Evaluation of the Consumer Rights Directive (2011/83/EU)

Information Requirements – emerging findings.

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Centre for Strategy & Evaluation Services

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Information requirements - overview

- Single set of fully harmonised, EU-wide, pre-contractual information requirements for off-premises and distance contracts (Art. 6(1)) & minimum rules for on-premises (Art. 5(1)).
- Changes compared with previous legal framework (Directive 97/7/EC (distance contracts) and Directive 85/577/EEC (off-premises contracts)).
- New aspects where contractual information must be provided:
  - Art. 5(1)(g) and 6(1) (r) – specific pre-contractual information requirements for digital content on functionality and interoperability (previously not explicitly regulated;
  - Art. 8(2) - making consumer aware of 'obligation to pay' rather than simply confirmation of order; if not consumer not bound;
  - Art. 8(3) – delivery restrictions and means of payment;
  - Art. 6(9) - burden of proof in respect of info requirements falls on traders;
  - Art. 10 - if traders fail to provide required pre-contractual information on right to withdrawal (RoW), increase from 3 to 12 months +14 days.

Effects of changes in information requirements

Under the CRD:

- Significant increase in pre-contractual information requirements for on-premises and off-premises contracts.
- Less significant changes in information requirements for distance contracts compared with previous legislation.
- Amount of pre-contractual information which traders are required to provide to consumers has increased in all EU Member States.
- Changes to sanctions regimes for non-provision of pre-contractual information.
- Still big divergence in fines (e.g. LT minimum is 140 EUR whereas in SE it is 5,000 SEK/ € 517).

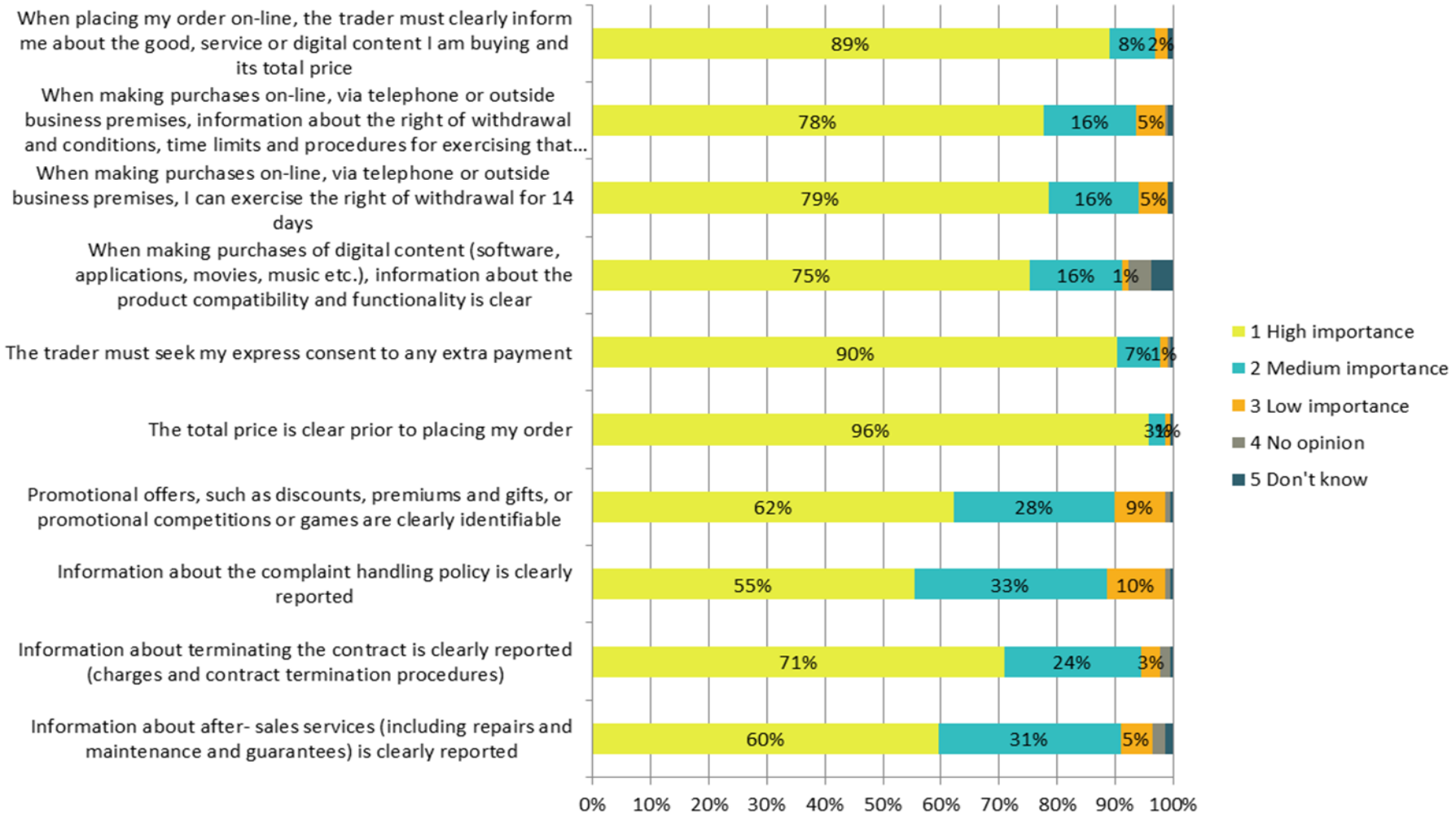
Online survey – information requirements

- Survey asked questions about information requirements, e.g.
  - *Whether consumers received the different types of information;*
  - *The importance to consumers of receiving this information.*
  - *Whether businesses could identify any changes in pre-contractual information requirements for on-premises, distance and off-premises.*
  - *Businesses were asked about the costs and whether they considered the new information requirements to be beneficial for their businesses.*

Traders reported the following:

- 60% stated that compliance costs have increased – new info req's
- But also benefits (harmonised rules, less market fragmentation)
- 60%: new information requirements are very or rather beneficial for their activities

Online survey findings (1)



Stakeholder feedback on information requirements

- Shift in burden of proof has meant that:
  - Some traders became more attentive to ensuring that adequate pre-contractual information is provided.
  - Prompted reviews of information in terms and conditions.
  - Telephone sales agents record conversations more systematically.
- New information requirements laid down in CRD welcomed by consumer organisations. “Greater regulatory certainty”.
- But some national authorities concerned about striking a balance (sufficient information vs. overloading consumers).
- Use of icons to convey pre-contractual information (neutral survey response, positive view in interviews, but only if non-binding).

Compliance with information requirements

- Most recurrent non-compliances that consumers/ enforcement authorities and ECC are aware of, is being examined. Examples of non-provision of information/ non-compliance by traders identified:
  - Total price of goods or services unclear (e.g. pop-up boxes used in relation to additional 'hidden' service charges).
  - Information missing (or inadequate info) on right of withdrawal (RoW)
  - Incorrect information provided on RoW.
  - Forgetting to specify delivery policy on website.
  - No information on geographical address & full name of trader missing
  - Non-functioning email and / or phone number.
  - Distance contracts - failure to make clear consumers' obligation to pay for online subscriptions.
  - Off-premises contracts - failure to provide detailed info. in a durable medium following conclusion of contract.
  - Difficulties in providing detailed pre-contractual information on mobile websites (e.g. for m-commerce at checkout stage).

Enforcement of information requirements

- Lack of awareness about information requirements among consumers and some traders remains a problem.

Distinction between compliance issues for:

- Traders that want to achieve full compliance - but may struggle due to lack of awareness with the requirements under the law; and
- Non-compliance by rogue / fraudulent traders (especially prevalent in advertising via social media) e.g. online subscription traps.
- Extent to which enforcement authorities have taken action against traders for non-provision of pre-contractual info. is being analysed.
- National legal cases:
  - **Legal case in DE** - clarified that Art. 6 (1) (c) and (f) of the CRD and those in Art. 5 (1) (c) E-Commerce Directive 2000/31/EC apply in parallel.
  - **Legal case in SE** - provider of dance courses didn't provide adequate information regarding RoW when dance classes were paid for online prior to classes.
- Soft law measures –Nordic countries running project on online subscription traps (ditto ECCNET).