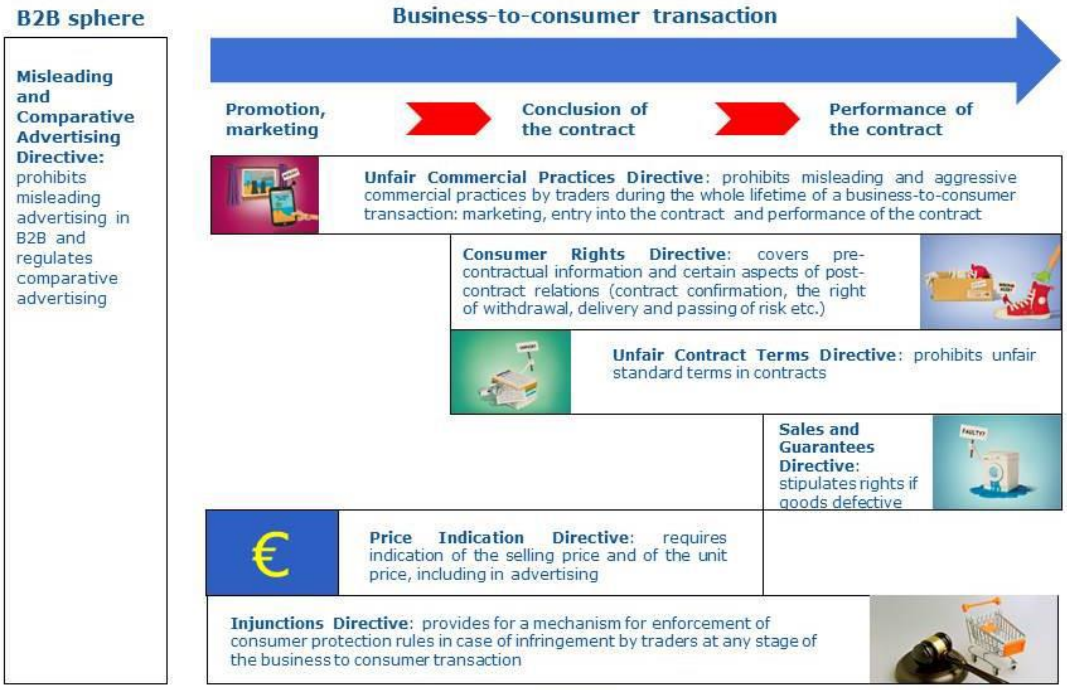
[7] Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers

[8] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC,

comprehensive framework for ensuring transparency in business-to-consumers relations, regarding the information to be given to the consumer at the pre-contractual stage of a transaction. Immediately before the conclusion of the contract, the Consumer Rights Directive protects the consumer by laying down formal requirements for distance and off-premises contracts.

At the stage of contract performance, it provides the consumer with certain additional rights, such as the right of withdrawal for distance and off-premises contracts and clear rules for delivery of goods and passing of risk. At this stage, the Directive interacts with the Unfair Commercial Practices Directive, the Consumer Sales and Guarantees Directive[9] and the Unfair Contract Terms Directive.[10]

The following diagram illustrates how the Consumer Rights Directive interacts with the other consumer and marketing law Directives currently subject to the wider Fitness check evaluation.



3. Evaluation Questions

To analyse the **effectiveness, efficiency, coherence, relevance and EU added value** of the Consumer Rights Directive, the evaluation should provide answers to a series of **evaluation questions** relating to each of these five key evaluation criteria. The evaluation questions are listed in section 6 under each of the criteria.

Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council

[9] Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees

[10] Council Directive 93/ 13/EEC of 5 April 1993 on unfair terms in consumer contracts

4. Method

The findings and conclusions of the evaluation are based on an external study on the application of the CRD, a report of the EESC on the CRD[11], a stakeholder consultation, submissions by stakeholders (also within the context of the REFIT stakeholder platform[12]), enforcement actions by national authorities, and information available through the conformity check of national transposition measures. The different evaluation activities are described in the following subsections and in the Annexes to this SWD. As the CRD evaluation ran in parallel to the general Fitness Check of consumer and marketing law, and the results of the CRD evaluation feed into the Final Fitness Check report, several consultation activities of the Fitness Check (such as the Stakeholder consultation group[13], the Consumer Summit[14], online public consultation) were used to gather views and data also for the CRD evaluation.

4.1. External study

Between May 2016 and February 2017, the Commission's external contractor carried out a dedicated study on the application of the CRD in order to support this evaluation.

The study's aim was to establish the degree to which the objectives of the Directive have been achieved – i.e. a high level of consumer protection and contribution to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions concerning contracts concluded between consumers and traders.

The study was performed by a consortium led by Risk & Policy Analysts Ltd (RPA) which was chosen based on a framework contract of (former) Directorate General Health and Consumers (former DG SANCO, currently DG SANTE) for the provision of evaluation and impact assessment in the area of Consumer Policy. It was based on literature review (including documents on the legal implementation of the Directive in different Member States) and stakeholder consultation (by means of an online survey and interviews – with 524 complete replies to the survey and 64 interviews in total; for more information please see Annex 2). In addition, results from the Commission's online public consultation carried out in the framework of the REFIT Fitness Check[15], the 2016 Consumer summit[16], the European Economic and Social Committee information report on the CRD, the results of the behavioural experiment and mystery shopping exercises to support the Consumer market

[11] EESC Information report: Consumer Rights Directive (evaluation) http://www.eesc.europa.eu/?i=portal.en.int-opinions.39555

[12] The REFIT Platform brings together the Commission, national authorities and other stakeholders in regular meetings to improve existing EU legislation, https://ec.europa.eu/info/law/law-making-process/overview-law-making-process/evaluating-and-improving-existing-laws/reducing-burdens-and-simplifying-law/refit-platform_en

[13] See point 3 in Annex 2 and the Register of Commission expert groups: http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3423

[14] More information on the 2016 Consumer summit is available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34204, and see point 7 in Annex 2 of this document.

[15] Public consultation for the Fitness Check of EU consumer and marketing law http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31689

[16] European Consumer Summit 2016 http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34204

study for the Fitness Check[17] as well as of the 2015 CRD sweep of the CPC network[18] were taken into account.

Annexes 1-3 provide additional information on the external study, its methodology and consultations. The final report of the study is published together with this SWD[19]. Over the course of the project the evaluation team encountered many difficulties in carrying out tasks in order to answer the evaluation question. The contractor for the CRD study has not been able to gather quantitative estimates of costs and benefits of the implementation of the CRD, except from anecdotal examples. In trying to overcome some difficulties in gathering data, the final report had to be revised and thus delayed compared to the original project timeline.

4.2. Online public consultation

The Commission organised an online public consultation to support its Fitness Check on consumer and marketing law and the CRD evaluation. The consultation ran from 12 May to 12 September 2016 in all EU languages. In total, 436[20] replies were received via the EU survey IT tool. The largest respondent category was companies, followed by consumers and business associations. As to the geographical distribution of responses, there was at least one reply from every Member State whilst the biggest number of responses was received from Germany (50%) followed by Belgium (11%) and UK (6%). The survey questionnaire consisted of short questionnaires for individual consumers and for individual companies and of a more comprehensive 'full' questionnaire for other respondents. The 'full' questionnaire was optional for individual consumers and individual companies. Around 38% of the consumer respondents and around 20% of the companies chose to also reply to the full questionnaire. The survey responses consisted of replies to multiple choice questions and open text comments to specific questions. Around 50 respondents submitted also additional position papers. The public consultation provided information essentially in the form of opinions about aspects of the Consumer law directives, but were not supported by evidence. The respondents were self-selecting and can therefore not be considered as representative, moreover within the different stakeholder categories, the numbers of respondents are relatively low. The results were nonetheless used to inform this evaluation, also in order to complement information gathered from other sources. In particular, the level of replies from national and EU level business and consumer associations was high enough to be considered useful for the evaluation (20 consumer associations, 86 business associations), also in view of the fact that in particular the EU level associations represent a significant number of members from different Member States. Annex 2 provides more information and a short analysis of the CRD related outcome of the public consultation. A summary and the responses have also

[17] Consumer Market Study to support the Fitness Check of EU consumer and marketing law (so called Lot 3) is available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

[18] The "EU sweep" is an EU-wide screening of websites. It is conducted in a form of simultaneous, coordinated checks to identify breaches of consumer law and to subsequently ensure its enforcement. http://ec.europa.eu/consumers/enforcement/sweeps/index_en.htm, 2015 CRD sweep: http://ec.europa.eu/consumers/enforcement/sweeps/directive/index_en.htm

[19] Final report of the study on CRD available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

[20] In addition, a few replies were submitted outside the EU survey IT tool.

been published on the Commission website[21] and a detailed report prepared by the external consultant of the Fitness check is published as part of the supporting studies[22].

4.3. Consumer Summit dedicated to Fitness Check (17 October 2016)

The 2016 Consumer Summit[23] was dedicated to the Fitness Check of EU consumer and marketing law and CRD related issues, and brought together around 450 representatives of national authorities, European institutions, consumer organisations, businesses as well as academics. It focused on the issues of consumer information requirements stemming, among others, from the CRD, the fairness of commercial practices and of contractual terms and ways to enhance the effectiveness of the injunction procedure. The participants largely shared the view that current EU consumer and marketing laws broadly remain fit for purpose. The key weaknesses identified were related to low and uneven enforcement linked to a low level of consumers' and traders' awareness about their rights and duties. As regards needs for modernising the existing rules, the participants were largely pointing towards targeted amendments to the existing directives, in particular to streamline and remove overlaps (e.g. by codification/ recast into a single instrument) and further awareness raising efforts and guidance on the interpretation/ application.

In relation to consumer information, one of the three main topics of the Summit, the participants largely agreed that there is a need for simplification of the information requirements currently provided in several directives, strengthening the transparency requirements for online intermediaries (platforms) and improving the way information is displayed to consumers. All information about the Summit, including the conclusions of the thematic workshops, is available on the website of DG Justice and Consumers.[24]

4.4. Stakeholder expert group

For the purposes of the Fitness Check and the CRD evaluation, DG Justice and Consumers set up, through an open call for applications, a dedicated Stakeholder expert group consisting of the main EU level consumer and civil society organisations, 5 major national consumer associations and main EU level business associations. Between September 2016 and May 2017 the Group has met four times to discuss the major evaluation topics as well as specific ideas for the future modernisation of EU consumer rules and methods of better presenting to consumers the mandatory pre-contractual information and standard contract Terms and Conditions. The Group will continue advising DG Justice and Consumers as regards follow-up activities to the Fitness Check and the CRD evaluation.

4.5. Meetings with DG Justice and Consumers networks

[21] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31689
[22] Available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332
[23] European Consumer Summits are annual stakeholder events organised by DG Justice and Consumers of the European Commission. European Consumer Summit 2016: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34204
[24] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34204

Since the beginning of 2016, DG Justice and Consumers has made a number of presentations at the regular meetings of the DG JUST networks of consumer protection authorities: the Consumer Protection Co-operation (CPC) network, the Consumer Policy Network (CPN), the European Consumer Consultative Group (ECCG) and the European Consumer Centres (ECC) network. At the meetings, focus was usually on the Fitness check of consumer and marketing law. There seemed to be agreement that the existing body of EU consumer law overall is still fit for purpose and there was no need for fundamental changes. Most members see benefit of streamlining and removing overlaps in existing law. There were divergent views on the question of level of harmonisation. For more details, please refer to point 6 of Annex 2.

4.6. Sweep activities and enforcement actions by CPC network to ensure compliance with CRD

Under the Consumer Protection Cooperation (CPC) Regulation[25], enforcement authorities – coordinated by the European Commission or by a Member State – can coordinate their enforcement activities (such as EU-wide screening of websites, called 'sweeps') and launch actions requiring traders operating in several EU countries to cease commercial practices contrary to EU consumer law.

In 2014 a sweep was carried out on guarantees for consumer electronics. The CPC authorities checked in total 437 websites selling consumer electronics[26]. 54% (235) of these websites were found to be non-compliant with EU consumer law regarding information obligations about the statutory and commercial guarantees. The lack of a reminder of the existence of the legal guarantee of conformity for goods before the consumer is bound by a distance contract – as required by Article 6(1)(l) of CRD was found in 174 websites (ca. 40%).

In 2015 a specific sweep was carried out on the CRD by the CPC authorities[27], under the coordination of the Commission. In total, the EU Member States' authorities checked 743 websites for their compliance with pre-contractual information requirements. Among these websites, there was a full spectrum of traders ranging from smaller players to big e-commerce platforms. The sweep revealed irregularities on 63% of the swept websites. After corrections and enforcement actions following the sweep this number went down to 12%.

4.7. Other consultation and evidence sources

In addition, the CRD evaluation benefited from the findings of the evaluation carried out by the European Economic and Social Committee as to how civil society organisations across the EU perceive and experience the implementation of CRD. The results of this report were taken into account in the study prepared by the external contractor, see point 4.1 above, and see point 9 of Annex 2 for more details on the EESC report. Moreover, the evaluation also benefited from the findings of a study recently concluded by DG Justice and Consumers,

[25] Regulation (EC) No 2006/2004, OJ L 364, 9.12.2004, p. 1. The CPC Regulation links national competent authorities to form a European enforcement network, the "CPC network".
[26] 2014 sweep http://ec.europa.eu/consumers/enforcement/sweeps/guarantees/index_en.htm
[27] 2015 CRD sweep: http://ec.europa.eu/consumers/enforcement/sweeps/directive/index_en.htm

analysing consumer issues in the collaborative economy (see more details on this study in section 6.4.6).[28]

Moreover, several business stakeholder groups submitted their comments on specific provisions of the CRD, either through the REFIT stakeholder platform[29] or directly to DG JUST, which have also been taken into consideration for this evaluation.

4.8. Limitation – robustness of the findings

Due to the relatively recent transposition and implementation of the CRD[30] and the lack of robust quantitative data, the evaluation is mainly limited to an analysis of the national transposition of the CRD, particularly focusing on the effects achieved in the short term by the Directive, and possible modifications needed on the basis of difficulties already encountered in the transposition and first application period of the Directive.
Furthermore, qualitative assessment has been used as much as possible to supplement scarce quantitative data.
The online survey conducted by the contractor had a relatively low response rate and data regarding the concrete impacts of the CRD gathered during the consultation activities is limited. Where possible the above limitations were remedied by the use of data collected through desk researches and data gathered in the consultation process carried out for the Fitness Check of EU consumer law as well as with available Eurobarometer data.
One also has to keep in mind that the CRD operates in a broad and complex regulatory and economic system. For instance, changes to the volume of online sales may arise for several reasons, so that the causal link with the CRD cannot always be clearly established.

5. Implementation state of play

5.1. Transposition and Implementation

According to Article 28 of the Directive, Member States had to adopt and publish national measures transposing the Directive by 13 December 2013, with a view to apply these measures from 13 June 2014.

The Commission services organised no less than 5 transposition workshops between 2012 and 2014, and in June 2014 issued a guidance document (the CRD Guidance).[31]

However, delays in transposition occurred in more than half of the Member States and the Directive was applicable in all 28 Member States only as from the end of 2014.[32] The full harmonisation character of the Directive meant that Member States had to carry out an extensive review of their national legislation to bring it into line with the CRD.

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[28] "Exploratory study of consumer issues in the sharing economy" - to be published.
[29] https://ec.europa.eu/info/sites/info/files/consumer_policy.pdf
[30] See overview of Member States that were late in transposing the Directive below in the Section on Transposition and Implementation.
[31] DG JUST Guidance document on the CRD, June 2014, available at: http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm
[32] The following Member States were delayed in transposing the Directive: AT, BE, BG, FI, HR, HU, ES, FR, IT, LV, LU, NL, PL, PT, RO, SK, SL.

At present there are still a number of outstanding issues with several Member States regarding the correct transposition of specific provisions (see more details in the subsection 5.3 Follow-up to transposition).

Member States chose different transposition techniques: some Member States transposed the CRD by incorporating it into already existing laws (e.g. their Civil Codes), others adopted a new piece of legislation transposing the CRD almost verbatim, and some chose a combination of these two approaches.[33]

5.2. Full harmonisation and regulatory choices

Despite its general full harmonisation character, the Directive allows Member States to impose additional pre-contractual information requirements for on-premises contracts under article 5(4). In addition, it gives Members States the possibility to apply certain regulatory choices under their own national law[34] as shown below.

- Article 3(4) – not to apply the provisions to off-premises contracts if the payment to be made by the consumer does not exceed 50 euros; twenty Member States have made use of it and twelve of them (CY, DE, EE, EL, FI, LV, LT, MT, PL, SI, SE) have set out lower value limits for contracts to be excluded from the scope of the directive whilst three Member States (BE, PT and the UK) have applied a partial exemption, excluding specific types of contract or exempting off-premises contracts of less than 50 euros from the application of specific provisions. The remaining Member States have not made use of this Article.
- Article 6(7) – to impose language requirements regarding the contractual information for distance and off-premises contracts so that such information is easily understood by the consumer; more than half of all Member States have made use of this regulatory choice. In Member States with more than one official language, such as in CY and MT, the regulatory choice requires information to be provided at least in one of the country's official languages.
- Article 6(8) – to impose additional information requirements in accordance with Directive 2006/123/EC on services in the internal market and Directive 2000/31/EC on electronic commerce regarding distance and off-premises contracts; only three EU Member States (UK, HU and CY) have made use of this option, with some differences. In HU, the legislator has added requirements such as the provision of information on warranties and guarantees, information on the right to conciliation and on electronic correspondence other than for off-premises or distance contract. In the UK, this option has been used only partially: enhanced information requirements are now needed by energy providers and estate agents.
- Article 7(4) – to apply a simplified information regime for off-premises contracts to carry out repairs or maintenance; it has been used by BE, IE, LT, NL, PT, SI, SK and ES but not in other EU Member States.

[33] For more details on the national transposition measures see the final report of the CRD study published at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332
[34] http://ec.europa.eu/justice/consumer-marketing/files/overview_regulatory_choices.pdf

- Article 8(6) – to introduce specific formal requirements for contracts concluded by telephone; the majority of Member States[35] have decided to apply this regulatory option but in some Member States it only applies when the professional calls the consumers (and not when the consumer makes the first contact).
- Article 9(3) – to maintain, in the case of off-premises contracts, existing national legislation prohibiting the trader from collecting payment from the consumer during a given period after the conclusion of the contract. Only a few Member States have applied this provision: BE, FR, EL, MT and SK. The periods that have been set up are 7 days and 14 days

The most frequent regulatory choice made by Member States is Article 3(4) that allows excluding off-premises contracts with low value, followed by the language requirement for distance and off-premises contracts and the need to confirm the contract concluded by phone. However, the CRD study notes that according to the survey conducted among traders, differences in national legislation are no longer a main reason for not conducting cross-border trade. This would suggest that the CRD has been effective in reducing earlier fragmentation and the regulatory choices made by Member States appear not to have had a significant detrimental impact on the achievement of the objectives.

5.3. Follow-up to transposition

The Commission services have carried out an extensive check of the transposition of the CRD in all Member States that has led to the opening of 21 bilateral dialogues (so called EU Pilot cases) with the national authorities concerned. It has notably revealed that a majority of the Member States had, at first, failed to transpose a number of definitions and key terms of the Directive in their national law. The Commission services have brought the Member States' attention to the fact that Article 4 CRD set out a full harmonisation approach:

> *"Member States shall not maintain or introduce, in their national law, provisions diverging from those laid down in this Directive, including more or less stringent provisions to ensure a different level of consumer protection, unless otherwise provided for in this Directive".*

Accordingly, the Commission services have taken the position that the full harmonisation approach of the Directive implies that Member States cannot omit to transpose definitions or key terms from the Directive, if such omissions could create discrepancies between the national law and the Directive which could lead to different interpretations in individual cases. After raising this issue with the Member States, many have agreed to transpose the relevant terms in their national legislation. Outstanding issues remain on this concern for certain Member States.

The CRD provisions related to digital content are an example of this issue dealt with in 8 bilateral dialogues. The CRD is the first Directive under EU consumer and marketing law that includes provisions on digital content and a few Member States have had some difficulties in transposing these concepts in an adequate manner. In some Member States the definition of "digital content" from Article 2(11) CRD had not been transposed or, in two cases, the scope

[35] Except HR, CZ, DK, DE, IE, FI, HU, LV, SE, UK.

of the Directive had been restraint to digital contracts against consideration. Other Member States have had problems with transposing the provisions relating to pre-contractual information requirements for digital content (on functionality and interoperability) under Articles 5(1)(g) and (h) and 6(1)(r) and (s) CRD, or the provisions related to obligations for the consumer in the event of withdrawal under Article 14(4)(b) CRD.

A typical argument by a number of Member States for not having transposed certain provisions, such as those related to definitions, termination of a contract, burden of proof, was that these concepts already existed in other parts of their national legal system, or that these provisions represented general concepts not requiring explicit transposition.

While Member States have made or proposed significant changes to their transposition laws in order to address these issues and bring their law in line with the Directive, the Commission services continue the bilateral dialogue with most of the Member States concerned to ensure full compliance. Whilst cases of lack of or incorrect transposition clearly affect the attainment of the objectives laid down by the Directive, few data are currently available to the European Commission as to the concrete impact in practice of such delayed and/or incorrect transpositions, since all the mentioned EU Pilot cases (with the exception of one) were opened *ex officio*, and not on the basis of complaints.

6. Answers to the evaluation questions

6.1. Effectiveness

Achievement of Directives' objectives – general analysis

Effectiveness considers to what extent the objectives pursued by the CRD have been achieved, namely setting a high level of consumer protection across the EU and contributing to the proper functioning of the internal market by approximating certain aspects of Member States' laws, regulations and administrative provisions concerning contracts concluded between consumers and traders. Further considerations include analysing the reasons why EU regulatory intervention has (or has not) been successful to date and the extent to which barriers and obstacles remain that could discourage traders from selling and consumers from shopping cross-border.

The evaluation assessed the following questions:

- How effective has the Directive been in eliminating the obstacles for businesses carrying out economic activities within the EU?
- What have been the impacts on consumer confidence and welfare?
- What factors influenced/hindered the achievements observed?
- What is the level of business compliance and how does this affect effectiveness?
- How effective has the enforcement of the Directive being?

As already highlighted in the introduction, due to the limited time of practical application, the evaluation has been mainly based on assessing how far the Member States, businesses and consumers are implementing and making use of the provisions of the Directive. Therefore, the evaluation focuses on the transposition and implementation of the new or modified rules introduced and their effects in terms of improving the consumer protection and eliminating the regulatory fragmentation, in order to assess whether the practical uptake is in line with the achievement of the Directive's main objective of enhancing consumer protection while contributing to the proper functioning of the internal market, with particular regard to the increase of cross-border B2C trade.

In fact, the 2008 Impact Assessment supporting the proposal for the Directive noted that *consumers were not reaping the benefits of a fully integrated retail market with increased choice and lower prices.*[36] One of the main reasons for this was the *fragmentation of the national laws regulating consumer transactions*, which, in turn, increased reluctance by businesses to sell cross-border to consumers and lowered consumer confidence in shopping cross-border.

The comparative analysis of the legislative situation pre-CRD and post-CRD carried out by the external contractor has highlighted that, for many of the key provisions of the CRD, consumer protection has been strengthened in most, if not all, Member States. This is because there had been either no such protection previously (e.g. in relation to pre-contractual information and the right of withdrawal for digital content contracts and prohibiting default options on websites) or, where there had already been some degree of protection, its level was increased by additional requirements on traders and harmonised rules on consumer protection. In particular, the analysis has shown:

• Prior to the implementation of the CRD, in almost all Member States (except Slovakia) consumers were not protected by legislation specifically concerning the pre-contractual information applicable to digital content and the right of withdrawal;

• The level of pre-contractual information which traders are required to provide to consumers under Articles 5 and 6 has increased in all Member States. Additionally, there are now clearer and stricter consequences if traders fail to inform consumers on their right to withdraw, with the withdrawal period having increased in 26 Member States, thanks to the CRD rules (Article 10), to 12 months from the end of the initial withdrawal period. Indeed, only in BE and in DE this period had to be reduced from an unlimited time to 12 months, following its entry into force;

• The period for the withdrawal right (Article 9) has increased in 15 Member States, remained the same in 9 (BE, CY, CZ, DK, EE, EL, FI, SE and LV), and got reduced in one (DE);

• Refund periods have now shortened across most Member States and the amounts that consumers are entitled to receive can now include the delivery costs (Article 13);

• Delivery periods are now set in a number of countries where these were not regulated previously (CZ, EE, ES, FR, IE, LV, MT, PT, SK, SE and the UK) (Article 18);

[36] SEC(2008) 2544 Commission Staff Working Document accompanying the proposal for a directive on consumer rights Impact Assessment Report of 8.10.2008

• Previously, most Member States had no provision in their national legislation protecting consumers against excessive telephone charges, additional payments, and inertia selling (Articles 21, 22, 27).

Moreover, the CRD study concludes that the examination of national legislation in the different Member States prior to the CRD implementation has shown a significant degree of variation concerning national rules on consumer protection. For instance, the rules on delivery varied as did the periods for the right of withdrawal. Thus, the CRD has reduced differences among Member States,contributed to the reduction of regulatory discrepancies, enhanced regulatory certainty across Member States and hence incentivised traders and consumers to respectively sell and buy cross-border.

The results from the surveys conducted by the contractor on the impacts of the CRD show that, overall, the Directive has been perceived by consumers and consumer associations as having enhanced the level of protection in both domestic and cross-border purchases. This is in line with the Directive's objectives to boost consumers' confidence in both domestic and cross-border purchases, especially online as also shown by Eurobarometer and Eurostat data trends examined below.

In particular, in terms of effects of the implemented rules, most consumers and consumer associations responding to the CRD survey said that the level of protection was moderate or high when buying goods and services as a result of the CRD implementation. The EESC's report notes that 37% of respondents to their questionnaire felt that consumer confidence in online shopping had increased since June 2014 and 31% believed that confidence had increased when buying cross-border. [37] Also according to available Eurobarometer data, the percentage of consumers feeling confident in purchasing online from another Member State has increased since 2014. In 2016, 58% of consumers felt confident in purchasing online from another Member State, which represents an increase of 21 percentage points since 2014.[38]

The CRD provisions that were rated as the most effective ones by consumers, their associations and national competent authorities in the survey conducted by the external contractor are the right of withdrawal and the pre-contractual information requirements for distance and off-premises contracts, although these latter have been found excessively burdensome by traders (see Section on Efficiency). For the European Consumer Centres (ECCs) consulted within the CRD study, the right of withdrawal is one of the most effective provisions in ensuring consumer protection cross-border, together with the ban on pre-ticked boxes (Article 22). Also in the dedicated workshop of the 2016 Consumer Summit the ban on pre-ticked boxes was mentioned as a particularly effective rule, together with the 'button provision' (Article 8(2)).

In detailed responses to the CRD survey, traders highlighted that the Directive had improved customer service and after-sales care within competitive markets, which in turn had helped to build consumer trust.

[37] Similar numbers of respondents believed that confidence had stayed the same (35% and 33% respectively).
[38] Source: Flash Eurobarometer 397 and survey on consumers' attitudes towards cross-border trade and consumer related issues (2016) to be used in the forthcoming Consumer Conditions Scoreboard 2017 (expected publication – summer 2017). Please note that methodology changed over the years, therefore trends and comparisons of data in different years should be interpreted with caution.

Although traders answering the CRD survey did not notice an increase in sales as a result of the Directive, a third of respondents consulted under the EESC's evaluation agreed that intra EU cross-border online sales had increased since June 2014 (EESC, 2017). Also in the online public consultation, around 30% of companies agreed that businesses can trade across the EU more easily thanks to the harmonised EU consumer and marketing rules, whilst 11% did not agree and 59% had no opinion on this. Analysis by Eurostat shows an increase of online cross-border purchases from 25 % in 2012 to 32 % in 2016.[39]

According to the stakeholder views, these positive developments are attributable also to EU consumer protection legislation. Whilst it is quite difficult to disentangle how far an increase in cross-border online sales is due to the CRD, as opposed to other factors many stakeholders consulted for the CRD study confirmed that there is growing interest in cross-border online shopping in order to benefit from lower prices, and stated that the CRD is one of the factors that helps to give consumers increased confidence in such shopping activities and for traders the advantage of one set of harmonised rules.

Concerning obstacles to the achievement of the Directive's objective of increasing cross-border trade, the CRD survey enquired about the main reasons for traders not to sell to consumers in other EU countries. Nearly half of the respondents replied that they are not interested in selling cross-border, while in interviews they pointed to issues which might be influenced by the regulatory framework: adapting and complying with different consumer protection rules (17%), formal requirements (18%) and problems in resolving cross-border conflicts (11%). Language and cultural differences and logistical challenges were also considered as main difficulties when selling in other EU countries. For traders operating cross-border, regulatory fragmentation was found to be the main difficulty when selling in other EU countries. Although these results have to be read cautiously due to the low number of respondents[40], they confirm the results of the Impact Assessment accompanying the digital contracts proposals[41].

As regards traders' views on obstacles to cross-border sales, the available Eurobarometer data show that in 2016, 37% of traders currently selling online considered differences between consumer protection rules as important obstacles to development of online cross-border sales, which represented a decrease of 5 percentage points compared to 2014.[42]

In the **2015 Digital Single Market (DSM)** Strategy[43], the Commission stressed the yet untapped potential for further growth within the EU, by noting that, whilst 61% of EU consumers feel confident about purchasing online from a retailer in their own Member State,

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[39] Base: individuals who bought or ordered goods or services over the internet for private use in the previous 12 months, source: http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals (figure 8.)

[40] The CRD study showed that of the 89 traders not selling cross-border who replied to the question on main reasons for not selling in other EU countries, while 45 traders operating cross-borders replied to the question about their main difficulties when selling in other EU countries.

[41] Available at http://ec.europa.eu/justice/contract/digital-contract-rules/index_en.htm

[42] Source Flash Eurobarometer 396 and survey on retailers' attitudes towards cross-border trade and consumer protection (2016) to be used in the forthcoming Consumer Conditions Scoreboard 2017 (expected publication – summer 2017). Please note that methodology changed over the years, therefore trends and comparisons of data in different years should be interpreted with caution.

[43] Communication from the Commission "A Digital Single Market Strategy for Europe" Brussels, 6.5.2015, COM(2015) 192 final; available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1447773803386&uri=CELEX:52015DC0192

only 38% feel confident about purchasing from a retailer in another EU Member State. The DSM Strategy also highlighted as a problem the fact that only 7% of SMEs in the EU were selling cross-border. This was attributed also to differences in Member States consumer protection rules that discourage companies from cross-border trading and prevents consumers from benefitting from the most competitive offers. The Commission therefore concluded on the need to work on further harmonisation of the obligations of the parties to a sales contract. As a result, the Commission proposed, in December 2015, two directives fully harmonising in a targeted way the rules on remedies for digital content and distance sales of tangible goods. These proposals are currently under negotiations in the European Parliament and Council. [44]

Despite the beneficial effects brought about by the Directive, consumer associations responding to the CRD survey indicated that, for cross-border activities, the CRD was more effective in relation to the provision of goods (43% thought the CRD was very or quite effective) than services (34% thought the CRD was very or quite effective) or digital content (30% thought the CRD was very or quite effective). These results correspond with the latest Consumer Market Scoreboard, which concluded that *despite the fact that improvements are more visible for services markets than for goods markets, the latter continue to be assessed more favourably than services markets*[45].

Contracts for the supply of digital content remain an area where consumers do not yet feel as protected as for sales or services contracts. Consumer associations attribute this relatively low level of effectiveness of the rules on digital content included in the CRD to both lack of enforcement and difficulties with the implementation of these provisions, especially for the right of withdrawal. The Commission services consider that another reason is probably the fact that contracts for the supply of digital content are still a relatively recent phenomenon compared to sales and services contracts and so far no tailor-made rules for digital content exist in national laws of almost all Member States.

However, unlike the rules on digital content for which there could be scope for clarification of some of them, the evaluation has found that overall the way stakeholders are implementing and making use of the provisions of the Directive and the practical uptake is in line with the objectives pursued by the Directive, as also showed by mentioned trends of increasing online purchase and consumers' confidence. This is further highlighted in the next subsections examining the level of compliance, awareness and enforcement of CRD rules, where the evaluation has also tried to analyse the most recurrent factors reported by stakeholders as hindrance to the CRD's effectiveness and thus to the achievement of its objectives, in order to identify appropriate follow-up actions to tackle the ascertained problems.

As the CRD study noted, the main reported obstacles to the effectiveness of the CRD highlighted by stakeholders include: lack of awareness and understanding among consumers and traders of the Directive's provisions, lack of clarity of some provisions, lack of compliance by traders, and issues related to enforcement.

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[44] For more information, see "Digital contracts for Europe" at: http://ec.europa.eu/justice/contract/digital-contract-rules/index_en.htm

[45] Consumer Markets Scoreboard - 2016 Edition http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/index_en.htm; direct link to the document: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_markets_scoreboard_2016_en.pdf

6.1.1. Awareness

A lack of awareness on the side of traders and/or consumers in respect of the rights and obligations stemming from the Directive may limit the effectiveness of the Directive. In fact, lack of awareness enhances the risks of unintended non-compliance by traders with their obligations. If consumers do not know their rights sufficiently well, they are unlikely to enforce them effectively and suffer detriment as a result. As further explained below, this was found to be the case for specific CRD provisions, particularly regarding the rules on digital content contracts, and for some categories of stakeholders such as SMEs.

With the aim of increasing the general knowledge among traders and consumers of the key consumer rights based on EU consumer law, the Commission launched a Consumer Rights Awareness Campaign[46], which ran between spring 2014 and March 2016. The campaign focused in particular on the Consumer Rights Directive, together with the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive and the Consumer Sales and Guarantees Directive. National consumer authorities, consumer associations, business associations and others were encouraged to participate in the campaign.

The ex-post evaluation of the campaign found that the messages addressed to consumers were relevant and well received, and thus effective in raising and enhancing awareness of consumer rights. However, it was noted that the message targeted at SMEs regarding the benefits of respecting consumer rights was not as effective, and traders were rarely able to quote specific rights relating to particular situations. Recommendations made in the evaluation suggested that future campaigns and information should focus on the obligations that traders have to comply with consumer rights.

In addition to the EU-wide awareness-raising campaign, the CRD study also identified a wide range of awareness-raising activities undertaken at national level.

The CRD study concludes that, despite the initiatives undertaken, the level of awareness of the CRD was not found to be in line with what it could have been expected, particularly regarding some categories of stakeholders and some specific key provisions of the Directive, as further analysed in next sections.

Similarly, the EESC's study concluded that:

> *In general, consulted parties have confirmed that they are sufficiently aware of the national legislation implementing the directive as well as of the national proceedings to enforce it, in particular with regard to pre-contractual information and the right to withdrawal. Yet a large number of consumers and SMEs are still not aware of the directive's specific provisions (i.e. recitals and articles of the directive) because the legislation is too complicated and technical for the consumer. Training initiatives and measures for disseminating the substance of the Directive and the rights deriving from it are deemed necessary.*

In December 2016, the Commission has launched, upon initiative of the IMCO Committee of the European Parliament, a pilot project for training of SMEs on EU consumer law which

[46] http://ec.europa.eu/justice/newsroom/consumer-marketing/events/140317_en.htm

aims at considerably increasing the awareness of traders about their obligations and the corresponding consumer rights.

6.1.1.1. Consumers' awareness of CRD provisions

Consumer associations responding to the survey reported in the majority of cases a low level of awareness among consumers of the CRD provisions, and only 4% noted that the level of awareness was high. In fact, while consumers seem to have a good awareness of the right of withdrawal, exceptions from this right and specific rules on the right of withdrawal from digital content contracts were found to be the provisions with very low level of awareness.

In particular, the consumers that were consulted through the CRD survey showed a high/moderate level of awareness of the right of withdrawal (which was one of the 5 key rights highlighted during the 2014-2016 Consumer Rights Awareness Campaign): this same result is confirmed by the survey conducted in the ex-post evaluation of the awareness campaign.

In the survey consumers were also tested as regards awareness of the CRD provision on inertia selling under Article 27, according to which the consumer is not obliged to give any consideration to goods or services in case of unsolicited supplies prohibited by the UCPD. The awareness test showed that consumers are only partly aware of their right in case of inertia selling. The responses were split almost equally between respondents stating that consumers are not obliged to pay the invoice provided that they return the product, and respondents stating, correctly, that consumers are not obliged to pay the invoice nor to return the product. Very few consumers responded that consumers are obliged to pay when receiving unordered products.

The provisions for which the lowest level of awareness was reported in the CRD survey were the pre-contractual information requirements on digital content, the rules on the right of withdrawal for digital content, the exemptions from the right of withdrawal, and the rules on delivery and the passing of risk.

6.1.1.2. Traders' awareness of CRD provisions

The CRD survey asked trade associations about the level of awareness of obligations by traders. Over 70% of respondents indicated either a high or a moderate level of awareness. Interestingly, in their opinion, traders are more aware of the CRD than of national legislation. Right of withdrawal and pre-contractual information requirements for distance and off-premises contracts are the provisions trade associations think traders are most aware of.

The provisions that the trade associations consider traders to be least aware of are those concerning digital content. Consulted traders confirmed such low level of awareness on digital content rules: only 13% of traders recognised that changes had been made in the legislation relating to extending information obligations and the right of withdrawal to digital content, in comparison with 65% who acknowledged that changes had taken place in respect of pre-contractual information requirements for distance and off-premises contracts.

The CRD study concludes that this could reflect the fact that many traders responding to the survey were not digital content providers, but it could also reflect the fact that digital content is a rather new area which has been disciplined for the first time at EU level through the CRD.

6.1.2. Problems with interpretation

According to the survey and the online public consultation, several stakeholders have identified problems with the interpretation of specific CRD provisions. A lack of clarity concerning interpretation, as also highlighted in the "Awareness" section above, could lead to non-compliance and undermine the effectiveness of the CRD.

Several problems concerning interpretation have been addressed in the CRD Guidance. The CRD Guidance was adopted in June 2014 following consultations with Member States' authorities in charge of the transposition and enforcement of the Directive, industry and consumer stakeholders. The CRD Guidance aims to help national authorities and courts to apply the Directive in a uniform and consistent way, providing guidance on the Directive's key concepts and provisions. It also includes practical examples that show how the Directive should work.

Several respondents to the online public consultation commented on the added value of the interpretative guidance. The CRD guidance was generally found to be very helpful in providing practical examples as to how the Directive should apply and in clarifying grey areas in relation to its intended scope.

Nevertheless, respondents identified certain provisions as particularly problematic.

Stakeholders have indicated problems concerning **the definition of the 'basic rate'** (Article 21), which is not defined in the CRD explicitly. The CRD Guidance clarifies that the Article requires traders to ensure that the consumers do not incur charges that exceed the normal costs which the consumer would incur for calling a standard (geographic) fixed or mobile number that is not subject to any special tariff regime. In its judgment of 2nd of March 2017 the Court of Justice confirmed that "the concept of ‘basic rate’ referred to in Article 21 of Directive 2011/83/EU […] must be interpreted as meaning that call charges relating to a contract concluded with a trader to a telephone helpline operated by the trader may not exceed the cost of a call to a standard geographic landline or mobile telephone line. Provided that that limit is respected, the fact that the relevant trader makes or does not make a profit through that telephone helpline is irrelevant."[47]

The clarification provided by the Court, and confirming the interpretation included in the CRD Guidance, will avoid risks of non-compliance in future, ensuring the full effectiveness of the concerned CRD provisions.

Concerning **the inclusion of digital content contracts provided without the payment of a price**, the CRD Guidance takes the position that free digital content should be covered by the scope of application of the CRD since, contrary to the definition of sales and service contracts (Articles 2(5) and (6)), the Directive does not mention 'payment of a price' as a requirement for the supply of public utilities and online digital content. This issue had been discussed during the transposition workshops and all Member States, except for two, have included 'free' digital content contracts in their CRD transposition laws. Within the REFIT Stakeholder Group, a number of business and consumer stakeholders have however indicated that there is, in their view, a lack of clarity on the precise scope of application as regards contracts on

[47]Paragraph 32 of the judgement of 2 March 2017 in Case C‑568/15 Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main e.V. v comtech GmbH.

digital content provided for free or against data. As further explained in section 6.4.3, there could be a case for clarifying the text of the CRD on this point, in order to provide more legal clarity and ensure that the Directive is fully and correctly applied.

It was also pointed out that there is a certain lack of clarity as regards **the distinction between a digital content contract and a contract for paid online services**. Such lack of clarity raises concerns about the rules that shall apply in concrete cases. The CRD study suggests that the lack of clarity regarding the distinction may help to explain why, in the mystery shopping experiment, the level of compliance with information requirements on the right of withdrawal for digital content was particularly low; this may also explain, in the contractors' view, why traders are reluctant to inform consumers about the exception under Article 16(m), whereby the consumer does not have a right to withdraw from the digital content supply if the performance has begun with his prior express consent and acknowledgment that, by accepting to have the performance starting, he no longer has the right to withdraw[48].

The above difficulties with regard to the distinction between digital content and online services deserve further investigations with a view to a possible follow-up action, having regard to ensure consistency with the proposal for a Directive on contracts for the supply of digital content (DCDP)[49][50].

Concerns were also raised as to the clarity of the notion of outside the 'business premises' in **off-premises contracts** (Article. 2(8)) in case of exhibitions and trade fairs. In particular, as explained in Recital 22, 'business premises' means the trader's permanent or **'usual basis'** of business in whatever form, including when used on a seasonal basis. The CRD Guidance indicates that contracts concluded with a trader at, for instance, a market fair which takes place regularly and lasts over a specified period of time, are likely to be on-premises contracts. In contrast, if the trader uses spaces accessible to the public, such as streets, shopping malls, beaches, sports facilities and public transport on an exceptional basis, i.e. once or occasionally and for a short duration in a given location, the contracts concluded with consumers are likely to be off-premises contracts. In this respect, different stakeholders have pointed to the difficulties of assessing what is exactly meant by 'usual basis' (how frequent) in the absence of specific references. This may lead to uncertainty on the part of traders in determining whether their activities are carried out on- or off-premises and, therefore, what rules they have to comply with.

Stakeholders also reported difficulties in assessing **the moment from which the 14-day cooling-off period starts as regards contracts containing elements of both sales and services contracts**. For such contracts the CRD Guidance indicates Article 2(5) as relevant, since it defines a sales contract also as "*any contract having as its object both goods and services"*; consequently if a contract's main purpose is the transfer of ownership of certain goods, it should be classified as a sales contract even if it also covers related services provided by the seller. Hence, the starting point of the withdrawal period would be "*the day on which the consumer or a third party other than the carrier and indicated by the consumer acquires*

[48] These issues are further discussed in the "Efficiency" section.
[49] Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM/2015/0634 final - 2015/0287 (COD).
[50] See the "Coherence" section.

physical possession of the goods" under Article 9(2)(b)[51]. However, difficulties in interpreting the notion of mixed purposes contracts and in assessing the main purpose of a contract have been raised by different categories of stakeholders in the consultation process of this evaluation.

Stakeholders highlight the practical difficulties of **calculating the diminished value of the returned goods** (Article 14(2)), particularly in the textiles, electronics and electric products sectors. Factors that affect the calculation include possible disagreements between the consumer and trader as to how extensively the good is used. Given the consumer preference for brand new goods, traders often viewed the returned goods as having negligible value. This issue is further discussed in the "Efficiency" chapter.

Dutch stakeholders raised specific concerns as regards the application of Article 27 of the CRD (inertia selling) to water supply. In particular, they reported that two Dutch first instance courts in recent judgments stated that, under Article 27 of the CRD, a consumer who had moved in a new home and used water without having informed (or concluded a contract with) the water supply company is not obliged to pay for the water used in the absence of a contract. Dutch water suppliers seem however to be obliged, under national law, to supply water to households and a court order seems necessary for them to stop doing so.

It should be underlined that Article 27 of the CRD exempts consumers from the obligation to provide any consideration in case of unsolicited supply of products prohibited by Article 5(5) and point 29 of Annex I of the UCPD. Prima facie, the fulfilment of a legal obligation cannot be regarded as prohibited "inertia selling" in the sense of point 29 of Annex I of the UCPD, and therefore the remedy provided under Article 27 CRD would not apply under such circumstances.

Furthermore, some concerns were raised regarding the **application of the CRD provisions to online platforms,** particularly concerning the assessment of whether platforms can be qualified as traders under the CRD and are therefore subject to comply with the pre-contractual information obligations thereof.

6.1.3. Compliance by traders

One indicator of compliance analysed in the CRD study is the number of consumer complaints and the aspects raised in those complaints; the limits of the available data do not allow definitive conclusions, but emerging trends may constitute a valid proxy for the orientation of the actions of awareness and enforcement.

Amongst the reasons for complaints to the ECCs by consumers on cross-border purchases, the right of withdrawal was the most reported in the CRD survey, with 79% of the ECCs stating that consumers had complained often about the right of withdrawal. The second most mentioned reason for complaints was reimbursement, followed by delivery and passing of risk. Available data from the ECC-Net database suggests that the greatest numbers of complaints concerning the CRD are related to product and service issues, over third of which

[51] Unless rules for multiple goods ordered in a single order, multiple lots of goods and regular delivery of goods apply.

related to unsolicited supply, followed by complaints related to the delivery.[52] Data from the harmonised complaints and enquiries database of the Commission[53] also show that the greatest number of complaints that can be related to the CRD concerned the right of withdrawal, followed by lack of information.[54] Complaints concerning delivery of goods and provision of services[55] and indication of price rank the highest; however, available data does not allow concluding that these always represent a complaint related to a CRD provision.

Consumers were asked in the CRD survey about different aspects of compliance by traders. Most of the responses highlighted issues related to compliance with the right of withdrawal; fewer consumers highlighted issues with formal requirements and fees.

In the on-line public consultation, 47% of consumer respondents reported that they had experienced problems in dealing with traders in the past year. The most frequently reported problem was that the trader had not provided key information. The majority of consumers who had experienced problems reported not having managed to solve their most serious problem at all. 25% managed to solve their problem at least to some extent and 18% managed to solve it fully.

6.1.3.1. Compliance with pre-contractual information and formal requirements

In order to assess compliance with the different information requirements, the CRD survey asked consumers how much information they receive concerning the different aspects covered in Articles 5 and 6 CRD. Overall, the results match with the results of the mystery shopping study, i.e. consumers received a fair to a great amount of information about the characteristics of the product and the accepted means of payment, although with differences at country level. Out of the consumers responding to the online survey, 38% stated that they did not receive much information about the trader. This was also found in the mystery shopping carried out within the Consumer market study for the Fitness Check,[56] where information on how to contact the trader was, on average, found to be less available, particularly for the provision of paid digital content. The CRD sweep also found incomplete or unclear details about the trader in 34% of websites checked. Additionally, consumers did not receive much information about accessing out of court complaint and redress mechanisms.

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[52] Dataset contains 38108 complaints of 2015, of which 12466 could be identified as being related to the CRD (or its predecessor directives: Directive 85/577/EEC on contracts negotiated away from business premises – "off-premises contracts" – and Directive 97/7/EC on contracts concluded through the means of distance communication – "distance contracts")

[53] The complaints data base implements the Commission Recommendation on the use of a harmonised methodology for classifying and reporting consumer complaints and enquiries of May 2010. It contains consumer complaints and enquiries (i.e. requests for information) collected from third-party complaint bodies (national authorities, consumer organisations ADR bodies, etc.). The number of participating countries and entities is steadily growing and currently there is data from 77 consumer organisations from 23 Member States and 1 EEA country (Norway). Data is provided on a voluntary basis; therefore the database cannot be considered as complete.

[54] Data made available to the Commission show a total number of over 1,1 million cases of complaints from 14/06/2014, of which around 100,000 complaints could be identified as being most likely related to CRD and thus taken into account in these calculations.

[55] It should be noted that there are several categories concerning delivery and provision of services, and together those categories represent one of the biggest share of the total complaints. However, having no further information, it can be assumed that the category 'non-delivery' includes complaints related to issues that fall outside the scope of the CRD.

[56] Consumer Market Study to support the Fitness Check of EU consumer and marketing law, available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

The mystery shopping also found that consumers felt quite well informed about digital content interoperability and functionality and found the information clear, while they felt relatively less informed on other characteristics of the digital content, such as, for instance, whether an internet connection was required and software updates available.

In 2014 the Commission coordinated the "sweep on commercial guarantees in consumer electronics", within which the CPC authorities checked in total 437 websites selling consumer electronics[57]. 54% (235) of these websites were found to be non-compliant with EU consumer law regarding information obligations about the statutory and commercial guarantees. The reminder of the existence of the legal guarantee of conformity for goods before the consumer is bound by a distance contract – as required by Article 6(1)(l) of CRD – was found to be lacking in 174 websites (ca. 40%). This sweep in particular raised discussions regarding the place where this reminder of the existence of the legal guarantee has to be provided on a website. In the Commission services' views, if traders provide pre-contractual information only in the terms and conditions on their website, this is not in compliance with Article 6(1).

Furthermore, the findings of the mystery shopping provided insights into the traders' compliance with the CRD pre-contractual requirements regarding the conclusion of distance contracts. In particular, it was found that, before placing their orders, almost all mystery shoppers were clearly informed about the total price of the product, while 54%-70% of mystery shoppers were informed about its main characteristics.

As regards compliance with Article 8(2) of the CRD, whereby traders are required to make the consumer aware, in a clear and prominent manner, of the fact that his order implies an obligation to pay, a dedicated order confirmation button was found to be present in almost all mystery shopping cases, although with some differences at country level. The use of this visual tool was found to be effective, given that most mystery shoppers evaluated its use as (very) clear and indicated that they clearly understood that pressing the button would finalize the purchase.

In almost all mystery shopping cases, there were no extra charges based on the method of payment. Dependent on the product type, mystery shoppers were relatively often offered selectable options that would cost them more. However, only about one fifth of the investigated traders pre-ticked these selectable options. In general, when additional cost applied, for instance for the selected payment means, or for the delivery, consumers could easily get the relevant information.

6.1.3.2. Compliance with pre-contractual information requirements and rules on the right of withdrawal

- Compliance with information requirements on the right of withdrawal

As regards specific pre-contractual information requirements on the right of withdrawal, the trader must provide clear and comprehensible information before the consumer is bound by a distance contract. The results from the mystery shopping show, however, that this information is often missing, with some differences depending on the type of contract as shown below.

[57] http://ec.europa.eu/consumers/enforcement/sweeps/guarantees/index_en.htm

For tangible goods, traders have to specify the right to withdraw from the contract within 14 days after delivery. This was done by about half of the investigated traders. However, consumers could easily found information on return procedures in case of sales contracts, and despite the lack of information they found the withdrawal procedures satisfactory. However, although traders grant consumers their right to withdraw, the lack of information on withdrawal can prevent consumers from exercising their rights.

Traders of digital content have to inform consumers that they have a right to withdraw from the contract before downloading the content and that they lose this right when the performance of the contract has begun with their express consent under Article 16(m). The mystery shopping run within the Consumer market study for the Fitness check[58] showed that only 23% of traders for music downloads, 33% of the traders offering one-off purchases of security software and 44% of the traders of security software subscriptions provided this information. The interviews with traders performed for the CRD study confirmed such finding, showing that 42% of consumers were not notified that they would lose their right of withdrawal if they started downloading or streaming digital content.

The mystery shopping task also revealed that withdrawal forms were quite difficult to find and in 25% of all online shops tested for tangible goods, such information was not available. This was also reflected in the responses given by consumers to the CRD survey, where 59% of consumers stated they were not given access to a withdrawal form.

This also applied to digital content. According to the mystery shopping, half of all software traders (52%) did not provide withdrawal forms.

The 2015 CRD sweep carried out by the CPC network also found similar results across all type of contracts. Irregularities were confirmed in 436 (63% of a total 697) cases, with websites missing or providing unclear or incomprehensible information on the right of withdrawal from a transaction. For example, websites did not contain a relevant withdrawal form while it was their legal obligation to do so, or did not inform the consumer about the exact number of days available to him/her to withdraw from an online transaction.

- Compliance with rules on withdrawal

Concerning refunds, the mystery shopping results show that most cases led to a full reimbursement. This number was, however, higher for tangible goods and security software than for music downloads. Refunds were almost always given in the form of money. For tangible goods, the delivery costs were only reimbursed by half the traders. [59]

The online public consultation provided some opinions from the traders' perspective on the right of withdrawal and compliance. The CRD study mentions the contribution from one stakeholder highlighting that the exceptions to the right of withdrawal may be difficult to apply in reality, in particular those relating to digital content. According to one trader, informing the consumer that he would lose their right of withdrawal can "*worsen the shopping experience*".

[58] Consumer Market Study to support the Fitness Check of EU consumer and marketing law available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

[59] The CRD mystery shopping included 341 assessments, distributed (fairly equally) across the 8 target countries. A slightly lower number of assessments was made for digital content (149 in total; 78 for security software and 71 for music) compared to tangible goods (192 in total, 96 per product).

Out of the respondents to the CRD survey who indicated having faced difficulties in exercising their right of withdrawal, the majority signalled that they had difficulties in contacting the relevant traders to notify them about their decision to withdraw; this issue is also confirmed by the consumer associations in the interviews, particularly with regard to traders using social media platforms to sell products.

6.1.3.3 Compliance by sector

By sector, the level of compliance also varies. Interviews performed for the CRD study have revealed a lack of compliance in respect of online subscriptions and monthly contracts for mobile phones whereas a review of the literature has found issues of compliance with the energy sector. The EESC, in its evaluation of the CRD, also identified compliance issues among traders to prevail in a few particularly problematic sectors such as distance sellers (telephone and catalogue), energy (gas/electricity) and telecommunications sectors. Other cases noted by the CRD study refer to the formal requirements for contracts by telecommunication companies offered by phone (in line with Article 8(6)).

According to the CRD sweep, irregularities in compliance occur across different sectors, types of retailers and types of contract (sales of goods, service provisions or public utilities/digital content provisions). The latest Consumer Scoreboard, however, has concluded that the largest differences in market performance between EU countries are found on the markets for electricity services, water supply, railway transport, mortgages and mobile telephone services. These markets appear to be particularly badly performing in those EU Member States where they face limited cross-border competition, insufficient structural reforms and absence of effective enforcement also of consumer protection rules[60]. The review done in the CRD study of the complaints dealt with by the ECC-Network has also shown that almost one in every two complaints relates to the sectors of recreation and culture (24%) or transport (20%); the rest of the complaints are however spread amongst a wide range of sectors, with 17% of all cases labelled under the category of 'miscellaneous goods and services'.

Lack of compliance in markets having often an oligopolistic structure may point to a lack of enforcement or insufficient disincentives in terms of penalties for big companies operating in such markets.

In 2015-2016 the CPC network carried out a coordinated enforcement action to improve consumer information in the car rental sector[61]: this joint enforcement action targeted large businesses representing 65% of all private car rentals in the EU.[62] A dialogue was set up between the CPC authorities, led by the UK Competition and Markets Authority, and the top

[60] 2016 edition of the Consumer Markets Scoreboard - Making markets work for consumers, available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/index_en.htm; direct link to the document: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_markets_scoreboard_2016_en.pdf

[61] http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/coordinated_enforcement_actions_en.htm

[62] Commission Staff Working Document, Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws, SWD(2016) 164 final, p. 18.

five car rental companies operating in the EU to ensure that their practices comply with EU consumer law, including the CRD (right of the consumer, pursuant to Article 6(1)(e), to be informed on the total price and charges of the service; right of the consumer, pursuant to Article 6(6), not to bear any additional charges of which the trader has not duly informed at pre-contractual stage; right of the consumer, pursuant to Article 22, to get reimbursed of any extra-payment which the trader may have imposed through pre-ticked boxes or without otherwise seeking the consumer's express consent). Thanks to this action, the companies concerned aligned their car rental practices to EU consumer law requirements, by improving their information policies and making their terms and conditions fairer.

6.1.4. Administrative and judicial enforcement

In relation to administrative enforcement, the survey asked the national competent authorities about the number and type of enforcement actions brought in their Member State for breaches of national rules transposing the CRD: based on their replies, it appears that the level of enforcement activities varies significantly across the Member States.

According to the CRD survey, stakeholder views on the enforcement abilities of the national authorities were rather mixed.

Furthermore, the online public consultation asked about the effectiveness of various consumer redress and enforcement mechanisms in ensuring the enforcement of EU consumer and marketing law, including the CRD. Most public authorities (61%) and business respondents (57%) agreed that injunction orders issued by authorities or courts to stop infringements of consumer rights are very effective or rather effective. In contrast, 42% of consumers and only 20% of consumer associations agree that such a mechanism is effective. A few respondents stressed that the differences in the way in which the rules were enforced in different Member States could lead to inequalities and to traders being unwilling to sell their goods and services cross-border.

As indicated in the CRD study, since the CRD only came into force in June 2014, it appears that, so far, only a limited number of CRD-related cases have been decided by national judges or administrative authorities[63]. Based on data available to the Commission's contractors in relation to the on-going creation of a unified Consumer Law Database, a total of 90 CRD-related cases decided by national courts or authorities have been so far identified. Out of them, no less than 35 come from just 4 Member States (IT 14 cases, DE 9, LV 8 and NL 4).

The survey asked national authorities for their views on the specific CRD provisions which are most likely to require enforcement action. 83% of the national authorities took the view that pre-contractual information requirements for distance and off-premises contracts are likely to require enforcement actions. The analysis of the 90 CRD-related cases identified in the context of the setting up of the future Consumer Law Database shows that a significant percentage of such cases relates to Article 6 CRD on pre-contractual information requirements for distance and off-premises contracts. The vast majority of identified cases concerned the rules on the right of withdrawal (85, out of which 30 related to Article 9). 22 of

[63] Moreover, since it takes some time for cases to be referred up to higher courts and for decisions to be reached, there are only a relatively small number of cases where court judgements have been upheld.

the 90 identified cases related to Article 8 (formal requirements for distance contracts), whereas in relation to Article 2(1) and (2), 9 cases were identified (definitions of consumer and trader). To date, there have been only a few cases (7 in total) in respect of Article 19 (fees for the use of means of payment), Article 20 (passing of risk), Article 21 (right of the consumer to contact the trader, in relation to the contract, at a basic telephone line rate) Article 22 (ban on "pre-ticked boxes"), and Article 27 (inertia selling), these latter mainly concern energy companies in Italy.

6.1.5. Penalties

Article 24(1) stipulates that Member States shall lay down the rules on penalties applicable to infringements of the national provisions implementing the CRD and shall take all measures necessary to ensure that they are implemented. The penalties provided must be effective, proportionate and dissuasive. The transposition check carried out by the Commission services has highlighted some issues concerning the level of penalties and also the fact that penalties do not always cover breaches of all CRD relevant provisions. To this regard, bilateral dialogues with concerned Members States continue in order to ensure the full compliance with the Directive and avoid inconsistencies that may hinder its effectiveness. Moreover, the huge divergence and overall relatively low level of penalties imposable at national level might also be considered through legislative intervention, as further explained below.

As also highlighted in the Fitness Check evaluation, there is considerable variation concerning the public enforcement of EU consumer law due to institutional diversity, distribution of powers between central, regional and local authorities, funding, staffing and powers of consumer protection authorities etc. The penalties imposed by national authorities generally take the form of administrative fines; however, some Member States, for example the UK, Ireland and Germany, also make certain infringements subject to criminal sanctions. However, criminal sanctions are generally reserved for serious infringements, for instance where breaches of the CRD were part of a larger pattern of fraudulent or misleading behaviour by traders.

The level of penalties currently available to the consumer enforcement authorities varies enormously. Some national authorities are able to impose higher penalties, especially for breaches that constitute market distorting behaviour. However, there is a lack of evidence concerning the impact of the variance in penalties on the level of compliance by traders which needs to be further investigated in the light of a possible follow-up to the Fitness Check and CRD evaluation. Some national authorities responding to the CRD survey were concerned that the maximum level of penalties they are able to impose is not sufficient to deter from non-compliance. Nevertheless, instead of pointing at the level of penalties, the findings of the consultation carried out by the CRD contractor highlighted the lack of awareness by traders about the content of the CRD as the main reason for non-compliance.

When asked for further details as to the level of penalties, information provided by national authorities indicates that the level of penalties varies significantly, ranging from modest fixed sums to high penalties, which are either set at a high fixed sum or connected to the trader's annual turnover, whichever is highest. As examples of lower penalties, the national authority in Bulgaria can issue penalties ranging from 100-3000 BGN (approx. 51-1535 EUR) and in

Lithuania from 144-1448 EUR. As examples of higher penalties, the national authority in the Netherlands can issue penalties up to 900 000 EUR or 1% of the annual turnover, in Cyprus up to 200 000 EUR or 5% of the annual turnover and in Latvia up to 100 000 EUR or 10% of the annual turnover. In Italy the penalties can be up to 5 million EUR. [64]

Nevertheless, even if a Member State features a high maximum penalty, the actual penalty issued might not be as significant. As was emphasised by Swedish and Irish respondents, the level of penalties are often modest, unless market-distorting behaviour can be identified and proven. For example, in Sweden a maximum penalty of 5 million SEK (512 017 EUR) can be issued, but only for very significant breaches of the CRD with a significant impact for large numbers of consumers. However, the CRD study has also identified several cases in which high penalties were issued. For example, in 2015 a penalty of 6 million EUR was issued by the AGCM, the Italian Competition Authority, on seven energy producers in Italy for violating the rules set out in the Italian Consumer Code concerning the CRD and the UCPD.

In conclusion, the information gathered on the level of penalties available to national authorities for sanctioning traders' breaches of obligations stemming from the CRD has revealed considerable differences in the transposition of Article 24 which requires "effective, proportionate and dissuasive" penalties to be established in the Member States. This may affect the effective implementation of the CRD across all Member States, in particular in cases cross-border operations which breach CRD provisions.

6.2. Efficiency

6.2.1. Costs and benefits – general analysis

Efficiency considers whether the Directive has achieved its objectives and outputs at a reasonable cost.

The evaluation assessed the following questions:

- What are the costs and benefits (monetary or non-monetary) associated with the application of Directive 2011/83/EU in the Member States?
- What are the burden and benefits for businesses arising from obligations on traders under the Directive?
- Which market sectors are affected by the provisions of the Directive? The assessment should identify which sectors have adapted more efficiently to the new requirements and which ones are characterized by more frequent breaches of the Directive's provisions.
- What are the specific challenges to SMEs, in particular micro enterprises, with respect to the implementation of the Directive?
- What, if any, specific provisions in the Directive can be identified that make a cost-effective implementation more difficult and hamper the maximisation of the benefits?

[64] For further details on national enforcement systems and penalties, see the CRD study available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

The evaluation has focused on costs and benefits associated with the application of the Directive, highlighting those provisions that make a cost-effective implementation more difficult, which might hamper the maximisation of the benefits and create unnecessary or excessive regulatory burden. The evaluation has also addressed specific challenges to SMEs, in particular micro enterprises, with respect to the implementation of the Directive.

The contractor for the CRD study has not been able to gather quantitative estimates of costs and benefits of the implementation of the CRD, except from anecdotal examples. In particular, stakeholders consulted in the framework of the CRD study could not provide quantitative estimations on the impacts of the CRD as they could not establish causality between increase in sales and CRD, on the side of benefits; yet, some examples of costs related to specific provisions have been provided within the study. In addition, some traders were hesitant to share data that they regarded as commercially sensitive. Furthermore the study concludes that the literature review has been sparse on the costs and benefits due to the short time since the Directive has been transposed. In particular, there is not available quantitative or qualitative data as regards possible decrease of compliance costs for businesses in cross-border trade, or availability of wider range of goods and services at lower prices for consumers.

Lack of quantitative data made a comparison with and analysis of the impacts anticipated in the Impact assessment (IA) of the original proposal difficult. In addition, the contractor had difficulties to establish the baseline, which further impeded the comparison.

Thus the analysis is based on qualitative information obtained in the framework of the CRD study through different available sources, such as the interviews and the online survey carried out as part of the stakeholder consultation of the CRD study, the European Economic and Social Committee's Information Report on the CRD, the online public consultation in support of the Fitness Check and the CRD evaluation, meetings of the Fitness Check stakeholder group and submissions of stakeholders.

The limited available data does not allow definitive conclusions about the level of costs faced by businesses in ensuring compliance with the new Directive. All surveyed businesses were reluctant to provide financial estimates of such costs, and there was scarce monetary evidence available. However, according to the different evidence sources the CRD study has considered, traders reported burdens deriving from specific provisions. In particular, the CRD study showed that the Directive has generally been found to be beneficial by consumers and their associations, while traders' view were divided, with a higher number of respondents considering that the benefits of the Directives do not outweigh the costs related to the CRD implementation, especially for SMEs. The greatest costs are attributed to the pre-contractual information requirements and the right of withdrawal even though they were not quantified.

6.2.2 Impacts on traders

In the CRD survey traders were asked about the different types of benefits that may have arisen from complying with the rules laid down in the CRD. Almost one third of the traders responding did not identify any benefits. Among reported benefits, traders mainly referred to the fact that consumers whose rights are respected come back and shop again with the same trader, and bring or attract other consumers. This was also confirmed in the online public

consultation, where a large majority of companies and business associations were of the view that the benefits from complying with consumer protection rules are that consumers whose rights are respected come back and bring/attract other consumers, whereas consumers whose rights are not respected discourage other consumers (damage to reputation).

In detailed responses to the CRD survey, traders highlighted that the Directive had improved customer service and after-sales care within competitive markets, which in turn had helped to build consumer trust. However, some traders felt the CRD was better suited to larger retailers/traders who can build in such requirements into their processes and policies more easily, and that small traders were already too burdened by legislation and having to compete on a small profit margin in competitive markets, which can easily be eroded if there is an increase in the percentage of consumers that exercise their right of withdrawal.

As regards specific provisions with a positive impact, the majority of traders in the CRD survey pointed to the consumers' right to get adequate information about the goods and the service. This was found in the CRD study to be in line with the findings of the online public consultation, where CRD provisions such as the right to get information about goods and services were regarded as beneficial by the majority of respondents in all stakeholder categories, together with the right of withdrawal. Although seen as beneficial, a majority of traders in the online survey agreed that pre-contractual information requirements had greatly or just increased the costs, followed by formal requirements (55%) and reimbursement policies stemming from the right of withdrawal (44%). Such data should also be read in conjunction with the findings of the Fitness Check evaluation regarding overlaps of information requirements under EU consumer and marketing law concluding that there is a need to consider reducing the information requirements applying at the advertising stage provided under Article 7(4) UCPD, in view of the fact that traders must provide the same and more detailed information at the pre-contractual stage under the CRD.[65]

Trade associations responding to the CRD survey also considered pre-contractual information requirements for distance and off-premises contracts the provisions with the greatest negative impacts on competitiveness, both on domestic and cross-border trade.

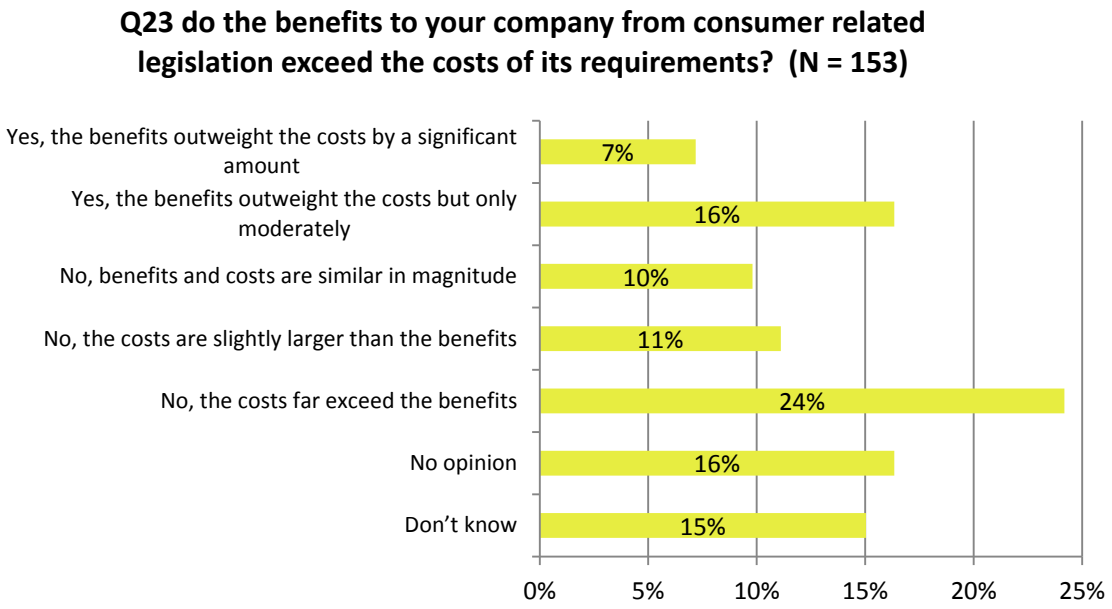
On the other hand, however, rules on reimbursement, inertia selling and exceptions from the right of withdrawal were viewed by trade association as having strengthened traders' competitiveness in both domestic and cross-border trade. Through the interviews performed within the CRD study, it was suggested that the main benefits in this regard relate to increased regulatory certainty.

A high number of respondents to the CRD survey were unable to say whether the requirements to provide information about digital content had been beneficial to their business, but this may reflect the fact that many traders responding to the survey sell goods rather than digital content. In this respect, business associations taking part in the online public consultation were also not convinced about the benefits to consumers of the right of withdrawal for downloading or streaming of digital content and of the right to get information about its functionality and interoperability.

[65] Fitness Check Report available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

Only a few national authorities responded to the survey. These reported that they had received mostly negative feedback from traders or feedback that there was no impact on the traders' competitiveness.

When traders were asked to compare the costs and the benefits of the CRD, their opinions were quite divided. However, a higher number of respondents thought that the costs exceeded the benefits.



Traders' views on benefits and costs (CRD study – Section on Efficiency)

The EESC report on the evaluation of the CRD concluded that, according to roughly a third of respondents, the compliance costs for business have increased since June 2014. For 20% of respondents, the costs have stayed the same. More than a third did not know.

The consultation undertaken for the CRD study has highlighted costs to traders from particular provisions of the Directive, such as pre-contractual information and formal requirements, the right of withdrawal and rules on reimbursements.

According to the general Eurobarometer data[66], in 2016 a large majority of traders agreed that in their own country compliance with consumer legislation is easy (71%) and that the costs of compliance are reasonable (66%). When it comes to traders operating cross-border, 55% of them agreed that compliance in other EU countries was easy and 48% agreed that the related costs were reasonable.

6.2.2.1. Impact of pre-contractual information requirements

As previously highlighted, according to the CRD study a majority of traders and trade associations think that pre-contractual information requirements have increased their costs. They report initial one-off costs in ensuring CRD compliance, such as familiarisation costs

[66] Source: Survey on retailers' attitudes towards cross-border trade and consumer protection (2016) to be used in the forthcoming Consumer Conditions Scoreboard 2017 (expected publication – summer 2017).

with the legislation, management time to check the requirements and to ensure compliance which may require getting external legal advice, updating websites also by the means of web designers, and taking corresponding actions to update internal processes and procedures relating to the transaction process, e.g. delivery, returns and right of withdrawal duration.

However, these are likely to be costs incurred by traders only at the beginning of the compliance process; furthermore, when asked about cost estimates, these could not be provided.

Some of the interviewees in the CRD study felt that the pre-contractual information requirements were imposing an unnecessary burden on traders. This burden was also stressed within the REFIT stakeholder group with particular regard to overlapping information requirement under different EU consumer and marketing directives.

Similarly, in the online public consultation, a majority of respondents in all categories agreed that information requirements currently included in the Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive should be regrouped and streamlined; the same conclusion was reached in the workshop on consumer information held during the Consumer Summit. Stakeholders consulted for the CRD study also argued that pre-contractual information requirements establish an excessive amount of information that can be overwhelming for consumers and noted that information requirements are not read by the majority of consumers, hence proving a lack of efficiency and effectiveness of concerned information requirements. However, regarding the need to reduce current information requirements, traders could not indicate which specific requirements are deemed unnecessary and burdensome. This might suggest that rather than a problem of excessive information requirements to be reduced - given that the evaluation has not identified particular inconsistencies - it would be more appropriate to improve the presentation of information; this is confirmed by the positive results of best practices in some sectors simplifying the way information is presented.

The CRD study reported concerns among a few stakeholders that the amount of information required is sometimes felt as disproportional to the product being offered, particularly in respect of low-value consumer goods.

Consulted stakeholders indicated that as regards off-premises contracts, traders face costs not only because of a substantial increase of and a high level of detail in the information requirements under the CRD, but also because information must be provided on paper or, if the consumer agrees, on another durable medium (Article 7(1) CRD).

6.2.2.2. Impact of the right of withdrawal and reimbursement procedures

Different stakeholders pointed to unintended and unexpected effects from the application of some CRD rules that may deserve further investigation in light of follow-up actions, since it has not been possible to reach definitive conclusions on the actual impact of such reported difficulties and whether an intervention would be needed.

In particular, several stakeholders consulted for the CRD study expressed concerns that the Directive allows consumers to withdraw from distance and off-premises contracts even after having used the goods to an extent going beyond what is necessary to establish the nature, characteristics and functioning of the goods. In this case, the consumer does not lose the right to withdraw, but Article 14(2) makes him liable 'for any diminished value of the goods'.

Traders consulted for the CRD study noted that this leaves scope to abuse the CRD, with consumers purchasing items with the intent of returning them after use. In this respect, in May 2016, the market research institute Norstat conducted a consumer survey on the issue of the return of used goods. The consumer survey showed that 23% of the respondents believe that it is acceptable to return used goods. In 2013, when the survey was conducted for the first time, only 11% believed that it was acceptable to return used goods. According to the Danish Chamber of Commerce such data shows a clear change of attitude among consumers.[67]

In January 2017, the Danish Chamber of Commerce conducted a survey among their members on the implementation of Article 14(2). Only 1 out of the 18 responding businesses said that, as a matter of principle, it would always assess and estimate the depreciation of the product as a consequence of use by the consumer. Nearly all the businesses responding lacked the resources to assess and report the impairment of each returned used product. As a result, they said that they tended to refund the full amount. This was partly also to avoid negative reviews by consumers. Also the Dutch Retailers' association raised concerns in the framework of the REFIT stakeholder platform about consumers' maintaining the right to withdraw from a contract even if they have used the good.

Feedback was also received from some stakeholders, through the interviews for the CRD study, about practical difficulties of calculating the diminished value of used goods and difficulties arising in case of disagreement between the consumer and trader as to how the good has been used and about its diminished value. If consumer and trader disagree about the diminished value, traders would have to keep the returned good to keep evidence in case of judicial litigation. This adds costs and further diminishes the value of the good.

In addition, traders, and in particular SMEs, report problems as regards re-use of returned goods. Many businesses do not sell used goods and simply dispose of them which, in addition to the economic loss, is detrimental also from an environmental point of view.

The Commission services consider that if consumers at a large scale exercise their right of withdrawal even after having used a good more than allowed, it would indeed risk distorting the right balance between a high level of consumer protection and the competitiveness of enterprises pursued by the Directive in accordance with its recital 4[68]. More robust economic data on the volume of returned used goods and the losses suffered by business would however be necessary to justify an amendment of the CRD to remove the consumer's right to withdraw in cases a good has been used. In addition, Commission services consider that authorities and courts could in the practice apply and interpret the relevant provisions having regard in particular to recital 47 of the CRD which states that the consumer should only handle and inspect a good in the same manner as he would be allowed to do it in a shop.

Concerns regarding the trader's obligation to reimburse all payments received from the consumer without undue delay and in any case not later than 14 days after the consumer has

[67] The survey was conducted on the basis of a representative cross section of the Danish population. 1010 responses were collected and examined. Data has been examined in regard to socio-demographic characteristics (e.g. gender, age, educational background, region) to ensure representativeness and validity.

[68] Recital 4 of the CRD reads: "In accordance with Article 26(2) TFEU, the internal market is to comprise an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured. The harmonisation of certain aspects of consumer distance and off-premises contracts is necessary for the promotion of a real consumer internal market striking the right balance between a high level of consumer protection and the competitiveness of enterprises, while ensuring respect for the principle of subsidiarity".

informed about his withdrawal from the contract (Article 13(1)) and related risks of financial losses have been reported in the CRD study as regards the fact that traders have to reimburse consumers without having the possibility to inspect the returned goods once the consumer has supplied evidence of having sent them back.

In the stakeholder consultation for the CRD study, stakeholders also reported two specific situations where the application of the right of withdrawal seems to be problematic in terms of burden for traders.

In particular, the German Federal Supreme Court has determined that consumers have a right of withdrawal from distance sales contracts for heating oil.[69] The German Federal Supreme Court stated that the objective of the exception from the right of withdrawal regarding purchases of goods for which price is dependent on fluctuations in the financial markets (Article 16(b) of the CRD) is to limit speculation[70]; thus this exception requires a speculative element of the contract that cannot be found in contracts for heating oil. The German association representing the heating oil retailers, who are mainly small companies, has claimed that this interpretation is excessively narrow, and has resulted in a significant increase in cancellations of such contracts in the months following the judgment, due to the attention it received in the German media. The association representing the sector fears that in the mid- or long-term, the application of a right of withdrawal in their sector would bear the risk of many small or very small companies to suffer losses endangering their existence. The price of heating oil in consumer contracts is generally the price as it stands at the time of the order. If, however, the price has decreased between the time of the order and the time of delivery, consumers may be tempted to cancel their contracts and place a new order at a cheaper price.

Such use of the right of withdrawal was found by consulted stakeholders to be particularly problematic for Small and Medium-sized companies (SMEs), because they buy oil at current prices in line with their order volumes only to find subsequently that they cannot deliver it, or have to deliver it at lower prices, and distributors do not have a right of withdrawal vis à vis refineries.

Another example provided in the CRD study refers to costs from the right of withdrawal faced by online platforms for auction purposes that do not benefit from the exception under Article 16(k) CRD, which excludes public auctions from the right of withdrawal. Consulted traders pointed to an '*unfair situation'* where online-only auction platforms have to provide a right of withdrawal but public auctions do not. In the CRD consultation, an estimate of the costs from the right of withdrawal was provided by an online auction platform that reported "*costs for handling the right of withdrawal requests roughly amounting to 1.5 to 2 million euros, and a loss of profit of 5.9 million euros out of the foreseeable 7 million euro volume of sales cancelled for withdrawal in 2017*".

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[69] Bundesgerichtshof (Federal Court), BGH, 17 June 2015 - VIII ZR 249/14, http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=71692&pos=0&anz=1

[70] The contract in the case that was brought to court pre-dated the implementation of the CRD and the court thus decided on the basis of the provisions transposing the 1997 Distance Sales Directive. However, the wording of the relevant provision in the German Civil Code that implements the CRD is basically the same as that which implemented the Distance Sales Directive, suggesting that the Federal Supreme Court's ruling may be upheld also under the national provisions transposing the CRD.

Stakeholders consulted for the CRD study have also mentioned losses associated with the right of withdrawal from the provision of digital content. In particular, in the context of streaming and downloading digital content, it has been highlighted by traders that prompting the consumers to give express consent that their right of withdrawal will be lost if the service has begun (Article 16(m) CRD) is sometimes not feasible during the ordering process. As a result, some traders still apply a full 14 days refund policy rather than applying the eligible exceptions under Article 16(m) CRD, in order to avoid losing customers.

6.2.3. Impact for SMEs

SMEs' responses to the CRD survey as to whether the requirements of the CRD had had an impact on costs for their businesses do not vary significantly from the general group of traders. Among those requirements noted to be the most costly are the provision of pre-contractual information and formal requirements[71]. The responses by SMEs and micro-enterprises (including the self-employed) as to whether the benefits from the CRD exceed the costs of its requirements are very similar to those in respect of the general population of traders. This may be because most traders responding to the survey are SMEs or micro-enterprises.

Whilst 22% of SMEs and micro-enterprises expressed the view that the benefits outweighed the costs by a moderate to a significant amount, 40% of respondents noted that the costs were greater than the benefits. Indeed, SMEs appear to be less aware of the benefits of respecting consumer rights, as shown by the evaluation study of the awareness campaign conducted by the European Commission from 2014 to 2016.

Similarly, the EESC's report concluded that the costs for SMEs under the CRD were disproportionate to the cost of compliance for big businesses.

Through the interviews conducted for the CRD study, feedback on the extent to which SMEs perceived the Directive to be administratively burdensome was also received. Among SMEs interviewed, there was a perception that the costs of some aspects of CRD implementation were high, especially the costs related to the right of withdrawal, which must include credit card costs and shipping. The CRD study highlighted a particular concern among traders about the total costs of returns for high value items sold online. The CRD study indicates that working with low profit margins in online retail was considered to put micro and small firms at greater financial risk resulting from consumers exercising their right of withdrawal and stemming from the return of used goods, as discussed above. Thus, the main costs from an SME perspective was found in the CRD study to be the administrative burden arising from changes to the rules in respect of returns, rather than updating information and policies on their websites.

[71] This was confirmed by Eurochambres' burden tracker report: http://www.eurochambres.eu/custom/Paper_EU_burden_tracker_-_CRD_-_Better_Regulation_-2016-00192-01.pdf. Besides its conclusion regarding pre-contractual information requirements, this paper finds that the definition of off-premises contracts is too broad and that it is difficult to distinguish between sales and service contracts in the case of mixed purpose contracts with the risk of providing wrong information.

6.2.4. Impact for national authorities

National competent authorities were also consulted in the framework of the CRD study about the costs of transposition. Most of them reported moderate administrative costs to transpose the Directive. Comments provided by authorities indicated that the costs of transposing the CRD were similar to the costs of transposing other directives and no additional budget was needed. There were some limited costs associated with the human resources needed to transpose the Directive. In this regard, in order to determine how the CRD should be transposed, some countries also organised stakeholder discussions at national level.

National authorities have rather experienced higher costs associated with raising awareness about the new requirements in the CRD, and in relation to enforcement activities such as checking compliance of traders' websites, drawing attention to areas of non-compliance, taking appropriate actions in case of non-compliance.

6.2.5. Impact for sectors

In the CRD study, an analysis of the impacts on different sectors has also been undertaken by type of contract, i.e. for goods, services and digital content separately. It was found that traders selling goods appear to be more convinced that the Directive brings benefits. Traders selling digital content report limited benefits. These results should be read with caution, however, due to the low level of responses.

As indicated in the CRD study, although digital content is an area newly covered by EU consumer law, it is expected that sectors providing digital content are affected more by the Directive than other sectors; surprisingly some stakeholders consulted in the framework of the study stated that they did not see that many major changes compared with earlier legislation, this might be related to the fact that digital content is an area where awareness of rules was found to be low and compliance also seems problematic (as highlighted in the Section on Effectiveness).

Looking at the different levels of compliance could also be a useful indicator of the scale of costs or difficulties encountered by traders in complying with the CRD requirements. In this regard, the CRD study indicates that the findings of the 2015 CRD sweep showed a similar pattern of irregularities across different sectors, multi-purpose or specialised retailers and type of contract (good, service, digital content). Overall, among the websites of specialised retailers with confirmed irregularities, 29% were websites selling clothes, shoes and fashion accessories; 15% electronic goods and household appliances; and 12% furnishing and home decoration.

6.3. Coherence

6.3.1. Coherence between the CRD and other EU legislation – general analysis

Coherence concerns the extent to which the different provisions of the CRD are consistent with other EU legislation.

The evaluation assessed the following questions:

- To what extent is this intervention coherent with other interventions which have

similar objectives?

- To what extent is the intervention coherent with wider EU policy?
- To what extent is the intervention coherent with measures and actions to strengthen consumer protections at national level in relevant areas and markets?

The relevant interventions or interplays can be divided into four categories: (1) consumer and marketing legislation, (2) other horizontal legislation, (3) sector-specific legislation, (4) new proposals. The evaluation has identified the following instruments as a source of potential overlaps or inconsistencies with the CRD: the Unfair Commercial Practices Directive 2005/29/EC, the Price Indication Directive 98/6/EC, the Injunctions Directive 2009/22/EC,[72] the Directive 2013/11/EU on consumer Alternative Dispute Resolution (ADR),[73] the Services Directive 2006/123/EC,[74] the E-Commerce Directive 2000/31/EC,[75] sector-specific legislation *inter alia* in the area of electronic communications, energy, passenger transport and financial services, and new proposals in the area of digital contracts and consumer protection cooperation.

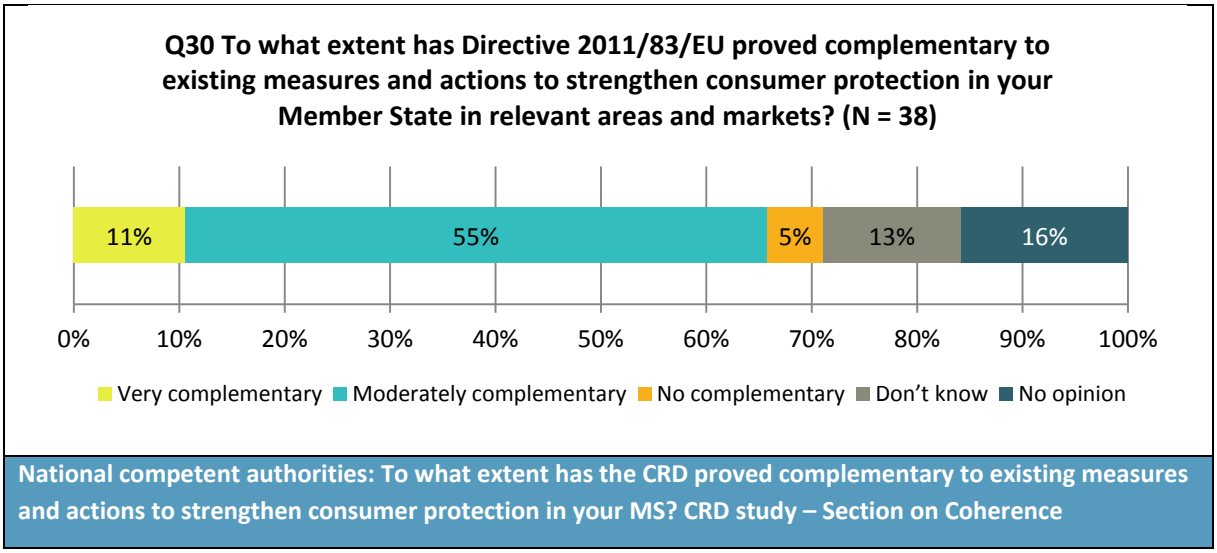
Overall, the CRD is deemed coherent with other EU legislation and no major problems have been identified. As evident from the graph below, in response to the questionnaire submitted for this evaluation, 66% of national competent authorities deemed the CRD to be complementary to other existing measures and actions. Nevertheless, stakeholders that responded to the online public consultation of the Fitness Check of EU Consumer and Marketing Law highlighted the need to simplify and consolidate the information requirements in the CRD which overlap with the information requirements in other EU legislation. Similar calls for consolidation were voiced by stakeholders at the European Consumer Summit 2016. The detailed overview in the sections below will address the possible areas for amendment.

[72] Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests

[73] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC

[74] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market

[75] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')



National competent authorities: To what extent has the CRD proved complementary to existing measures and actions to strengthen consumer protection in your MS? CRD study – Section on Coherence

6.3.2. Interplay with consumer and marketing legislation

6.3.2.1. Unfair Commercial Practices Directive (UCPD) and Price Indication Directive (PID)

The UCPD protects consumers against unfair commercial practices, which are contrary to requirements of professional diligence and which are likely to cause the consumer to take a transactional decision that they would not have taken otherwise. Article 7(4) of the UCPD, stipulates that whenever a commercial communication includes a description of a product and its price, the trader is required to provide information, if not already apparent from the context, about:

- the main characteristics of the product, to an extent appropriate to the communication medium (i.e. considering the limitation of space and time to provide information) and the product;
- the trader's identity and geographical address;
- the full price;
- the existence of the right of withdrawal (where applicable);
- the arrangements for payment, delivery, performance and the complaint handling policy (if such arrangements depart from the requirements of professional diligence).

All of the information requirements in Article 7(4) UCPD can be found in Article 5 and 6 of the CRD. However, the CRD information requirements apply at the pre-contractual stage of a transaction, i.e. when the consumer visits a brick-and-mortar shop or looks at the product descriptions in an online shop, whereas the UCPD information requirements apply to any "invitation to purchase", i.e. a commercial communication which indicates the characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase.

The relationship between the information requirements in the CRD and in Article 7(4) of the UCPD has been addressed in the existing guidance documents for both directives[76].

[76] Guidance on the Implementation/Application of Directive 2005/29/EC on Unfair Commercial Practices, 25.5.2016, SWD(2016) 163 final and DG JUST Guidance document on the CRD, June 2014.

Nevertheless, the information requirements in the UCPD and the CRD could be further streamlined and it could be clarified that the current requirements in the UCPD apply at an earlier stage of the transaction than the requirements under the CRD.

The PID deals with the indication of the selling price and the price per unit of measurement of products offered by traders to consumers in order to improve consumer information and to facilitate comparison of prices. As a result, there are overlaps between the information requirements in the CRD, UCPD and PID concerning the price. The requirements in Article 5 and 6 of the CRD to provide the total price of the goods or services correspond to the requirement in Article 7(4) UCPD to indicate the full price and to the requirement in Article 3 of the PID to indicate the selling price. Only the "unit price" requirement of the PID is not included in the CRD.

6.3.2.2. Injunctions Directive (ID)

The ID requires Member States to ensure in their national legal systems the possibility of using an injunctions procedure. The injunctions procedure in the ID aims at stopping infringements that harm the collective interests of consumers as protected by EU consumer law instruments that are listed in Annex I to the Directive. As the ID predates the CRD, it does not explicitly refer to the CRD in its Annex I, but instead refers to its predecessors regarding off-premises and distance contracts (Directive 85/577/EEC and Directive 97/7/EC). Since Article 31 of the CRD establishes that "*references to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II"*, the CRD is therefore covered by the ID. For clarity, the CRD could be explicitly stipulated in the Annex.

In parallel to the ID, the CRD contains more general enforcement provisions, under which the injunctions procedure is one of the possible enforcement procedures. The "qualified entities" enabled to initiate injunctions are defined more generally under the ID than in the CRD.

The above-mentioned inconsistences could be further addressed in the context of broader initiatives aimed at improving the effective enforcement of EU consumer law.

6.3.2.3. Consumer Alternative Dispute Resolution (ADR) Directive

Directive 2013/11/EU on consumer ADR ensures that EU consumers have access to alternative dispute resolution (ADR) entities for resolving their disputes with EU traders out-of-court in fast, fair and inexpensive way. The Directive applies to disputes concerning contractual obligations stemming from sales contracts or service contracts in virtually all retail sectors (only disputes regarding health and higher education are excluded from the Directive's scope) and irrespective of whether the product or service was purchased online or offline and whether the trader is established in the consumer’s Member State or in another Member State. Member States are required to establish lists of ADR entities whose compliance with the Directive's binding quality requirements they have positively assessed. The Directive's binding quality requirements for ADR entities and procedures apply only to such listed "ADR entities".

Article 13 establishes an obligation for traders to inform consumers about the ADR entity by which the trader is covered. Pursuant to Article 13(1) traders shall inform the consumers about the ADR entity or ADR entities by which those traders are covered, when those traders commit to or are obliged to use those entities to resolve disputes with consumers. That

information shall include the website address of the relevant ADR entity or ADR entities. The information shall be provided in a clear, comprehensible and easily accessible way. Article 13(2) further specifies that the information shall be made available on the trader's website where one exists, and, if applicable, in the general terms and conditions of sales or service contracts between the trader and a consumer. In addition, Article 13(3) stipulates that in cases where the dispute could not be settled following the complaint submitted directly by the consumer to the trader, the trader shall provide the consumer with the information referred to in Article 13(1) specifying whether he will make use of the relevant ADR entities to settle the dispute. That information shall be provided on paper or on another durable medium.

In parallel, the CRD's pre-contractual information requirements for distance and off-premises contracts include in Article 6(1)(t) an obligation for traders to provide information on "*where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.*" Article 6(1)(t) refers to any out-of-court complaint and redress mechanism to which the trader is subject, irrespective of whether such mechanism qualifies as listed "ADR entity" or not. For contracts other than distance and off-premises contracts, the CRD does not establish any pre-contractual information requirements regarding out-of-court complaint and redress mechanisms.

The scopes of the information requirements in Article 13 of Directive 2013/11/EU and in Article 6(1)(t) of the CRD partially overlap but do not conflict. However, in order to ensure coherence between the information requirements in both instruments, their content could be further aligned.

6.3.3. Interplay with other horizontal legislation

Services Directive and E-Commerce Directive

Article 6(8) of the CRD regulates the relationship between the information obligations for off-premises and distance contracts in the CRD, the Services Directive and the E-Commerce Directive. It stipulates that the information requirements in the CRD are additional to those included in the Services Directive and the E-Commerce Directive, and that the Member States are not prevented from imposing additional requirements in accordance with those two Directives. If a provision from those two Directives on the "content and the manner in which the information is to be provided" conflicts with a provision of the CRD, the latter prevails.

Concerning overlapping information requirements, the CRD includes similar or more detailed requirements with respect to the description of the product (main characteristics, functionality and interoperability of digital content) and price. Providing this information in accordance with the CRD is therefore sufficient to also comply with the requirements of the E-Commerce and Services Directives. There is one exception – the E-Commerce Directive additionally requires specific information about promotional offers (Article 6). The E-Commerce and Services Directives also require information about general terms and conditions (T&Cs). Since these requirements are not further specified, they should not impact on the trader's obligation to provide the specific information required by the CRD, which could form part of general T&Cs. Furthermore, the E-Commerce Directive requires this information to be provided in a way that enables the recipient to "store and reproduce" it. This requirement goes

beyond the requirements in Article 6(1) and 8(1) of the CRD. Finally, all three Directives require information about any applicable code of conduct and out-of-court complaint and redress mechanisms. The provision of this information according to the CRD should suffice to also satisfy the relevant requirements in the other two Directives. In conclusion, there are no considerable problems with coherence between the CRD and the Services and E-Commerce Directives.

6.3.4. Interplay with sector-specific legislation

There are no considerable incoherencies with sector-specific legislation due to its exemption in certain areas from the CRD's scope in Article 3(3) and the sector-specific *lex specialis* rule in Article 3(2), which stipulates that in case of conflicts with legislation governing specific sectors, the sector-specific legislation shall prevail instead of the CRD. The CRD is therefore without prejudice to the application of fundamental rights related legal requirements, for example, concerning the Data Protection Directive[77] and ePrivacy Directive[78], which are particularly relevant in online sales and advertising for issues such as data subjects' right to information about the processing of their personal data, the creation of profiles based on online identifiers provided by data subjects' devices, applications, tools and protocols, such as internet protocol addresses and cookie identifiers and data subjects' consent to the tracking and use of personal data supplied or collected. Furthermore, additional information requirements are set out, for example, in Directive 2002/22/EC on electronic communications services[79], Directive 2010/13/EU on audio-visual media services, Directive 2009/72/EC on electricity, Directive 2009/73/EC on natural gas and Directive 2012/27/EU on energy efficiency. Moreover, despite the exemption of financial services from the scope of the CRD and the sector-specific rules in Directive 2002/65/EC on distance marketing of consumer financial services and Directive 2008/48/EC on consumer credit agreements apply, the CRD is nevertheless applicable when financial services are incorporated within a sales or service contract, i.e. through ancillary contracts.

Research undertaken for the evaluation has revealed that there have been concerns concerning compliance with the CRD in the energy, electronic communications services and passenger transport sectors. However, the problems are not necessarily connected to the lack of coherence between the sector-specific legislation and the CRD. Nevertheless, the online public consultation revealed a lack of awareness by traders and consumers about the complementary application of sector-specific legislation, which could contribute to problems in practice. However, this lack of awareness was not identified specifically regarding the relationship between sector-specific legislation and the CRD, but rather regarding the relationship between sector-specific legislation and EU consumer and marketing law more broadly.

[77] Directive 95/46/EC will be replaced as from 25 of May 2018 by the Regulation (EU) 2016/679 (the General Data Protection Regulation).

[78] Directive 2002/58/EC. The Commission submitted on 10 of January 2017 a proposal for a Regulation of the European Parliament and of the Council concerning the respect of private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)

[79] The 2016 Proposal for a Recast Directive includes an amendment to the Recital that clarifies the interplay with the CRD.

6.3.5. Interplay with new proposals

Pending final adoption, the assessment of the interplay between the CRD and the new EU legislative proposals is without prejudice to the changes that were introduced after this evaluation was carried out.

6.3.5.1. Digital Contracts Proposal (DCDP)

In 2015, the European Commission adopted the Digital Single Market Strategy setting the creation of a Digital Single Market as one of its key priorities to generate additional growth in Europe. In this context, two legislative proposals have been put forward: (i) a proposal for a Directive on certain aspects concerning contracts for the supply of digital content, and (ii) a proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods.

The Directive on contracts for the supply of digital content (DCDP) aims to regulate certain aspects of the supply of digital content to consumers, with a particular focus on rules on conformity of digital content with the contract. The DCDP will thus complement the CRD, which does not regulate issues related to conformity with the contract. However, several intersections with the CRD should be carefully reviewed to ensure consistency. In particular, the scope of the CRD should be aligned in order to ensure that both directives apply to the same digital content and services as raised by Member States.[80] Equally it should be further clarified that the CRD covers digital content and service contracts for which the consumer does not pay a price. Furthermore, it could be considered whether the pre-contractual information requirements specific to digital content and the rules on the right of withdrawal for digital content and services in the CRD should be revised as a result of the alignment. These issues are further addressed in the "Relevance" section of this document.

6.3.5.2. Review of the Consumer Protection Cooperation (CPC) Regulation

In 2016, the European Commission adopted a proposal to review Regulation (EC) No 2006/2004 on consumer protection cooperation (the CPC Regulation)[81], which lays down a cooperation framework to allow national authorities from the Member States to jointly address breaches of consumer rules when the trader and the consumer are established in different countries. The Annex to the CPC Regulation lists the EU consumer legislation that is covered by its scope of application. The current Annex to the CPC Regulation references Council Directive 85/577/EEC doorstep selling and Directive 97/7/EC on distance selling, which, subject to Article 31 of the CRD shall be construed as references to the CRD. However, the review of the CPC Regulation proposes to explicitly add the CRD to the Annex to the Regulation, which will ensure coherence between the two instruments.

6.4. Relevance

[80] According to Point 6 of the Council Conclusions of 2 June 2016 on the policy debate for the DCP, the EC is invited to include in its CRD Report an evaluation of the application of the CRD to all types of contracts for the supply of digital content covered by the DCP, with a view to help in the assessment of further needs for alignment between the CRD and the DCDP.

[81] 25.5.2016, COM(2016) 283 final, http://ec.europa.eu/consumers/consumer_rights/unfair-trade/docs/cpc-revision-proposal_en.pdf

6.4.1. The objectives of the CRD

Relevance concerns the relationship between the needs of society and the objectives of the legislative instrument. The assessment considers whether the objectives set by the Directive remain relevant, namely, the objective of achieving a high level of consumer protection across the EU and the objective of contributing to the proper functioning of the internal market by approximating certain aspects of Member States' laws, regulations and administrative provisions concerning contracts concluded between consumers and traders.

The evaluation assessed the following questions:

- Do the objectives of Directive (still) correspond to the needs within the EU?
- To what extent have the needs of consumer protection changed since the adoption of the Directive?
- Is the scope of the Directive still appropriate?

As indicated in Article 1 of the Directive, the overall objective of the CRD is to achieve a high level of consumer protection across the EU and to contribute to the proper functioning of the internal market by approximating certain aspects of Member States' laws, regulations and administrative provisions concerning contracts concluded between consumers and traders.

Recital 5 of the Preamble to the Directive stresses that the cross-border potential of distance selling, which should be one of the main tangible results of the internal market, had not been fully exploited. The full harmonisation of consumer information and the right of withdrawal in distance and off-premises contracts under the CRD were intended to contribute to reaching this potential, by ensuring a high level of consumer protection and a better functioning of the business-to-consumer internal market.

As highlighted in Recital 7 to the Directive, full harmonisation of some key regulatory aspects should considerably increase legal certainty for both consumers and traders, who should all be able to rely on a single regulatory framework based on clearly defined legal concepts. The effects of such harmonisation should be to eliminate the barriers stemming from the fragmentation of the rules and to complete the internal market in this area, while at the same time consumers should enjoy a high level of protection across the EU.

As concerns e-commerce transactions, the CRD provisions on distance contracts for goods, services and digital content are particularly relevant within the framework of the Digital Single Market policy of the European Commission. The objectives of ensuring a high level of consumer protection and a functioning internal market in online contracts are likely to become even more relevant in the future, as online purchases by consumers are expected to increase. This will further enhance the importance of the correct application of the pre-contractual information and the right of withdrawal for distance sales.

6.4.2. Stakeholders' views: Relevance of the objectives of the CRD

According to the available information, stakeholders consider that the objectives of the CRD remain relevant.

In the online survey that was part of the stakeholder consultation for the CRD study, consumer associations and trade associations were asked if they think that the objectives of the CRD are still relevant to the needs of consumers and traders within the EU. 64% of respondents from consumer associations and 55% of respondents from trade associations replied that the objectives of the CRD are "very relevant", whilst the corresponding numbers saying that the CRD objectives are "slightly relevant" were 23% and 27%. It follows that, overall, 87% of respondents from consumer associations and 82% of respondents from trade associations consider the objectives of the CRD relevant.

Stakeholders were also asked about the relevance of the Directive for the EESC's Information Report on the CRD, which found the following:

> *"Consumer and business associations as well as trade unions have confirmed the relevance and impact of this directive on commercial transactions between consumers and businesses including SMEs"*[82].

The CRD study concludes that the objective of contributing to the proper functioning of the internal market by approximating certain aspects of Member States' laws, regulations and administrative provisions concerning contracts remains relevant, mainly for two reasons:

Distance and off-premises trade is only expected to increase in the future. As recent statistics suggest, there has been an increase in the % of people buying over the internet. This trend is only expected to continue in the future which reinforces the need to ensure a high level of consumer protection in the internal market; and
The CRD provides a framework through a full harmonisation approach that companies could use to increase business opportunities in other Member States other than their own; thus most likely reducing the compliance costs when trading cross-border.

Furthermore, according to the CRD study, the fact that the Directive includes pre-contractual information requirements and a right of withdrawal for contracts for digital content for the first time within the context of EU consumer and marketing law is also especially relevant from the point of view of pursuing the objectives in the Digital Single Market Strategy. The CRD study points out, however, that on digital content there could be room for re-assessing some of the CRD rules in order to fully correspond to the current needs within the EU. In particular, it raises questions related to the fact that the CRD does not apply to digital services not supplied against a price. In the online survey for the CRD study, stakeholders were also asked if they would consider the introduction of harmonised rules related to information requirements, right of withdrawal and ranking criteria for searches in connection with transactions that do not infer any payment, through online platforms, as beneficial for increasing consumer trust. These questions are further discussed below.

6.4.3. Should the scope of the Directive be amended in relation to digital content?

Sales and service contracts against payment are covered by the CRD

[82] Section 4 of the EESC Information report: Consumer Rights Directive (evaluation) http://www.eesc.europa.eu/?i=portal.en.int-opinions.39555

The CRD is applicable to sales and service contracts for which the consumer *"pays or undertakes to pay the price"*.[83]

In the CRD Guidance[84], the Commission services indicated that the reference to the *"price"* refers to payment in money, (which also includes vouchers, gift cards or loyalty points with a specified monetary value). Consequently, the Directive does not apply to gifts or to services provided by the trader for free.

Application of the CRD to contracts for 'free' online digital content

Besides sales contracts and service contracts, the Directive also covers contracts for the supply of digital content which is not supplied on a tangible medium (hereinafter referred to as: "contracts for online digital content").

Contracts for online digital content are not expressly defined in the CRD, but Recital 19 CRD explains that, for the purposes of this Directive, they are not classified as sales or as service contracts. Recital 19 also clarifies that the Directive considers digital content supplied on a tangible medium, such as a CD or a DVD, as goods.

The CRD Guidance[85] points out that the CRD does not mention *"payment"* for these other types of contracts. Accordingly, it suggests that contracts for online digital content are subject to the Directive even if they do not involve the payment of a price by the consumer. The CRD Guidance provides the following example: *"the Directive applies to a contract for a free download of a game from an app store."* At the same time, since the CRD applies only to "*contracts concluded between consumers and traders"*[86], it should not apply to online digital content provided outside a contract.

However, consultations with the dedicated Stakeholder Group for the Fitness Check and the CRD evaluation have indicated that there could be a case for clarifying the text of the CRD on this point. Notably, some stakeholders do not agree that contracts for online digital content are subject to the Directive if they do not involve the payment of a price by the consumer. Accordingly, as a follow-up action to the CRD evaluation and the Fitness Check it should be considered to further clarify the application of the CRD to "free" digital content in the text of the CRD, in order to provide more legal clarity.

Contracts for digital services are only partly covered by the CRD

Contracts for online digital content, according to the description in Recital 19 CRD, cover products such as movies and music. By contrast, this category of contracts is not likely to cover digital services such as cloud storage or webmail, where the main contractual obligation of the trader is not to provide digital content but rather a service allowing the creation, processing, storing or sharing of data, including personal data that are produced by the consumer. Such digital services rather fall within the definition of service contracts under Article 2(6) CRD. Therefore, they are covered by the CRD rules for service contracts only when provided against payment of a price. Accordingly, when contracts for digital services

[83] Articles 2(5) and 2(6) CRD.

[84] See page 8 of the Guidance, issued by DG JUST in June 2014, available at: http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm

[85] Pages 8 and 64 of the Guidance, available at http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm

[86] Articles 1 and 3 CRD.

are not provided against payment of a price they are not covered by the CRD. Moreover, information obligations on "functionality" and "interoperability" are limited to digital content (Article 6(1)(r) and (s)) – i.e. consumers acquiring digital services do not profit from these information despite the functional complementarity of digital content and digital service.

Following the Council discussions on the proposal for a Directive on Contracts for the Supply of Digital Content (DCDP)[87] at the June 2016 JHA[88] Council, the Ministers invited the Commission to examine whether contracts for digital services that are not provided against payment of a price should be brought within the scope of the CRD in the context of the CRD evaluation[89]. Such an examination will need to take into account the outcome of the discussions in the Council and the European Parliament as regards the scope of the DCDP. In addition, if the scope of the CRD is extended to contracts for digital services that are not provided against payment of a price, it should also be assessed whether the information requirements on "functionality" and "interoperability" should be extended to such contracts and whether new provisions on the right of withdrawal are needed.

The interviews and the literature review for the CRD study indicate certain gaps in consumer protection with regard to free online services to which the rules of the CRD do not apply. Accordingly, in the online survey for the CRD study, stakeholders were asked the following:

> *To what extent would the following EU consumer protection rules if fully harmonised at EU level be beneficial for increasing trust of consumers?*
>
> - Before subscribing to a free online service, such as social media or cloud service, the consumer should receive the same information as currently received for paid services and for digital content[90];
> - When subscribing for a free online service, such as social media or cloud service, the consumer should have a right of withdrawal from such a service contract within 14 days from conclusion;

On question 1 (whether pre-contractual information requirements should be introduced for free digital services), 82% of national competent authorities, 80% of consumer associations, 85% of ECCs and 35% of trade associations considered this (rather/very) beneficial for consumers.

On question 2 (whether a right of withdrawal should be introduced for free digital services), 71% of national competent authorities, 77% of consumer associations, 77% of ECCs considered this (rather/very) beneficial for consumers and 36% of trade associations considered it rather beneficial.

[87] Proposal for a Directive of the European Parliament and of the Council on certain aspects concerning contracts for the supply of digital content, COM/2015/0634 final - 2015/0287 (COD).
[88] Justice and Home Affairs
[89] Council of the European Union, Interinstitutional File 2015/0287(COD), 2 June 2016.
[90] The Data Protection Directive (95/46/EC) and as from 25 May 2018 the General Data Protection Regulation (Regulation (EU) 2016/679) already require the provision of additional specific information on the processing of personal data.

In the same survey, in a question about consumer problems when accessing or buying digital content online, over 40% of respondents reported having experienced difficulties when unsubscribing from free online services.

Also amongst the members of the REFIT stakeholder group there was a considerable support for extending the scope of the CRD to (digital) services for which consumers provide personal data, taking in to account the outcome of negotiations on the DCDP. However, there were also strong concerns against such an extension, pointing to the potential additional burden on businesses and obstacle to development of new services it may create. Overall, members pleaded for consistency between data protection, consumer protection and contract law rules.

This evaluation has found that, on digital content, there could be room for re-assessing some of the CRD rules in order to better match current needs within the EU. In particular, from available data there seems to be room for extending the scope of the Directive to cover digital services for free as a follow-up action of this evaluation.

6.4.4. Relevance of specific CRD provisions

In the online survey for the CRD study, consumers were asked which of the aspects regulated under the CRD they consider the most important when they make purchases. 96% of respondents indicate that having the price clear prior to placing the order is the most important aspect. The requirement that the trader shall seek the express consent of the consumer for any extra payment and the requirement that, for online sales, the trader must provide specific information in a clear and prominent manner directly before the consumer places the order are also considered very important (indicated as of "high importance" by 91 and 90 % of the respondents respectively). A table showing the full findings on this question can be found in the CRD study[91] .

Consumers were also asked about the relevance of different information requirements under current EU consumer and marketing law in one of the behavioural experiments in the consumer market study for the Fitness Check.[92] The replies indicated that, in general, the information required by the CRD was found to be relevant, with information related to the arrangements for payments and the total price being considered the most important one.

In the discussion held within the REFIT stakeholder group, there was large support for the idea of allowing traders use more modern manner of communication, such as web-based contact forms as an alternative to e-mail addresses provided that they grant the same functionality as e-mail. Stakeholders also pointed to the fact that the fax number is an outdated means of communication and it could therefore be deleted from the list of means of communication in Article 6(1)(c).

6.4.5. Relevance of specific information requirements and possible need for a model form

The different sources of information for the CRD study have questioned the added value of the pre-contractual information requirements as they currently stand in the CRD. During the

[91] CRD study available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332
[92] Consumer Market Study to support the Fitness Check of EU consumer and marketing law, available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

interviews for the CRD study, it was suggested that the pre-contractual requirements should be reduced and/or simplified to the benefit of both traders and consumers.

The EESC report notes that:

> *"In the current round of consultations it has been suggested:*
>
> *(...)*

(i) to simplify information requirements, focusing on quality rather than quantity of the information to be provided; the possibility of referencing via digital links should be facilitated, without reducing the amount of information;"[93]

On this the EESC report states:

> *"One solution is that information to consumers (Art 5) would not be completely indicated on the product; instead a reference to the website with further information could be indicated."*[94]

Stakeholders attending the Consumer Summit agreed that pre-contractual information requirements should always be included and easy to find on traders' websites.

The relevance for consumers of all the current pre-contractual information requirements has also been questioned. Both the online survey for the CRD study and the CRD behavioural experiment carried out in the consumer market study for the Fitness Check[95] indicate that some provisions, notably the requirement to indicate the total price, are more relevant to consumers than others.

Furthermore, findings from the Fitness Check evaluation suggest that, in order to ensure coherence between the UCPD and the CRD, certain information obligations in Article 7(4) of the UCPD could be removed. Such information requirements would continue to apply at the later pre-contractual stage, as required by the CRD.

Another aspect explored in the evaluation relates to the possibility of better implementing the current requirement in Articles 5(1) and 6(1) of the CRD to provide information in a clear and understandable manner. Data available from the online public consultation, the European Consumer Summit, the CRD study, and the discussions held in the meetings of the Fitness Check Stakeholder Group point to the need to simplify the way information is presented to consumers.

[93]Section 5.2 (i) of the EESC Information report: Consumer Rights Directive (evaluation) http://www.eesc.europa.eu/?i=portal.en.int-opinions.39555

[94]Section 4.2.5.2 of the EESC Information report: Consumer Rights Directive (evaluation) http://www.eesc.europa.eu/?i=portal.en.int-opinions.39555

[95] Consumer Market Study to support the Fitness Check of EU consumer and marketing law, available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

The adoption of a model form to improve the communication of the CRD information to consumers was one of the options considered in the Fitness Check evaluation. In the European Consumer Summit, a large majority of the participants of the relevant workshop supported the idea of developing a model form for the presentation of key consumer information; many thought that the use of the form should be voluntary. Also in the online consultation, the majority of consumers (58%) and consumer associations (75%) supported a uniform model for the presentation of the pre-contractual information. Similar conclusions are reached in the information report of the EESC, which focused on the possible adoption of standardised information for public utilities.

The views of traders and trade associations were rather split in response to the online survey question of the CRD study on whether the presentation of pre-contractual information to consumers should be simplified by applying a uniform easy graphic model using icons or pictograms. 32% of respondents from trade associations agreed to introduce a non-binding model, whilst 46% disagreed with this idea. Traders were more in favour of the icon model, but with views evenly divided on whether this should be binding or not (23% for and 23% against a binding model for icons). Consumer associations and ECCs tended to agree that the model should be binding. Most of the national competent authorities, however, disagreed with this idea.

At the time of the adoption of the CRD guidance in 2014, the Commission services already proposed a model for presenting consumer information for digital content. Although it received positive feedback from industry and consumer representatives and was based on extensive research and testing, this icon-based voluntary model has not been implemented by the industry.

In the online survey for the CRD study, consumers were asked about their views on whether pre-contractual information requirements could be simplified by using a graphical model with icons. 40% of the respondents agreed that the presentation of pre-contractual information in graphic form would be very useful. In the Consumer Summit a majority[96] of the participants of the consumer information workshop was in favour of a non-binding model form, indicating that it should include icons.

On the other hand, the CRD behavioural experiment carried out within the consumer market study for the Fitness Check[97] did not seem to confirm the added value of icons. This experiment was based on examples of presenting information in line with those included in the CRD Guidance digital content model form, and showed that respondents **understood** the pre-contractual information required by the CRD and found the information to be **relevant**. Respondents were also able to **use** pre-contractual information. However, adding icons did not seem to facilitate understanding and for certain information items it even seemed to lower understanding. There may thus be little added value in introducing requirements under the CRD to present pre-contractual information through the use of icons.

[96] 69% of 129 participants. Workshop conclusions are available on the Summit's webpage: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34204

[97] This behavioural experiment examined consumer understanding and the use of pre-contractual information for products in two sectors: the digital content sector and e-commerce of ICT97 goods. The products were smartphones and streaming content (movies). The report of the Consumer Market Study to support the Fitness Check of EU consumer and marketing law is available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

6.4.6. Relevance of specific information requirements for online marketplaces

The conclusion of contracts on online marketplaces[98] raises specific issues from the point of view of EU consumer and marketing law, such as whether consumer users are informed about the identity and legal status of supplier (if the supplier qualifies as a *"trader"* or *"consumer"* under EU consumer and marketing law), the criteria used by platform when presenting search results, including offers by different suppliers (both third party and platforms' own offers) and whether review and rating systems can possibly replace some of the functions of the current consumer acquis. Currently, those information requirements do not exist under the CRD.

Criteria used by platforms when presenting search results

In the online survey for the CRD study, stakeholders were asked the following:

> *To what extent would the following EU consumer protection rules if fully harmonised at EU level be beneficial for increasing trust of consumers?*

When using an online platform to search for information or a product, the consumer should be informed about the ranking criteria that the platform uses when presenting the search results.

A large majority of national competent authorities, of consumer associations and of ECCs as well as 45% (relative majority) of trade associations considered introducing requirements to inform consumers about ranking criteria beneficial to consumers.

Results were similar in the online public consultation: A majority of respondents in all categories[99] (however only a relative majority in the case of business associations) agreed that online platform providers should inform consumers about the criteria used for ranking the information presented to consumers.

At the 2016 Consumer Summit, one of the participatory workshops focused on consumer information. Participants in that workshop showed also clear support for strengthening transparency requirements for online platforms.[100]

The question about introducing requirements for platforms to inform consumers about ranking criteria was also discussed in the Fitness Check Expert Group, but without any clear conclusion. A Multi-Stakeholder Group on comparison tools, organised by DG JUST, agreed, in its "Key Principles", on the importance of the transparency of the ranking methodology used and the identification of advertising in default rankings.[101] Furthermore the updated

[98] As defined in Regulation (EU) No 524/2013 of 21 May 2013 on online dispute resolution for consumer disputes (Regulation on consumer ODR) where 'online marketplace' means a "*service provider, as defined in point (b) of Article 2 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), which allows consumers and traders to conclude online sales and service contracts on the online marketplace's website*";

[99] Consumer associations, public authorities, consumers, companies (see Annex 2 for more detail).

[100] 69% of 126 participants. Workshop conclusions are available on the Summit's webpage: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34204

[101] See Principles 1 and 4 at http://ec.europa.eu/consumers/consumer_rights/unfair-trade/docs/key_principles_for_comparison_tools_en.pdf

UCPD guidance[102] discusses the role of online platforms and their qualification as traders that need to comply with consumer laws.

Results of a screening of 485 for profit platforms facilitating peer-to-peer transactions in 28 EU Member States undertaken for the "Exploratory study of consumer issues in the sharing economy"[103] indicate that a majority of platforms offer search functions with filter options as part of their "matching" service. But in-depth case studies of 10 such platforms undertaken as part of the same study[104] showed there is no information about how the competing offers are ranked or their visibility is "pushed up" within filtered search results.

> *Are consumer information requirements less relevant when platforms operate review and rating systems?*

The same study shows that more than half of the 485 screened platforms use review or rating systems as means of building trust among users. However, a survey of about 10.000 users of platforms facilitating peer-to-peer transactions in 10 Members States undertaken in May 2016 as part of the same study[105] shows that neither peer consumers nor peer providers use these reviews and/or rankings systematically. Only about 40% of peer consumers and peer providers use reviews and ratings at least frequently before and after transactions. A substantial proportion of consumers and providers (15% - 23%) never uses the reviews before or after transactions at all.

Before a purchase only, 22% of consumers always use the review system, while a majority provides reviews only sometimes, rarely or never (52%). Consumers are even less likely to write reviews after a transaction: only 20% always post a review of their experience with a peer provider, 22% do it frequently and the majority (58%) only sometimes, rarely or never.

Moreover, only 20% of peer consumers who took some form of action after experiencing a problem in a transaction left a negative review, and almost half of those who experienced a problem did not take any action at all.

The survey results indicate that a majority of all types of peers do not use review/rating systems systematically, that most use them on an irregular basis and that a substantial proportion never use them at all, particularly after a transaction. Hence, ratings and reviews are unlikely to reflect the experience of all or most platform users. They therefore risk to give a misleading or inaccurate impression to platform users.

While most peer consumers in the 2016 survey generally evaluate user review systems as a positive contribution to safety and protection and adequate information, three quarters of peer consumers have at least some reservations about the reliability of user ratings and reviews. Use of these systems increases trust in the platform for almost 20% of peer consumers, while

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[102] SWD(2016) 163 final of 25.05.2016 available at: http://ec.europa.eu/justice/consumer-marketing/files/ucp_guidance_en.pdf

[103] To be published; the scope of the study included for profit online platforms facilitating the sale or resale of goods, renting/sharing of goods, renting/sharing of accommodation, hiring/sharing of rides, and platforms for hiring people for non-professional services ('odd jobs')

[104] Platforms examined in case studies are: Airbnb, BlaBlaCar, eBay, easyCarClub, Nimber, Peerby, Uber, Yoopies, Wallapop, Wimdu

[105] Online survey of 1000 internet users active as peer consumers and/or peer providers on the platforms in the scope of the study per country in Bulgaria, Denmark, France, Germany, Italy, Netherlands, Poland, Slovenia, Spain and United Kingdom.

almost 40% only slightly agree with this, a sizable minority of 34% are neutral and almost 10% disagree.

These findings about irregular use of rating and review systems were confirmed in focus groups undertaken for the same study in 10 Member States[106]. Peers further reported scepticism about the reliability of peer reviews and ratings and awareness of the subjectivity of reviews. They underlined uncertainty about the representativeness of reviews, as it is not clear whether people tend to write reviews more often after they have experienced a problem or after a positive experience, and raised the problem of fake positive reviews.

These findings are confirmed both by academic studies[107] and by the responses to the Commission's public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy[108].

The above findings indicate that review and rating systems should not be considered an adequate substitute for consumer protection rules, if the objective is to ensure a high level of consumer protection. However, they can be considered a supplementary tool to enhance trust and empower users there where consumer protection rules do not apply (peer-to-peer transactions). In this context, it is important to reinforce their reliability by stepping up enforcement efforts against fake reviews and misleading practices.

Information about the identity and legal status of suppliers

The EESC's Information Report on the CRD suggests changes to the "consumer" definition in light of the sharing economy:

> *"It should be clarified whether the CRD applies to contracts with online platforms which can be both the seller and the buyer (e.g. Airbnb where the owner of an apartment can be considered as both a capital owner as well as a worker). Currently platforms are able to exclude all their obligations under the Terms and Conditions and the CRD only governs the direct relationship between the trader and consumer."*[109]

In the online public consultation, majority of consumer associations, public authorities and business respondents, and a relative majority of consumers agreed that further criteria should be defined to allow for a clearer distinction between consumers and traders in the collaborative economy. Business associations had mixed views on this.

According to 2016 Eurobarometer data, more than four in ten survey respondents who have heard of or have visited collaborative platforms say that not knowing who is responsible in

[106] Focus group research was undertaken in May 2016, amongst groups of 8 à 10 peer consumers and peer providers in 10 cities in Bulgaria, Denmark, France, Germany, Italy, Poland, Slovenia, Spain, the Netherlands and the UK

[107] Authors such as Slee (2013) and Bolton et al. (2012) have identified various elements explaining this behaviour towards bias in reviews

[108] European Commission, 2016, Synopsis report on the public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy. Available at: https://ec.europa.eu/digital-single-market/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud

[109] Section 4.2.5.3 of the EESC Information report: Consumer Rights Directive (evaluation) http://www.eesc.europa.eu/?i=portal.en.int-opinions.39555

the event of a problem is one of the main disadvantages for people using the services offered on collaborative platforms (41%).[110]

Both the definition of a "consumer" and of a "trader" in the CRD reflects similar definitions in other Directives under EU consumer and marketing law, such as the UCPD and the UCTD. Any lack of clarity related to these definitions in the context of the collaborative economy platforms or other platforms facilitating peer-to-peer transactions should therefore be considered on a broader basis. In addition, the Fitness Check Report notes that the distinction between a "trader" and a "consumer" under EU consumer and marketing law is valid also on a more horizontal basis and to the whole platform economy.

The issue of the role and responsibilities of professional intermediaries when facilitating transactions between consumers was addressed by the Court of Justice in the recent case C-149/15 *Wathelet*[111]. The specific issue in that case was whether a professional intermediary can be considered a ″seller″ under a sales contract between two consumers, if that intermediary creates a likelihood of confusion in the mind of the consumer, leading him to believe in its capacity as owner of the goods sold. The degree of participation and the amount of effort employed by the intermediary in the sale, the circumstances in which the goods were presented to the consumer and the latter's behaviour may, in particular, be relevant in that regard in order to determine whether the consumer could have understood that the intermediary was acting on behalf of a private individual. This question can arise in many situations; its translation into the online world would need to be balanced with the intermediary liability exemption under the E-commerce Directive. In the *Wathelet* case, however, it arose in connection with the sale of a second-hand car through a traditional transaction in a brick-and-mortar garage. The Court of Justice clarified that, under the Consumer Sales and Guarantees Directive[112], the fact that the garage did not inform the buyer that the car was actually sold by a third party – and that this third party was a consumer – was likely to lead the buyer to believe that she bought the car directly from the garage. Consequently, the garage itself could be considered as the "seller" under the Consumer Sales and Guarantees Directive.

As regards the legal status of suppliers on online platforms facilitating peer-to-peer transactions, the case study findings of the above mentioned study[113] show that none of the ten platforms examined[114] qualify as merely hosting an information society / electronic service. In fact, all platforms examined actively manage the conclusion of transactions, and some of them also govern the transactions between the peers by setting terms for these transactions.

Findings further show that these platforms have diverging practices when it comes to informing users about the legal status of providers on the platform. Five out of ten of the assessed platforms allow a distinction between private or commercial actors. Some platforms (BlaBlaCar ride sharing and easyCar Club car sharing platform) do so by excluding commercial activity (activity carried out for professional purposes). Other platforms (eBay,

[110] Source: Flash Eurobarometer 438.
[111] Judgement of 9 November 2016 in Case C-149/15, Sabrina Wathelet v Garage Bietheres & Fils SPRL
[112] Directive 1999/44/EC on consumer sales and guarantees.
[113] "Exploratory study into consumer issues in the sharing economy" to be published
[114] AirBnB, BlaBlaCar, eBay, easyCar Club, Nimber, Peerby, Uber, Wallapop, Wimdu, Yoopies

Wimdu accommodation and Yoopies odd jobs platform) require providers to clearly indicate their legal status to the platform. Two platforms (eBay and Yoopies) require providers to inform platform users in their listing or in their profile whether they are a private individual or a business. The other five platforms studied (Airbnb, Nimber, Peerby, Wallapop, Uber) do not make a distinction and do not require providers to give any information about their legal status.

The case studies further find that all platforms deny liability for false information provided by peers, including about their legal status or identity.

The distinction between private and commercial providers is most relevant on larger platforms, where the high number of users attracts businesses providing commercial services. The study therefore considers it an element of concern that some of the largest platforms examined (e.g. Airbnb, Uber) still do not inform users about the provider's legal status. On the contrary, examples of good practices, such as indication of legal status, verification of the authenticity of the identity of providers against official documents, criteria to distinguish private from commercial peer providers and indication of peer providers' status in the listing or the profile are found on both larger (BlaBlaCar, eBay, Wimdu) and smaller platforms (Yoopies, easyCar Club)

Other elements of concern identified in the case studies are that most, including larger, platforms enable users to conclude transactions without verifying their official identity documents, and deny responsibility for the accuracy of identity information in their Terms & Conditions. Two Sharing/Hiring Ride platforms (Uber and easyCar Club) carry out a pre-screening of the peer provider's identity during the registration process, by verifying the authenticity of his/her identity and car registration documents and by checking his/her criminal records. However, most platforms examined in the case studies do not systematically verify the provider's identity. They allow registration and transacting on the platform as peer consumer and/or peer provider after confirmation of the email address through a link sent to the user, or by linking to a social media account or Google account. Such practices are a major obstacle to transparency about the status of peer providers, as well as a potential risk in case something goes wrong in a transaction.

6.5. European added value

The analysis of European added value assessed the following questions:

- What is the additional value resulting from Directive 2011/83/EU, compared to what could be achieved by Member States at national and/or regional levels?
- In particular, what has been the EU added value of areas such as pre-contractual information requirements and the right of withdrawal (including the use of a standard withdrawal form and the right to return used goods)?

The objective of the CRD is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by approximating certain aspects of the laws, regulations and administrative provisions of the Member States concerning contracts concluded between consumers and traders.

Recital 6 of the Directive states that disparities create significant internal market barriers affecting traders and consumers and that disproportionate fragmentation undermines consumer confidence in the internal market and increases compliance costs to traders wishing to engage in the cross-border sale of goods or provision of services.

The legal analysis and the consultations carried out in preparation of this evaluation suggest that an EU approach based on approximation of national laws remains the most appropriate response to the challenges identified prior to adoption of the CRD and is more likely to contribute to achieving its objectives than action at national and/or regional levels. However, as already stated, only limited information was available to analyse the European added value of the CRD, also due to its short period of application in the Member States. The limited information specifically on EU added value may also be due to the fact that most interlocutors do not question at all the added value of internal market legislation that harmonises rules to remove obstacles to cross-border trade whilst achieving a high level of consumer protection across the board and take this for granted.

Prior to the Directive, a number of consumer rights such as the pre-contractual information requirements and the right of withdrawal were not harmonised. There was also no obligation to provide a withdrawal form. The Directive also for the first time laid down specific rules at EU level on digital content, namely specific requirements regarding pre-contractual information and the right of withdrawal.

The online public consultation showed that the right to get information about goods and services offered and the right of withdrawal, rights which had been harmonised by the CRD, were regarded as beneficial to consumers by the majority of respondents in all stakeholder categories. Business associations were less convinced about the benefits (for consumers) of the right of withdrawal for downloading or streaming of digital content and of the right to get information about the functionality and interoperability of digital content.

The analysis and consultations showed that, overall, the CRD has increased the level of consumer protection across most MS, with very few exceptions and that it is unlikely that

Member States could have tackled the problem linked to the difference in consumer laws at national and/or regional level.

For example, respondents to the CRD study consultations agreed that the CRD has contributed to reducing differences in consumer legislation and has achieved a significant level of harmonisation. 71% of traders who indicated, in response to the CRD survey, that they trade cross-border and experienced problems quoted differences in national legislation as a main difficulty to selling in other EU countries.

In the surveys conducted for the CRD study, most national competent authorities saw either significant (43%) or moderate (41%) added value resulting from the CRD compared to what could have been achieved by individual Member States at national or regional level. None of the responding competent authorities saw "no added value" from the CRD.

In their view, the uniformity and harmonisation of consumer rights across Europe has increased cross-border sales, broadened the market, enhanced legal certainty, and resulted in compliance cost reductions. In addition, the national authorities also commented that harmonisation has facilitated the enforcement of consumer rights and the handling of cross-border complaints and infringements.

How EU full harmonised rules could enhance cross-border enforcement was demonstrated for instance by the coordinated enforcement actions carried out by the CPC network in 2015-2016; the existence of EU common rules under the CRD, such as the information requirements on the total price and charges of the service, and the ban of pre-ticked boxes, allowed Member States to easily agree and coordinate their enforcement actions to make the top five car rental companies operating in the EU comply with EU consumer law, including the CRD, improving consumer information in the car rental sector.[115]

Intervention at EU level also allows for EU-wide coordinated control actions (so-called EU sweeps), which have proved to be effective tools to identify breaches of EU law and enable subsequent enforcement.

Although traders answering the CRD survey did not notice an increase in sales as a result of the Directive, a third of respondents consulted under the EESC's evaluation agreed that intra EU cross-border online sales had increased since June 2014.

Analysis by Eurostat seems to confirm this trend indicating an increase of intra-EU cross-border online purchases from 25 % in 2012 to 32 % in 2016.[116]

Regarding consumer confidence, available Eurobarometer data shows, that the percentage of consumers feeling confident in purchasing online from another Member State has increased

[115] http://ec.europa.eu/consumers/enforcement/cross-border_enforcement_cooperation/coordinated_enforcement_actions_en.htm

[116] Base: individuals who bought or ordered goods or services over the internet for private use in the previous 12 months, source: http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals (figure 8.)

since 2014. In 2016, 58% of consumers felt confident in purchasing online from another Member State, which represents an increase of 21 percentage points since 2014.[117]

As regards traders' views on obstacles to cross-border sales, the available Eurobarometer data show that in 2016, 37% of traders currently selling online considered differences between consumer protection rules as important obstacles to development of online cross-border sales, which represents a decrease of 5 percentage points compared to 2014.[118]

It should be noted that these positive general trends may only partially be attributed to consumer legislation including the entry into force of the CRD as other factors are likely to have contributed as well.

Also in the online public consultation, around 30% of companies agreed that businesses can trade across the EU more easily thanks to the harmonised EU consumer and marketing rules whilst 11% did not agree and 59% had no opinion.

37% of respondents to the EESC survey think that consumer confidence in online shopping has increased since June 2014, but a similar number (35%) think it has stayed the same. 24% do not know. A third of respondents (33%) claim that consumer confidence while buying online from other Member States has stayed the same since June 2014, but a close 31% of respondents think it has increased. 7% think consumer confidence when shopping online has decreased, and 28% do not know.

The EESC survey also examined the effect of the Directive on legal certainty: a third of respondents (33%), evenly spread between employers, employees and consumers, believe there is less legal uncertainty, 22% believe that there is more legal uncertainty, 19% think it has stayed the same. 26% do not know.

In the online public consultation, a majority of respondents in all stakeholder groups (relative majority of business associations) stated that EU consumer law and marketing law has a positive impact on the amount and relevance of information available to consumers to compare and make informed purchasing choices. However, it should be noted that the question did not refer explicitly to the CRD but to EU consumer and marketing law in general.

Overall, the evaluation suggests that EU-intervention continues to be justified. In particular as regards facilitation of cross-border trade and protection of consumers in cross-border purchases, it is unlikely that intervention on Member State-level alone in the areas harmonised by the CRD would be able to achieve the same positive results as EU level action.

[117] Source: Flash Eurobarometer 397 and survey on consumers' attitudes towards cross-border trade and consumer related issues (2016) to be used in the forthcoming Consumer Conditions Scoreboard 2017 (expected publication – summer 2017). Please note that methodology changed over the years, therefore trends and comparisons of data in different years should be interpreted with caution.

[118] Source Flash Eurobarometer 396 and survey on retailers' attitudes towards cross-border trade and consumer protection (2016) to be used in the forthcoming Consumer Conditions Scoreboard 2017 (expected publication – summer 2017). Please note that methodology changed over the years, therefore trends and comparisons of data in different years should be interpreted with caution.

7. CONCLUSIONS

Due to the still early stage of the Directive's implementation, this evaluation focused on the progress introduced by the Directive compared to the *status quo ante* and experiences with the application of the Directive during its first two and a half years. The evaluation shows, based on inputs from stakeholders, that the Directive has positively contributed to the functioning of the B2C internal market, with a high common level of consumer protection albeit so far with some limitations.

Effectiveness: Overall, the transposition and first application of the CRD rules appears to be in line with the Directive's main objectives of enhancing consumer protection and reducing regulatory fragmentation. In particular, a comparison of the rules pre- and post-CRD has shown that consumer protection has been strengthened in most, if not all, Member States regarding most of the key provisions. Available data show positive trends in terms of enhanced consumer confidence and increase in cross-border sales, that can also be attributed to consumer protection legislation including the CRD. However, the level of effectiveness seems to differ depending on the type of contract involved: it was found that the level of protection for digital content purchases is not perceived as effective as for goods and services mainly due to lack of awareness or compliance with the rules. In general, a number of factors have been found to still be hindering the effectiveness of the Directive’s implementation. These are a lack of awareness by consumers and traders of the Directive's provisions, problems with the interpretation of some of the Directive's provisions, a low level of compliance with specific provisions, including key ones such as information requirements on the right of withdrawal, and a low level of enforcement. These conclusions need to be seen against the backdrop that this evaluation has been carried out at an early stage of the application of the Directive.

Efficiency: It has not been possible to gather quantitative estimates of costs and benefits of the implementation of the CRD, thus the analysis has been based on qualitative information. The limited available data do not allow definitive conclusions about the level of costs faced by businesses in ensuring compliance with the new Directive. Surveyed businesses were reluctant to provide financial estimates of such costs, and there was scarce monetary evidence available. However, specific burdens especially for SMEs have been reported, mainly relating to the pre-contractual information requirements and the right of withdrawal.

Coherence: Overall, the CRD is deemed coherent with other EU legislation and no major problems have been identified. However, the interplay with several other EU pieces of legislation and new EU legislative proposals could be further streamlined and clarified in the future.

Relevance: The original objectives of the Directive are as valid today as when the Directive was first proposed. In particular, the objectives of ensuring a high level of consumer protection and a level playing field for businesses in online business-to-consumer contracts are relevant within the framework of the Digital Single Market policy. Also the provisions of the CRD are still relevant, except for the requirement to provide the trader's fax number, and the trader's e-mail address where other, more modern means of communication (such as web-based forms) could be sufficient, to the extent they enable the consumer to efficiently contact the trader in a manner which allows the consumer to keep a proof of such exchanges on a durable medium. The provisions on distance contracts are likely to become even more relevant in the future, as the number of online consumer purchases are expected to increase. In order to ensure that the Directive remains fully relevant to meet current challenges, the scope of the CRD could be expanded to cover also digital services provided for "free". If this is done, it could also make sense to extend the information requirements on "functionality" and "interoperability" to such contracts. Moreover, with the growing role of online platforms, there is a strong call, especially from consumer associations and some business associations, to introduce specific transparency requirements for online marketplaces.

EU Added Value: An EU approach remains the most appropriate response and is more likely to contribute to achieving the objectives set by the Directive than national approaches. In fact, the Directive has consistently reduced the regulatory fragmentation among Member States through its harmonisation approach, hence contributing to enhance consumer trust in cross border sales and traders' cost of compliance when selling cross border. Harmonised rules are also a pre-condition for effective cross-border enforcement actions among Member States.

Possible follow-up

Follow-up actions to be undertaken might include further awareness activities and guidance to clarify the most controversial provision and their implementation in practice.

Also focused enforcement actions in the framework of the CPC Regulation in the areas with the lowest level of compliance could help enhancing the practical effectiveness of the Directive.

With a view to improve compliance with the current information requirements, whilst simplifying the way information is presented to consumers, the Commission has recently launched a self-regulatory exercise within the REFIT stakeholder group with the aim to agree on a set of key principles, similar to those concerning comparison tools and environmental claims, for a better presentation of both pre-contractual information under the CRD and standard contract terms. Legislative intervention could be considered too, notably in case this self-regulatory approach proves unsatisfactory.

If a legislative initiative was decided, it should include an extension of the CRD scope to contracts on free digital services, a clarification of the rules applicable to digital content contracts combined with reviewing rules applicable to digital content and digital services, a simplification of certain information requirements so as to better reflect technological/market developments, e.g. web-based contact forms as an alternative to a trader’s e-mail; and

extension of transparency requirements for online intermediaries as well as consequences if they fail to comply.

There may also be scope for simplifying certain rules that appear to create excessive burden for traders, in particular SMEs, such as the right of withdrawal for goods used to an extent more than necessary to establish their nature, characteristics and functioning, and the requirement to reimburse the price before a trader has received the good back from the consumer. However, more robust economic data to justify the need for legislative action should be gathered.

The Commission's follow-up actions are presented in the Report from the Commission to the European Parliament and the Council on the implementation of Directive 2011/83/EU.

ANNEXES

Annex 1 - Procedural information concerning the process to prepare the evaluation

Lead DG: European Commission, Directorate-General Justice and Consumers (DG JUST)

Organisation

In January 2016, DG JUST launched the evaluation of the Consumer Rights Directive. The roadmap[119], the consultation strategy[120] and the Terms of Reference for the contract on the evaluation study were published end of February 2016.

As the CRD review process was running in parallel with the Fitness Check of consumer and marketing law, it was decided in order to simplify the process to use tools which were set-up for the Fitness Check of consumer and marketing law (Inter-service steering group, Fitness Check stakeholder group, online public consultation, consumer market research). It was also decided to have the CRD evaluation published at the same time as the Fitness Check of consumer and marketing law.

The Inter-service Steering Group (ISSG) that had been set up for the Fitness Check of consumer and marketing law consisted of representatives of Directorates-General ENV, EMPL, CNECT, FISMA, MOVE, ENER, COMP, ECFIN, GROW, TRADE as well as the Secretary General and Legal Service of the Commission. At the beginning of the process, the ISSG was consulted on the draft roadmap, the consultation strategy and the Terms of Reference and later on the deliverables of the CRD evaluation study. The ISSG members were also invited to attend the meetings with the contractor to discuss their deliverables.

Agenda Planning – Timing

Date	Description
25/10/2011	Publication of the Consumer Rights Directive with application date 13/06/2014 including Article 30 with report submission by 13/12/2016
October 2015	Establishment of the Steering Group for the Fitness Check of consumer and marketing law
End February 2016	Request for services for assessment study (using DG SANTE framework contract)
15/03/2016	Consumer market research (Lot 3 study of the Fitness Check on consumer and marketing law) – contract signed (GfK Belgium)
19/04/2016	Consumer market research– meeting with the contractor to discuss the inception report; ISSG

[119] http://ec.europa.eu/consumers/documents/roadmap_of_the_crd_evaluation.pdf
[120] http://ec.europa.eu/consumers/documents/consultation_strategy_on_the_evaluation_of_the_crd.pdf

Date	Description
	members consulted on the draft and invited to the meeting
25/04/2016	Publication of the Roadmap and Consultation strategy
3/05/2016	Contract signed with consortium led by Risk & Policy Analysts Ltd (RPA)
31/05/2016	Inception Report of the Study Ad-hoc feedback from the Steering Group, inception report circulated within the Steering Group
12/05 – 12/09/2016	Online public consultation (jointly with Fitness Check of consumer and marketing law)
13/05 – 13/06/2016	Call for applications – Fitness Check Stakeholder consultation group
3/09/2016	Interim report of the study Ad-hoc feedback from the Steering Group, interim report circulated within the Steering Group
21/09/2016	1st meeting of the Fitness Check Stakeholders Consultation Group covering CRD topics
17/10/2016	Consumer summit 2016 Presentation of the interim findings from the external assessment study
26/10/2016	Consumer market research – meeting with the contractor to discuss the 2nd interim report; ISSG members consulted and invited
30/10/2016	Amended interim report of the assessment study with meeting on 3/11/2016 - ISSG members consulted and invited to the meeting
25/11/2016	2nd meeting of the Fitness Check Stakeholders Consultation Group covering CRD topics
20/12/2016	Draft Final Report of the assessment study Ad-hoc feedback from the Steering Group, report circulated within the Steering Group
17/01/2017	Summary of public online consultation and responses published on DG JUST website; ISSG members consulted on the draft before publication (http://ec.europa.eu/newsroom/just/item-

Date	Description
	detail.cfm?item_id=31689)
27/01/2017	3rd meeting of the Fitness Check Stakeholder Consultation Group covering CRD topics
10/03/2017	Draft Commission report and Staff Working Document with accompanying documents and final study report sent to the ISSG – meeting on 17/03/2017
17/03/2017	Steering Group Meeting - discussion of the report, draft Staff Working Document (SWD) and of final report of the supporting study.
29/03 – 24/04/2017	Inter-service consultation
03/04/2017	4th meeting of the Fitness Check Stakeholders Consultation Group
23/05/2017 (tbc)	Publication of the Report, SWD and Study

External Expertise

The following contract study was carried out to provide facts and evidence for the evaluation and form the base of the conclusions presented in this document: *"Study on the application of the Consumer Rights Directive 2011/83/EU"*. The Terms of Reference presented the background and scope of the evaluation, the intervention logic and the detailed evaluation questions, the documents and data sources already available, the phases of the evaluation and its organisation. The contract was signed on 3/5/2016. The contract was carried out by a consortium led by Risk & Policy Analysts Ltd (RPA) under the framework contract for provision of evaluation and impact assessment in the area of Consumer Policy of DG General Health and Consumers (former DG SANCO). The final report of the study was approved in May 2017.[121]

The following contract study provides additional data: "*Consumer market study to support the Fitness Check of consumer rules*" (Consumer Market Study also called Lot 3 study of the Fitness Check of consumer and marketing law). The Terms of Reference presented the background and scope of the required market research (that consisted for the CRD of mystery shopping and behavioural research) and the key evaluation themes, the documents and data sources already available, the methods and phases of the research and its organisation. The contract was signed on 15 March 2016 and covered a period of 10 months. The contract was carried out by a consortium led by GfK Belgium. The final report of the study was approved in March 2017.

[121] Final report available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

Annex 2 - Synopsis of stakeholder consultations

Stakeholder involvement was vital for the evaluation in order to identify the problems, collect facts and data and, on this basis, to assess the impacts of the legislation as well as collect views on potential options for future action.

The consultation strategy was developed and published from the start of the project in January 2016 and aimed at implementing as much as possible the Better Regulation Guidelines published in May 2015. The relevant stakeholders for this evaluation included:
- Consumers;
- National and EU-level consumer associations;
- Businesses (including SMEs);
- Organisations representing businesses in e-commerce and retail trade at European and national level, as well as those representing businesses in specific sectors (for example: telecommunications, energy, financial services, etc.);
- Member States' authorities (the relevant ministries, consumer enforcement authorities and sector-specific national regulators);
- Network of European Consumer Centres (ECCs)

Lawyers' associations, university/research institutes dealing with consumer law as well as third country authorities and organisations had also the opportunity to provide their views during this consultation. DG JUST engaged with Members of European Parliament and the European Economic and Social committee. The latter contributed to the process also by preparing, at the Commission's request, its own assessment report.

The main consultation activities were:

- **Feedback on the Roadmap** following its publication
- **Targeted stakeholder consultations** in the framework of the external study (national consumer organisations, consumers, business associations, businesses, national consumer enforcement authorities, ministries and national regulatory authorities) through interviews and online survey
- **Meetings of the Stakeholder consultation Group**, created for the Fitness Check exercise, that brings together representatives of European and national consumer organisations as well as representatives of European business organisations
- **Meetings with existing stakeholder groups of DG JUST networks**: Consumer Policy Network (CPN), Consumer Protection Cooperation Network (CPC), and European Consumer Consultative Group (ECCG) and network of European Consumer Centres (ECC) as well as with DG GROW's SME related network through its Small Business Act (SBA) follow up meetings
- **Online public consultation** using EUSurvey tool
- **Consumer Summit** dedicated to the Fitness Check of consumer and marketing law and covering also CRD

- **Dialogue/Consultation with other EU institutions**, European Parliament's (EP) Committee on Internal Market and Consumers (IMCO), European Economic and Social Committee (EESC)

The results of all the consultation processes listed above and outlined in more detail below fed into to the present Staff Working Document. The CRD evaluation and the Fitness Check of consumer and marketing law were carried out in parallel; several of the consultation activities were used for both exercises.

1. Consultation on the roadmap

The roadmap was published on DG JUST website and on smart regulation page of the Commission on 25 April 2016 and stakeholders were invited to provide feedback on the roadmap. One organisation provided formal feedback, the Zentralverband des Deutschen Handwerks (German craft association, ZDH). The ZDH welcomed the assessment exercise and pointed out challenges that German craft needs to overcome to comply with the rules introduced by the CRD.

Roadmap of the CRD evaluation and feedback are published at:
http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/index_en.htm

2. Targeted stakeholder consultations (July-November 2016)

The contractor for the evaluation study carried out targeted stakeholder consultation by means of an online survey and phone/ face to face interviews.

Contact details for national enforcement authorities were provided by the Commission, while contact details for trade associations, consumer associations and ECCs were identified from the consultants' database and online. In order to reach as many stakeholders as possible, not only were specific stakeholders contacted directly, but consumer and trade associations were asked to disseminate the survey to their members, as well as to post links to the survey on their website or on social media sites, in order to reach individual consumers and traders. Posts were also displayed on the European Commission website, social media sites as well as on online forums.

Surveys enabled the collection of data from a relatively large number of stakeholders within a relatively short amount of time, although the level of response was moderate. The survey questions aimed to assess the effectiveness, relevance, coherence and efficiency of the Directive and its provisions: which provisions are regarded as most effective, whether the cost outweighed the benefits, cost of transposition, views on potential application of the CRD to free online services, requirements for online platforms etc.

The surveys were carried out between July-September 2016 and different questionnaires were developed for consumers, traders, national consumer & trade associations, competent authorities and European Consumer Centres (ECCs).

Stakeholders were asked to complete the survey by e-mail and invited to disseminate the link. Questionnaires were translated into 16 official languages for consumers and traders. Support and additional information has been provided on request.

Numbers of responses received from different stakeholders are summarised in this table.

Online survey	• 255 complete responses from consumers; Greece, Cyprus and the UK where the MS with the largest number of completes; • 25 national consumer associations; • 157 complete responses were received from traders; • 23 complete responses from trade associations; and • 24 completed responses from enforcement authorities and 16 from ministries. • 24 ECCs responses
Semi-structured interviews	64 interviews in total in 18 Member States: • 18 interviews with MS authorities • 9 with ECCs • 22 with trade associations of which 14 were European level ones • 11 consumer associations • 1 individual consumer • 3 individual traders

Based on the responses, consumers prefer retail outlets and the internet for their purchases and the latter is more prominent for cross-border purchases. Doorstep selling was not popular among respondents

Most of the companies responding to the survey were SMEs (58.8% of the total) and 51.6% sell cross-border (the vast majority through e-commerce). By type of contract:

- 75% of traders sell goods;
- 37% sell services;
- 8% sold digital content; and
- 8% provided free-online services.

Of the trade associations that replied to the survey:

- 89% represent traders selling goods;
- 68% represent traders selling services; and
- 50% represent traders providing digital content both paid and free.

The level of response to the online survey from traders and consumers has been rather low, despite reminders and engagement through social media. One may attribute this to the time in the year when the consultation was launched (during the summer time) but equally to stakeholders' fatigue, as other studies on consumer protection have been conducted nearly simultaneously with the same or similar target groups. To compensate for this, additional data

was collected through interviews with trade associations and other stakeholders but only from those willing to participate.

Interviews with stakeholders enabled more in-depth data and clarification to be obtained in relation to responses received to the surveys and also with regard to the legal mapping carried out. They helped gather further insights into the application of the CRD and the associated outcomes and costs.

Stakeholders were invited to be interviewed when submitting their online survey and interview arrangements were followed at their convenience.

The majority of interviews were conducted by telephone, with a small number conducted face-to-face. The set of questions was tailored to each interviewee based on their response to the online survey. Where it seemed necessary, clarification on the survey responses were requested, as well as feedback on the survey. Other areas covered in the tailored interview guidelines included their views on:

- The implementation of the CRD in their country, including the costs, practical problems, benefits, and coherence with other EU (and any additional national) consumer legislation (national enforcement authorities and responsible ministries);
- How it compares with experiences under the previous regulatory regime;
- Problems encountered in respect of administrative procedures in implementing the CRD; and
- Any issues relating to enforcement and levels of compliance.

In addition to these areas, interviewees were asked about their opinions on future/further actions in relation to the CRD, including:

- Should the scope of the Directive be expanded to include the provision of service contracts where the services are provided for free in exchange for personal data?
- Should information requirements include information on criteria for ranking search results (on online platforms) when conducting online shopping?
- Would it be helpful to provide traders with a model form using icons to display pre-contractual information (binding or non-binding model form containing icons)? Would this help consumers? For traders, what would be the costs or benefits?
- Are there any new/additional consumer issues that need to be addressed through the Directive that are not already explicitly addressed?

The study's report, prepared by the external contractors, contains more information on the consultation activities and is available at:

http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

3. Meetings of Fitness Check Stakeholder Group

The Commission set up a Stakeholder Consultation Group (the Group) with the objective to consult the most important consumer and business stakeholders on key issues of the Fitness Check as well as of the CRD assessment, in particular in relation to the possible need for further modernisation of the relevant rules, through a balanced and inclusive approach.

The Group consists of EU level and national organisations representing consumers and/or civil society and EU level and national business organisations representing retailers, service providers, manufacturers, including SMEs. Member organisations were selected through a call for application (application period 13 May-13 June 2016) requiring applicants to be registered in the Commission's Transparency Register.[122] The Group is registered as an informal Commission expert group in the Register of Commission expert groups and other similar entities ('the Register of expert groups').

To date the Group has met four times: 21 September 2016, 25 November 2016, 27 January 2017 and 3 April 2017. Further meetings will be held in 2017 and if necessary in 2018 to assist the Commission in the potential follow-up activities of the Fitness Check exercise.

Consumer organisations' representatives were vocal in calling for not lowering the level of consumer protection achieved and business organisations in calling for not lowering the level of harmonisation so far achieved.

One of the topics of the discussions was modernising and possibly streamlining information requirements included in the CRD.

Participants agreed on the need to clarify which information requirements apply at which stage of the market transaction (advertising, invitation to purchase, contractual offer). Several stakeholders supported further guidance and assessment of best practices regarding the information that should be presented to consumers. Discussions point to the need to simplify the way information is presented to consumers. Some also supported the exploration of a voluntary model. At the 4th meeting, it was decided to create a subgroup with the aim to continue the work on enhancing presentation of pre-contractual information and Terms and Conditions.

The idea to allow traders to use web-based contact forms as an alternative to e-mail addresses provided that they grant the same functionality as e-mail was supported by a number of stakeholders. Stakeholders also pointed to the fact that the fax number is an outdated means of communication and it could therefore be deleted from the list in Article 6(1)(c).

A number of business and consumer stakeholders have also indicated that there is, in their view, a lack of clarity on the precise scope of application as regards contracts on digital content provided for free or against data.

[122] Commission's Transparency Register http://ec.europa.eu/transparencyregister/public/homePage.do

There was a considerable support for extending the scope of the CRD to (digital) services for which consumers provide personal data, but outcome of negotiations on the Digital Content Directive should be taken into account. However, there were also strong concerns against such an extension. Overall, members pleaded for consistency between data protection, consumer protection and contract law rules.

The question about introducing requirements for online platforms to inform consumers about ranking criteria was also discussed, but without any clear conclusion.

More information on the group's composition, selection procedure and its activity is available at:
http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3423

4. Online Public Consultation

In support of both the CRD evaluation and the Fitness check of consumer and marketing law, the Commission organised an online public consultation[123] using the EUSurvey[124] tool. The public consultation was intended to allow a wider range of stakeholders and the general public to express their views on the key issues described in the roadmap. The respondents were self-selecting and can therefore not be considered as representative; within the different stakeholder categories, the numbers of respondents are relatively low. Replies were analysed according to different types of respondents (consumers, consumer associations, businesses, business associations, Member State authorities, etc.). The consultation opened on 12 May 2016 in English and was made available in 23 European languages in June 2016. The consultation was originally scheduled to run until 2 September 2016, but, following requests, it was extended until 12 September 2016.

The public consultation covered the six consumer and marketing law directives subject to the Fitness Check as well as the Consumer Rights Directive. Therefore, it should be noted that some questions (examples see below) did not refer solely and explicitly to the CRD but to general consumer and marketing law.

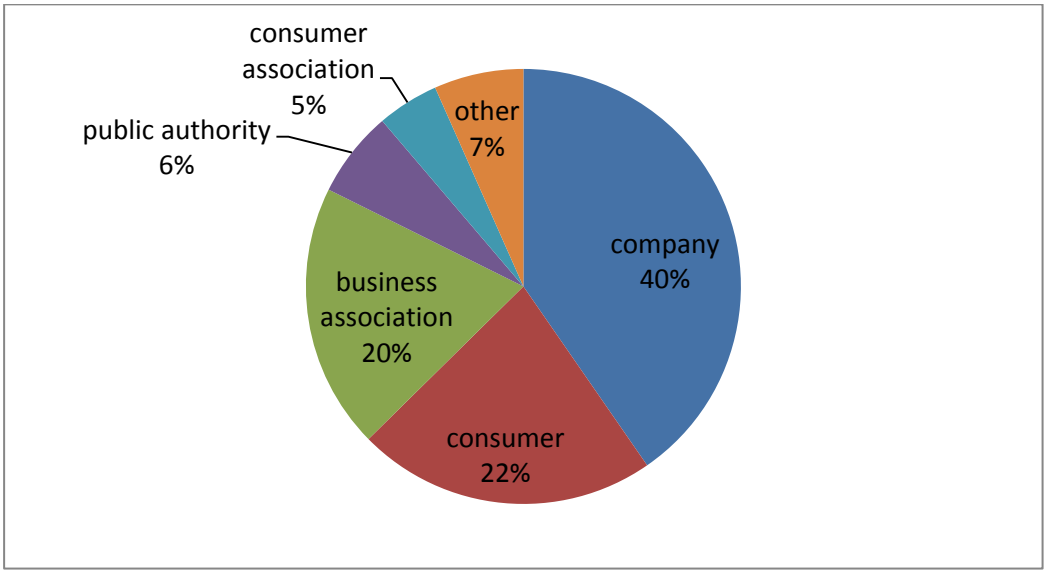
In total, 436 respondents filled in the online questionnaire. Additionally, 55 position papers were received from the respondents, including three position papers submitted to DG JUST outside the EUSurvey tool within the consultation period.

The questionnaire contained three parts:

[123] http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31689
[124] https://ec.europa.eu/eusurvey/home/welcome

- a short consumer questionnaire available for respondents who indicated that they were consumers (citizens); 97 responses from 14 Member States were received;
- a short business questionnaire available for respondents who identified themselves as a company (or group of companies) in the beginning of the survey; 176 responses were received; 71% of the business respondents carries out their activities both online and offline (23% only offline, 6% only online). The vast majority of businesses carry out their activities only domestically. Based on number of employees, around 1/3 were micro enterprises (1-9 employees), around 30% small (10-49 employees), 16% medium (50-249 employees) and 22% large companies (250+ employees).
- a full questionnaire for all other respondent categories (associations, authorities, think tanks, other categories etc.). For individual consumers and individual businesses, it was optional to fill in also the full questionnaire after having completed their respective short questionnaires. 237 responses were received to the full questionnaire (including 36 of the 97 consumers and 37 of the 176 companies who chose to continue to this full version of the survey) from all 28 Member States and 9 responses from non-EU countries

In the following overview of the responses, the category "consumer association" combines both EU-level and national consumer associations; the category "business association" combines both EU-level and national business associations; the category "public authority" combines national consumer enforcement authorities, ministries in charge of consumer policy and sector-specific regulatory authorities; and the category "other" includes: a think tank/ university/ research institute, a professional consultancy/ law firm and others.



Responses were received from all 28 Member States and “other” countries including Switzerland, Norway, Turkey and the United States. The biggest number of responses was received from Germany (50%) followed by Belgium (11%) and UK (6%).

47% of consumer respondents reported that they had experienced problems in dealing with traders in the past year. The most frequently reported problem was that the trader did not provide key information.
Majority of consumers who experienced problems reported not having managed to solve their most serious problem at all. 25% managed to solve their problem at least to some extent and 18% managed to solve it fully. The most frequently mentioned reasons for not fully solving the problem was that the trader did not want to comply with consumer rights, followed by too complex/ long/ costly administrative enforcement proceedings.

Around 30% of companies agreed that businesses can trade across the EU more easily thanks to the harmonised EU consumer and marketing rules whilst 11% did not agree and 59% had no opinion.

Large majority of companies and business associations (same question in the full survey) were of the view that the benefits from complying with consumer protection rules are that consumers whose rights are respected come back and bring/attract other consumers whereas consumers whose rights are not respected discourage other consumers (damage to reputation).

CRD rules such as right to get information about goods and services offered and the right of withdrawal were regarded as beneficial to consumers by the majority of respondents in all stakeholder categories. Business associations were a bit less convinced about the benefits to consumers of the right of withdrawal for downloading or streaming of digital content and of the right to get information about the functionality and interoperability of digital content.

Majority of respondents in all categories thought that the lack of consumer awareness about their rights is an important problem for the application of the rules.

Majority of respondents in all stakeholder groups (relative majority of business associations) stated that EU consumer law and marketing law has a positive impact on the amount and relevance of information available to consumers to compare and make informed purchasing choices.

Majority of respondents in all categories agreed that information requirements currently included in the Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive should be regrouped and streamlined.

Majority of businesses, business associations and public authorities considered that the information given to consumers at the advertising stage should focus on the essentials while more detailed information should be required only at the moment before the contract is concluded. Other stakeholders had divided views.

Majority of respondents in all categories (however only a relative majority in the case of business associations) agreed that online platform providers should inform consumers about the criteria used for ranking the information presented to consumers.

Majority of consumer associations, public authorities and business respondents, and a relative majority of consumers agree that further criteria should be defined to allow for a clearer distinction between consumers and traders in the collaborative economy. Business associations had mixed views on this.

Majority of consumers (58%) and consumer associations (75%) supported the need for a uniform model for better presenting the pre-contractual information; public authorities (47% agree v. 32% disagree) and companies (43% agree v. 41% disagree) were more divided in this regard and business associations were the least supportive (23% agree v. 56% disagree).

In their comments, several respondents stressed the need for better or more consistent enforcement of existing rights.

In the position papers that commented on the CRD, the three main issues discussed by stakeholders included information requirements, the 14-day withdrawal period for distance sales, and the 30-day period for delivery and passing on risk. Business stakeholders generally argued that information requirements should be simplified, and pointed out that the withdrawal period is complicated to apply in practice, particularly with respect to digital content. Consumer organisations emphasised the importance of information requirements and the need to consider how information is presented in light of behavioural research, particularly in the digital market. Consumer organisations also emphasised the importance of the 14-day withdrawal period for online and other distance sales.

The full report on the public consultation prepared by an external contractor as part of the study to support the Fitness Check is available at: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

A summary and the replies were published on the consultation page: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=31689

6. Meetings with existing stakeholder groups of DG JUST networks

6.1 Meetings of the European Consumer Consultative Group (ECCG)

The European Consumer Consultative Group (ECCG) is the Commission's main forum to consult national and European consumer organisations. The ECCG meets three times a year and consists of one representative of national consumer organisations per country, one member from each European consumer organisation (BEUC and ANEC), two associate members (EUROCOOP and COFACE) and two EEA observers (Iceland and Norway).

At the ECCG meeting of 14 April 2016 DG JUST gave a presentation on the state of play and the timeline of the CRD evaluation (and the Fitness Check exercise).

During the discussion, Members stressed the need for more harmonised enforcement rules and sanctions, warned about the risk of lowering consumer protection standards and

compared their national legislation on specific issues (implementation problems of right of withdrawal and with door-to-door and telephone sales) and suggested ideas for improvement: the possibility to extend the standard information form under the consumer credit directive to all contracts.

At the meeting of 18 October 2016, DG JUST briefly presented the results of the three workshops organised the previous day in the framework of the Consumer Summit and participants discussed concrete ideas for improvement: simplification and improved presentation of information requirements was one of the topics mentioned by most members as a key area. There were divergent views on the question of level of harmonisation. Members agreed that enforcement of consumer law needs to be strengthened.

More information on the group's composition, selection procedure and its activity is available at:
http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=849&NewSearch=1&NewSearch=1

http://ec.europa.eu/consumers/eu_consumer_policy/consumer_consultative_group/eccg/index_en.htm

http://ec.europa.eu/consumers/eu_consumer_policy/consumer_consultative_group/documents/

6.2 Consumer Policy Network (CPN)

The CPN is an informal Commission Expert group that has been set up to facilitate exchange of information and good practice between consumer policymakers in the Member States. The members are representatives of the highest administrative level responsible for consumer policy in national administrations of the EU Member States and Norway, Iceland and Liechtenstein. The network meets twice per year. At the meetings described below, the discussion focused on the Fitness Check of consumer and marketing law; therefore some of the statements cannot be solely and specifically linked to the CRD, but related rather to the Fitness check exercise. Because of its interplay with information requirements under UCPD and PID, CRD was indirectly always touched upon.

At the CPN meeting of 25 May 2016, the Commission presented the state of play and the timeline of the CRD evaluation. CPN members were invited to reply to the Commission's public consultation and to cooperate with the Commission's external contractors which had the task of collecting all relevant data at the national level, in particular through stakeholder interviews.

At the meeting of 18 October 2016, which focused on the Fitness Check exercise, CPN members generally agreed that existing body of EU consumer law is a good basis and there was no need for fundamental changes. Most members see benefit of streamlining and removing overlaps in existing law. There was a strong call that enforcement of existing law

should be top priority, although this was rather linked to the general Fitness Check exercise. Most members see benefit of streamlining and removing overlaps in existing law (e.g. some pre-contractual information requirements in UCPD, CRD, PID). There were divergent views on maximum/minimum harmonisation. Some members made strong argument for maximum harmonisation to help the Single Market. Others pointed out that maximum harmonisation would constrain developments at national level. Some also pointed out that maximum harmonisation could bear the risk of leaving things out which might benefit consumers due to lack of agreement. Yet others considered that instead of entering into a general discussion on this issue, maximum harmonisation should be targeted, whilst leaving the Member States to go beyond for specific issues.

On the collaborative economy, there was a mix of views: On the one hand, some members raised concerns not to introduce regulatory obstacles to new business models whilst others considered that a 'void' in the law should be filled. Some considered that the concept of trader would need to be clarified to include citizens who rent out or sell recurrently.

At the CPN meeting of 23 November 2016, the Commission presented an overview of the progress and future steps of the Fitness Check. In the discussion, some Members agreed that, as also shown at Consumer Summit, many stakeholders consider EU consumer rules to be still for purpose and, if anything, only some targeted revisions may be needed. Some Members indicated that full harmonisation makes it difficult for Member States to address national specificities and that Member States need room for manoeuvre at the national level.

More information on the group's composition and selection procedure is available at: http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=861&NewSearch=1&NewSearch=1

6.3 Consumer Protection Cooperation (CPC)

The Consumer Protection Cooperation (CPC) is a network of authorities responsible for enforcing EU consumer protection laws in EU and EEA countries.

At the CPC meeting of 25 May 2016 and the webinar of 9 June 2016, the Commission presented the state of play and the timeline of the CRD evaluation.

At the meeting of 18 October 2016, that was dedicated to the Fitness check. The difficulties in drawing the boundary between application of the UCPD information requirements for the "invitation to purchase" and the CRD pre-contractual information were mentioned as well as the question of communication with the consumers via website rather than email. Article 8(2) CRD was mentioned as a useful indicator of the most essential consumer information.

More information:
http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/consumer_protection_cooperation_network/index_en.htm

6.4 Small Business Act (SBA) regular meetings with European SME associations (at DG GROW)

The Small Business Act (SBA) is an overarching framework for the EU policy on Small and Medium Enterprises (SMEs). It aims to improve the approach to entrepreneurship in Europe, simplify the regulatory and policy environment for SMEs, and remove the remaining barriers to their development.

In November 2016, in the context of the "Small Business Act" regular meetings organised by DG GROW, DG JUST gave a presentation of the main developments of the CRD evaluation and the Fitness Check – the results of the public consultation, Consumer summit and external studies.

Participants included representatives of Business Europe, Eurocommerce, UEAPME, Eurochambres, as well as from "CEPLIS – European council of liberal professions", "Cooperatives Europe", "ESBA – European Small business alliance, and the German craft organisation ZDH.

Members largely agreed that the current consumer law is still fit for purpose, however there might be need for further improvement. It was stressed that if changes are to be made they must be targeted and aiming at further harmonisation to make it easier for businesses to trade across borders, they also called for more efficient enforcement. In their view, the possible review must address new commercial practices and technological developments, in particular user reviews were mentioned. Participants highlighted the burdensome nature of consumer law. As examples of challenges for SMEs, participants raised the excessive information obligations and the need to assess whether an off-premises contract is a service or a sales contract in order to apply the correct right of withdrawal regime.

More information on the SBA: https://ec.europa.eu/growth/smes/business-friendly-environment/small-business-act/

7. Consumer summit – 17 October 2016

European Consumer Summits are annual stakeholder events organised by DG Justice and Consumers of the European Commission. The 2016 Consumer Summit was dedicated to the Fitness Check of consumer and marketing law. Around 430 representatives of national authorities, European institutions, consumer organisations, businesses as well as academics took part in the Summit to discuss whether and how the current EU consumer and marketing law rules should be modernised.

Besides high-level Commission representatives, speakers included Members of the European Parliament, and President of the European Economic and Social Committee. At the high-level panel Per Bolund, Minister for Financial Markets and Consumer Affairs, Deputy Minister for Finance, Sweden; Gerd Billen, State Secretary, Federal Ministry of Justice and Consumer Protection, Germany; Rastislav Chovanec, State Secretary of the Ministry of Economy of the

Slovak Republic; Theresa Griffin, Member of the European Parliament, Committee on Industry, Research and Energy, and Jean-Eric Paquet, Deputy Secretary General, European Commission discussed ways to achieve a clear, stable and robust regulatory framework to boost consumer trust and sustainable growth. At the second high level panel consumer and business representatives discussed challenges and perspectives of EU consumer law.

Furthermore the programme included presentations of case studies from consumer experts as well as three participatory workshops, organised in parallel, which also allowed for more focused discussions in smaller groups.

The workshop on **consumer information** concluded on the need for simplification of the overlapping information requirements set out in three directives (Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive) and the need to ensure consistency with information requirements in the sector-specific legislation. Information requirements for online platforms should be clarified. Developing a model form for the presentation of key consumer information was supported by a large majority of the participants but many thought that the use of the form should be voluntary.

More information on the 2016 Consumer summit is available at http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=34204

The event was web-streamed and a video of the conference is available online https://webcast.ec.europa.eu/european-consumer-summit

8. European Parliament's internal market and consumer protection committee (IMCO) and legal affairs committee (JURI)

At the IMCO meeting of 29 November 2016, the Commission presented the outcome of the 2016 Consumer Summit and the state of play of the Fitness Check and committee members had the opportunity to discuss the main issues with the Commission. IMCO members called for focused on key consumer challenges, i.e.: Information overload, both at pre-contractual stage and in the area of Terms and Conditions, leading consumers not to get the information they really need at the right time; Platforms and their often opaque marketing practices, including on ranking criteria; B2B challenges, where IMCO members felt it is mainly bigger companies that are against extending the B2C rules, whereas smaller ones are asking for increased protection. IMCO Members stressed that EU consumer acquis is one of the biggest Internal Market achievements and that it is crucial to avoid cutting back existing rights.

9. European Economic and Social Committee's (EESC) consultation

Following the request from the Commission, the European Economic and Social Committee (EESC) prepared an information report on the Consumer Rights Directive (evaluation). In order to ensure complementarity of evidence gathering, the Commission and the EESC agreed on a coordinated approach.

The EESC information report evaluated *how civil society organisations (CSOs) across the EU perceive and experience the implementation of the Directive on Consumer Rights (2011/83/EU)*. The evaluation is based on primary data collected through a questionnaire, fact-finding missions, and an Expert Hearing. Secondary data was collected from existing sources, such as EESC opinions, reports of conferences, missions and public hearings, and any other relevant work carried out by other EU institutions or expert studies and articles.

The questionnaire asked those civil society organisations to which the members of the EESC are affiliated how they perceive and experience the implementation of the Consumer Rights Directive. It was created using the EU Survey online portal and consisted of a mix of question formats (filter questions, closed, open-ended, grid and most-significant-change method). The consultation was open during the first half of September 2016. The total number of civil society organisations that replied to the questionnaire is 54. This included 21 representatives of the employers, 20 representatives of consumer organisations, and 10 representatives of workers (trade unions), with 3 stating "other".

5 Member States were chosen for fact-finding missions: Latvia (3 October 2016), Italy (5 October 2016), Spain (10 October 2016), Poland (10 October 2016) and Belgium (20 October 2016), based on the following four criteria:

- Level of consumer protection
- Size
- Geographical spread
- Lower coverage by the Commission's own evaluation of the Consumer Rights Directive and Fitness Check on consumer law

With the exception of Belgium, all the selected countries were targeted by the European Commission's 2014-2015 Awareness Raising Campaign.

These fact-finding missions included semi-structured interviews with local civil society organisations, largely following the structure of the questionnaire.

The Expert Hearing was held at the EESC in Brussels on 14 September 2016. Participants included the members of the EESC study group, experts representing organisations of employers, employees and various interests (including consumer organisations), as well as national regulators and academia.

Consumer and business associations as well as trade unions have confirmed the relevance and impact of this directive on commercial transactions between consumers and businesses including SMEs.
In general, consulted parties have confirmed that they are sufficiently aware of the national legislation implementing the directive as well as of the national proceedings to enforce it, in

particular with regard to pre-contractual information and the right to withdrawal. Yet a large number of consumers and SMEs are still not aware of the directive's specific provisions.

The full information report of the EESC is available: http://www.eesc.europa.eu/?i=portal.en.int-opinions.39555

10. Overall messages from the consultations

These consultation activities were highly valuable sources of a broad range of opinions, information and data that complemented the findings from desk research and literature review.

The consultations suggest that stakeholders largely agree that the CRD has brought benefits to the consumers and that its full harmonisation nature has contributed to reducing legal fragmentation. According to most stakeholders, improving awareness and enforcement of existing rights should be a priority. However stakeholders also called for modernisation of information requirements and pointed out challenges in relation to specific provisions, such as the definitions of off-premises contracts, digital content and application of right of withdrawal. Views were divided on the need for a (voluntary or binding) model form to present pre-contractual information. There was also support for introducing information requirements regarding the criteria that online platforms use for ranking the information.

Most of the information received via consultation activities was qualitative, i.e. it consisted of opinions and experiences. It was more difficult to gather quantitative data also due to the short period of application of the CRD.

Annex 3 - Methods and analytical models used in preparing the evaluation

CRD study

The approach to the study consists of a **literature review** based on **desk research**, including documents on the legal implementation of the Directive in different MS and other relevant studies, as well as **stakeholder consultation**, by means of online surveys and a programme of interviews. More information on consultation activities can be found in point 2 of Annex 2.

During the desk research literature from the EU and other parallel studies were examined including the Directive's legal text and other literature available online for assessing the implementation of the CRD in the different Member States. Searches were conducted in the official languages of the EU by native country researchers assigned according to language capabilities.

A number of parallel studies have provided useful information to this evaluation: the results from the Commission's **Online Public Consultation** and the **Consumer Summit**; an **evaluation by the European Economic and Social Committee Report** (EESC) on the CRD; a **mystery shopping exercise and a behavioural experiment**.

The Online Public Consultation, Consumer Summit and the EESC report are described in Annex 2. The mystery shopping and a behavioural experiment of the consumer market study of the Fitness Check are described further below in this Annex.

Furthermore the results of the analysis of complaint data from the ECC-net database as well as of the analysis of the EU-wide sweep have fed into and informed the CRD study.

The aim of the **analysis of complaint data** was to assess the impact of the CRD on consumer complaints, and eventually on the degree of legal certainty that the new Directive has introduced. The analysis of complaints data is based on data provided by the Commission and related to the ECC-Net database. It should be emphasised that the ECC-Net database includes only cross-border cases and thus may underestimate the level of complaints. To account for this, the on-line survey also asked the national competent authorities and consumer associations for the number of complaints as well as the nature of these complaints. Although the amount of quantitative data was limited, any information provided that was provided is given below (refer to Section 3). This information is triangulated with that of the ECC-Net database. In consultation with the EC project manager for the ECC-Net database it became clear, however, that this should be interpreted with caution, owing to the different definitions that still apply when recording the data. Further work is being undertaken by the ECC-Net and the Commission services in this regard.

The "**EU sweep**" is an EU-wide screening of websites by the CPC network[125]. It is conducted in a form of simultaneous, coordinated checks to identify breaches of consumer law and to subsequently ensure its enforcement. The latest sweep conducted in 2015 focused on the quality of pre-contractual information available to consumers online before making a

[125] 2015 CRD sweep: http://ec.europa.eu/consumers/enforcement/sweeps/directive/index_en.htm

purchase, as regulated by the CRD. Member States' authorities checked 743 websites making it the largest sweep conducted at EU-level so far. Among these websites, there was a full spectrum of traders ranging from smaller players to big e-commerce platforms. Information from the sweep has been used to assess the estimated level of compliance by traders and thus the effectiveness of the CRD as non-compliance is a reason for lack of effectiveness.

Analysis of policy papers: NVivo software was used to analyse the policy papers submitted in response to the Commission's online public consultation. NVivo is software that supports qualitative and mixed methods research. It is designed to help organise, analyse and find insights in unstructured or qualitative data, like position papers.

Position papers relevant to the CRD were uploaded to NVivo for analysis. Once uploaded into the software, the top 50 most frequent words (exact matches) were generated using NVivo, in order to obtain the most frequent themes. The initial list generated by the software contained many words that were either too general and did not indicate a theme, such as ‘consumer’ and ‘directive’, or that related to themes outside the scope of this study (e.g. ‘marketing’, ‘advertising’). This was due to the fact that many of the position papers contain information on several different directives. Some words were thus removed by adding them to the NVivo ‘stop list’. These included words that were considered to be too general or outside the scope, such as: Using word trees generated from the most frequently used words, it was possible to explore the use of a word in context, and therefore to identify any key themes associated with that word.

The fifty most frequently used words were generated using a ‘word frequency’ search in NVivo, and were subsequently formed into a word cloud using NVivo’s ‘word cloud’ function.

The evidence from the sources was processed according to the following typology in ascending order of reliability:

1. Messages communicated from stakeholders but unsupported by desk-research: obviously some traders have been keen to emphasize the costs and problems with the interpretation of the CRD but sometimes their views are not supported by the consultant's interpretation of the provisions and other available literature (refer for instance to the discussion on the impacts of the CRD's regulatory choices as described by traders in some countries when the regulatory choices have not been used).
2. Messages communicated from stakeholders and supported by desk-research. In particular messages that have been found to be grounded and supported by other literature (mystery shopping, behavioural study and other studies described below) have been given greater weight (e.g. discussion on level of consumers' awareness).
3. Independent Systematic Review of at least the majority of relevant evidence, including primary and secondary sources of data as well as experts' opinions.

Care has been taken however to interpret the evidence based on the following:

- Internal validity of the evidence: i.e. its precision and reliability. Less weight is given to opinions, but when these have been shared by different stakeholders, these have been given greater weight (also when these have been expressed by organisations representing the interest of more than an individual consumer and trader).
- Sample size and representativeness, including geographical scale: Particular care has been taken to note where a case or example is illustrative, or where it is representative of many cases in many countries. In particular, some issues with the CRD and interpretation of its articles have been identified that have the potential to be repeated in more than one country by setting a precedent. These have been included as relevant points in the assessment (e.g. refer to the discussion on return of used products, water utilities and inertia selling and online bidding platforms and exceptions from the right of withdrawal)
- Temporal relevance. The evidence on the impacts represent the period since the CRD implementation, i.e. 2014, but in comparison with the previous regulatory regime. The study has thus focused on the specific provisions of the Directive that are new (with reference to specific articles).
- Independence of source: although there are obvious different points of view from consumers and traders and their associations, the most balanced arguments have been presented to avoid extreme bias.

For more information see the final report published: http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332

Consumer market study to support the Fitness Check of consumer rules (Lot 3) - Mystery shopping and behavioural experiments

The consumer research carried out by the Lot 3 contractor of the Fitness Check exercise included a CRD-related mystery shopping and a behavioural experiment in 8 selected Member States.[126] These were selected to constitute a representative sample whilst also securing sufficient sample sizes of respondents/participants. The selection was designed to include a balance of number of factors, such as region, level of consumer knowledge of their rights, trust in public authorities to protect their rights, and the number of consumer complaints.

The results of these market research activities informed the study on the CRD evaluation and the present SWD.

The **mystery shopping exercise** studied the level of traders' compliance with specific provisions of the CRD relevant to purchasing digital content and tangible goods online. Most importantly, the mystery shopping exercise was designed to test all relevant provisions regarding pre-contractual information requirements and the right of withdrawal for each product category. In total 341 mystery shopping assessments were conducted, with a maximum of 3 assessments per mystery shopper, which translates into a minimum of 15

[126] Bulgaria, Finland, France, Germany, Greece, Netherlands, Poland, and Portugal

shoppers per country and a total minimum of 120 mystery shoppers participating in the exercise.

The selection of sectors and products was done by using the most recent version of the Harmonised Database of Consumer Complaints. The complaints were filtered falling in categories relevant to the scope of the CRD.

The ICT (Information and Communication Technology) goods market was a clear choice in terms of the proportion of complaints related to issues outlined in the CRD. Within the ICT sector, two specific tangible products that fall within the price range of 20-50 EUR (upper limit due to budget and risk constraints) were selected: computer mice and memory (USB) sticks. These products are widely available in online electronics retailers, reaching a broad range of European consumers. In terms of digital content, the following two product categories were chosen: security software and music downloads. Security software and music downloaded in digital format are two widespread and common product types within the digital content sector.

Following the European Commission's requirements, the largest online shops in each country, with at least three per country having an international presence, were chosen. To select the largest retailers, internet traffic data of visitors in that country, provided by the SimilarWeb online database was used as a proxy for market share SimilarWeb updates their data with high frequency (once per month). SimilarWeb rankings from July and August 2016 were used to create the retailer lists.

Since the presence of sellers of music downloads varies a lot between countries, these evaluations could not be distributed equally across the countries. In order to obtain a sufficient number of completed evaluations for this product type, a larger number of assessments were included for countries with a greater presence of music sellers to compensate for countries with a smaller number of music sellers. The included retailers represent all meaningful retailers in the markets.

The mystery shopping was broadly structured around three stages (two for security software and music downloads). In the first stage (1), mystery shoppers visited the retailer's website and reported on the availability of the seller and product information and the retailer's compliance with information requirements before and when making a purchase. During the second stage (2), the mystery shoppers documented the delivery of the product and the ease of finding information about the product return procedure. Since this is only applicable for tangible goods, this step was skipped for mystery shoppers for security software and music downloads. During the third stage (3) the mystery shoppers returned the product and reported about the reimbursement they may have received and their satisfaction with the return procedure.

In general, mystery shoppers perceived a relatively good level of compliance in all scenarios. However, information on right of withdrawal was often missing, in particular for digital contents.

The **consumer behavioural experiment** examined consumer understanding and the use of pre-contractual information for products in two sectors: the digital content sector and e-commerce of ICT goods. The products were smartphones and streaming content (movies).

The experiment investigated if information requirements in the CRD are comprehensible and perceived as relevant by consumers. 4,149 respondents completed this experiment. The included respondents were a representation of the national population of consumers aged 18+ in the respective countries. In order to ensure this, quotas were set on age (based on three age groups: 18-34, 35-54, and 55+) and gender. Furthermore, when recruiting sample from the panel, a spread of education, work status and financial situation was taken into account.

The investigated sectors and products were chosen drawing on the findings of the most recent version of the European Consumer Complaints Registration System.

A concise post-experiment questionnaire measured relevant respondent characteristics. For example a relevant variable is whether the respondent is an expert in consumer law (see also Experiment 2). This may influence how easily the respondent understands specific pre-contractual information as well as his/her knowledge on the CRD, and, therefore, his/her use of pre-contractual information.

Respondents' experience with e-commerce as well as familiarity with the product categories were also measured. Those more familiar with e-commerce may be more aware of pre-contractual information requirements and those more familiar with the product categories may be more aware of specific rules, such as having to give your prior express consent to start downloading or streaming digital content. In addition, those more familiar with the products may need less information about them, and hence, might have less need of duplication (i.e., point out the redundancy more often).

The study team also measured agreed socio-demographics, such as gender, age, level of education, financial status and work status.

In general, respondents indicated that they understood CRD-required information items and found the information relevant.

The study's report, prepared by the external contractors, was published on the Commission's website and is available at

http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332