Max Planck Institute
LUXEMBOURG
for Procedural Law

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Efficient Proceedings Involving Consumers – First Results of the Study JUST/2014/RCON/PR/CIVI/0082

Brussels 17 October 2016

A. Outline of the study

B. The perspective of consumer protection

C. The concept of consumer

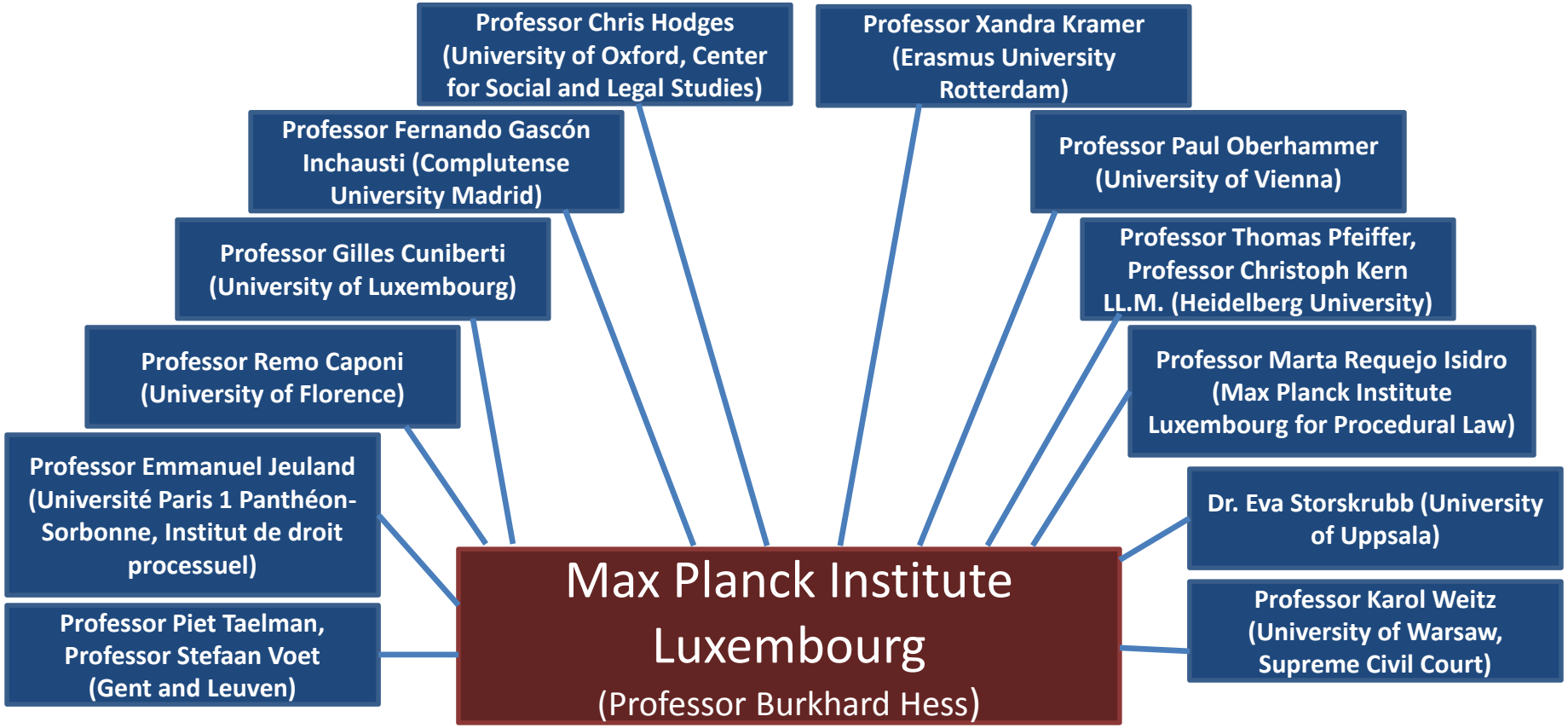
D. Consumer actions before national courts

E. Collective redress

F. Consumer alternative dispute resolution

G. Conclusions

The Consortium working in the project



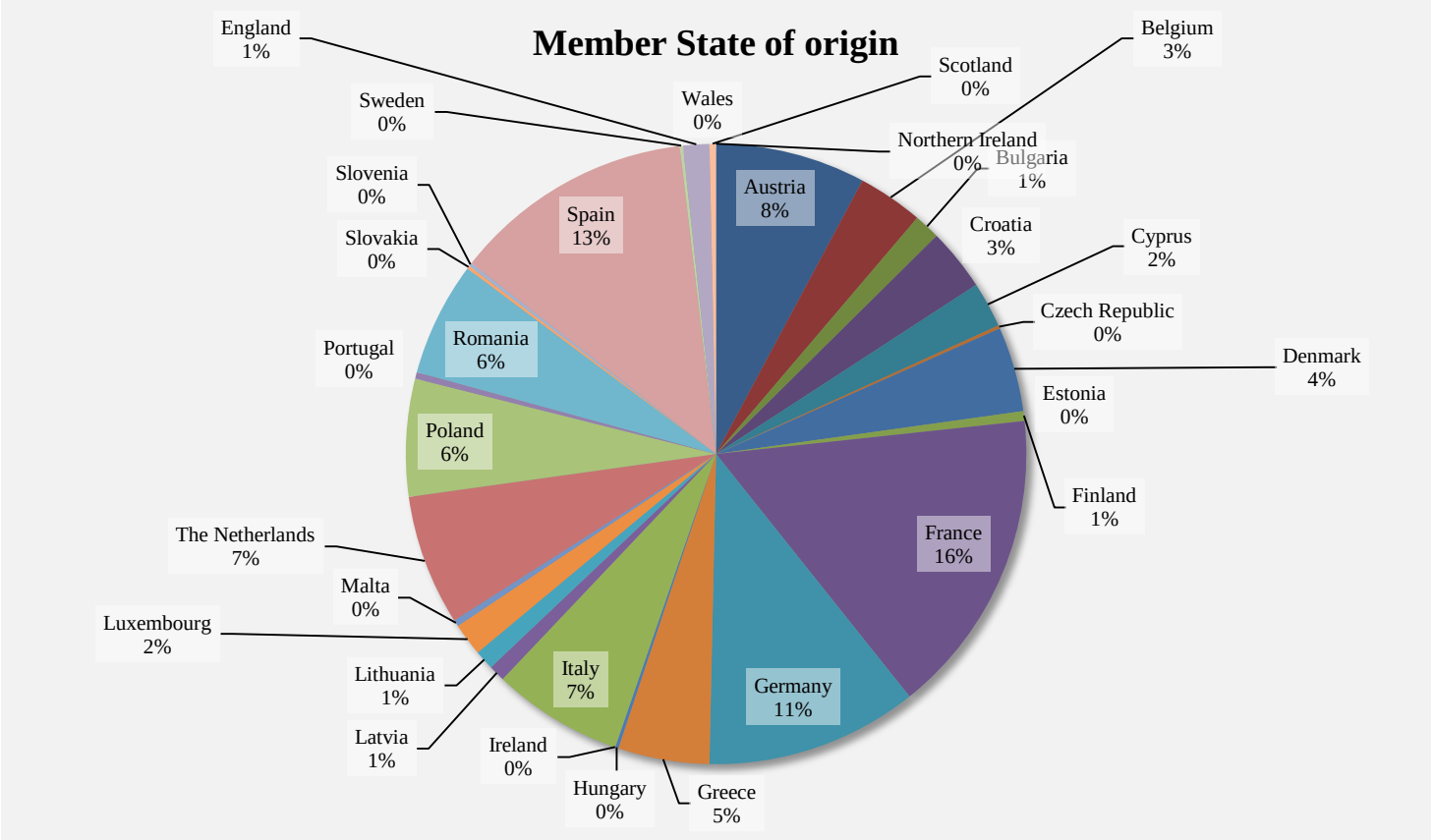
28 national reporters

Study JUST/2014/RCON/PR/CIVI/0082

Sources of information

1. **Legal Desk Research and Archival Research** (aimed at collecting statistical data and at detecting relevant case-law)
2. **Online Questionnaire** (aimed at highlighting perceptions from stakeholders)
3. **Interviews** (aimed at getting empirical information from stakeholders)
4. **National reports** (aimed at assessing the collected information from the different EU Member States)

SurveyMonkey online questionnaire: 260 responses from various types of stakeholders, including consumers, lawyers, judges, consumer protection associations

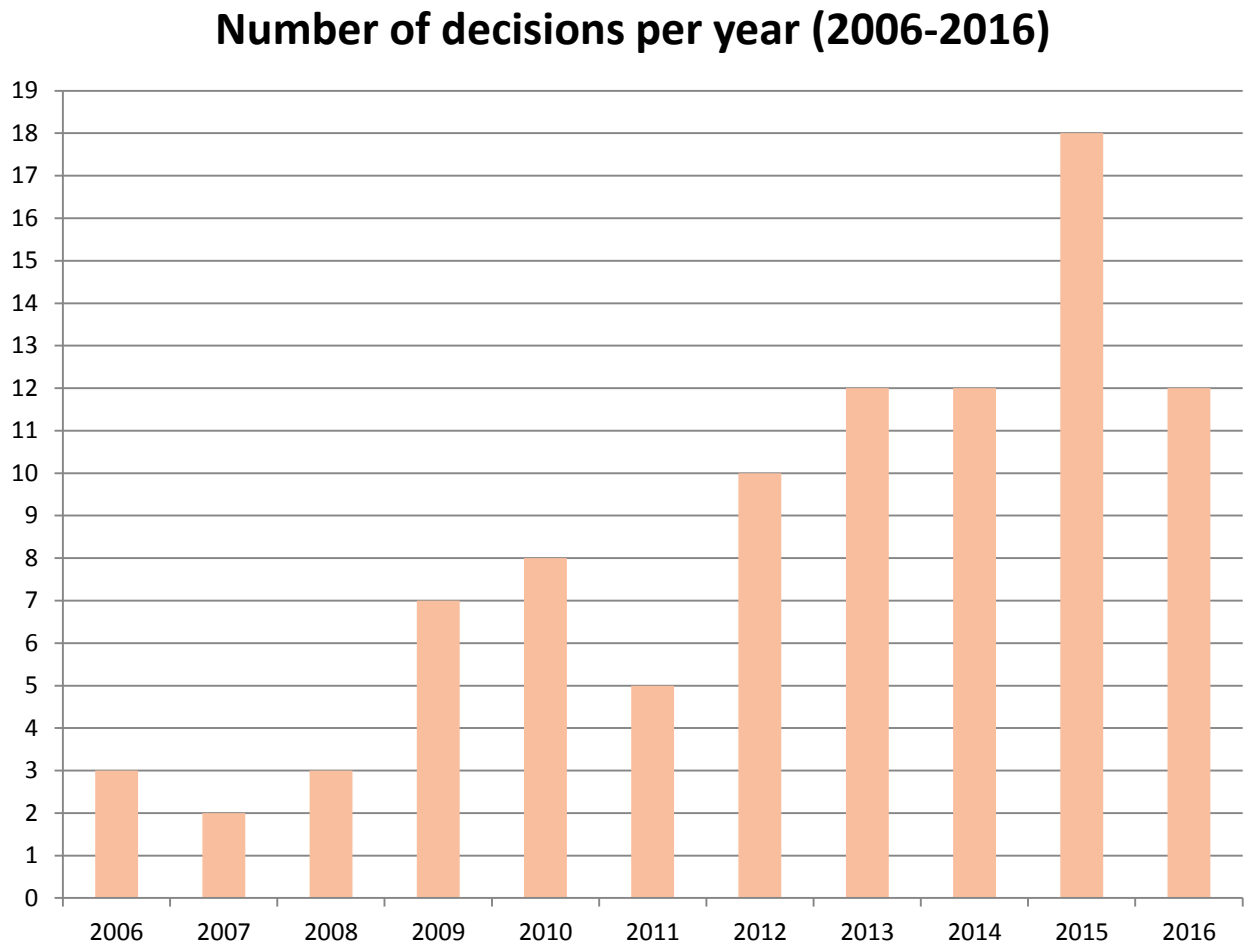


B. The perspective of consumer protection

The typical nature of a consumer protection dispute is domestic and not European

- EU consumer law is based on Directives. At the national level, implementing laws supersede the EU background.
- Cross-border disputes are still rare exceptions (even in the context of online transactions).
- Most consumer disputes are dealt with by the civil courts of EU Member States, where the case-law of the CJEU is often unknown, especially when it relates to cases coming from other Member States.

Consumer protection in the case-law of the CJEU



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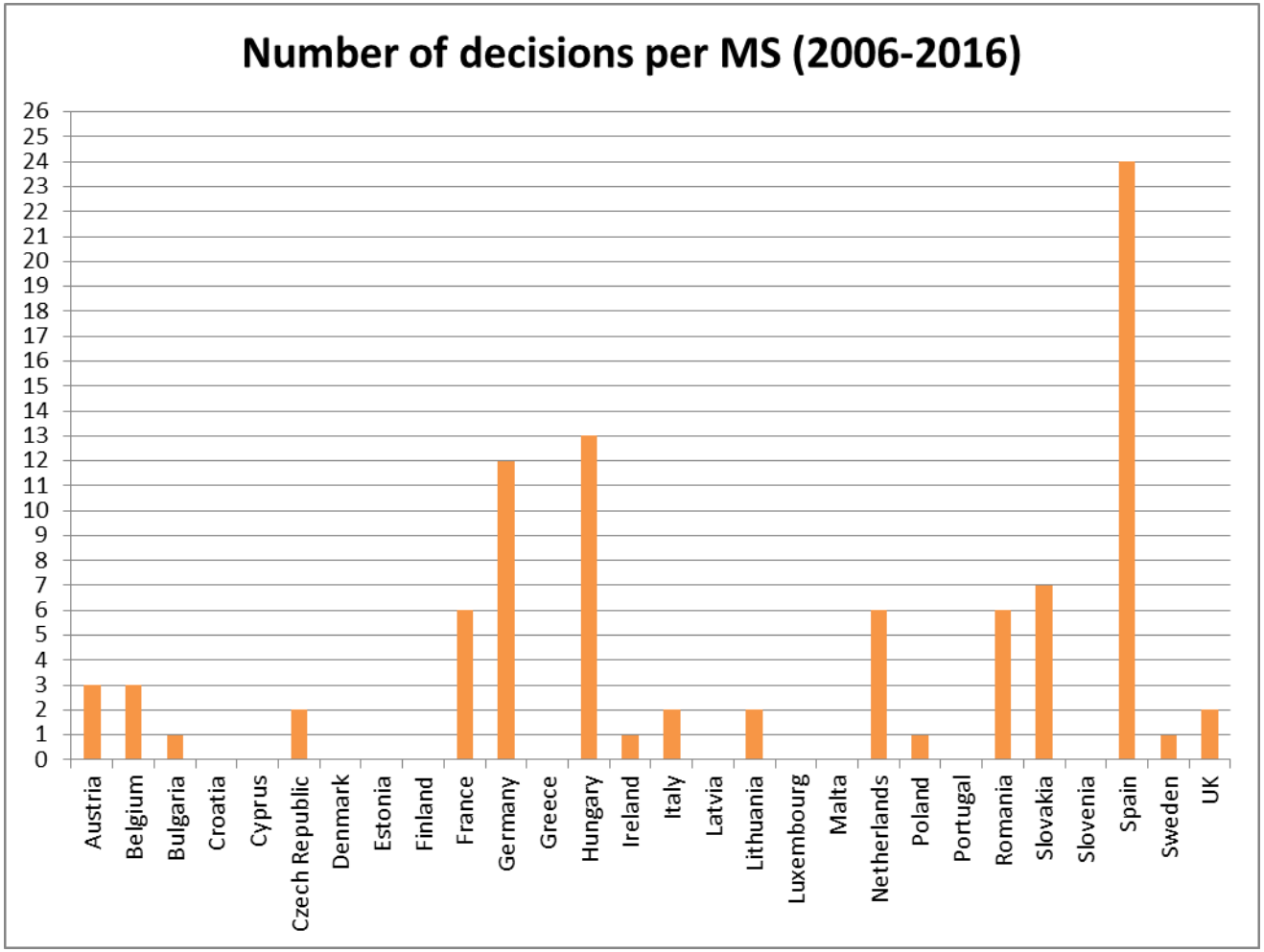


C. Different concepts of "consumer"

National law also dominates the concept of the consumer; but there is no uniform definition in EU law nor at the domestic level.

According to *Heinz Micklitz*, three different types of consumers should be distinguished:

(1) the average consumer,

(2) the confident consumer

(3) the vulnerable consumer

D. Difficult Access to Justice

Across the Member States, a lack of consumer claims – whether judicial or ADR, domestic or cross-border (but especially, judicial, cross-border) – is identified.

Why?

- **Costs, duration and uncertainty of proceedings.**
- **Complexity arising in bringing a judicial claim or an action before an ADR fora**
- **Lack of knowledge of EU-consumer law**

E. Consumer actions before national courts

- **The role of the parties and the courts in consumer disputes are a matter of the procedural laws of EU-Member States**. Usually, the civil procedures impose the burden of making a claim on the litigants.
- The **efficiency of consumer processes is not guaranteed** – **the average consumer process in the first instance in Europe lasts much more than a year**
- However, the enforcement of EU-consumer law is subject to **the principles of effectiveness and equivalence**.
- **In consumer law, the Court of Justice developed the principle of ex officio application of mandatory EU law**

E. Consumer actions before national courts

Ex officio application of consumer law – an unclear concept of EU law

The obligation of the judge to apply mandatory consumer law can only be assessed from the **specific procedural context** where the problem is raised. The following **factors** must be taken into account:

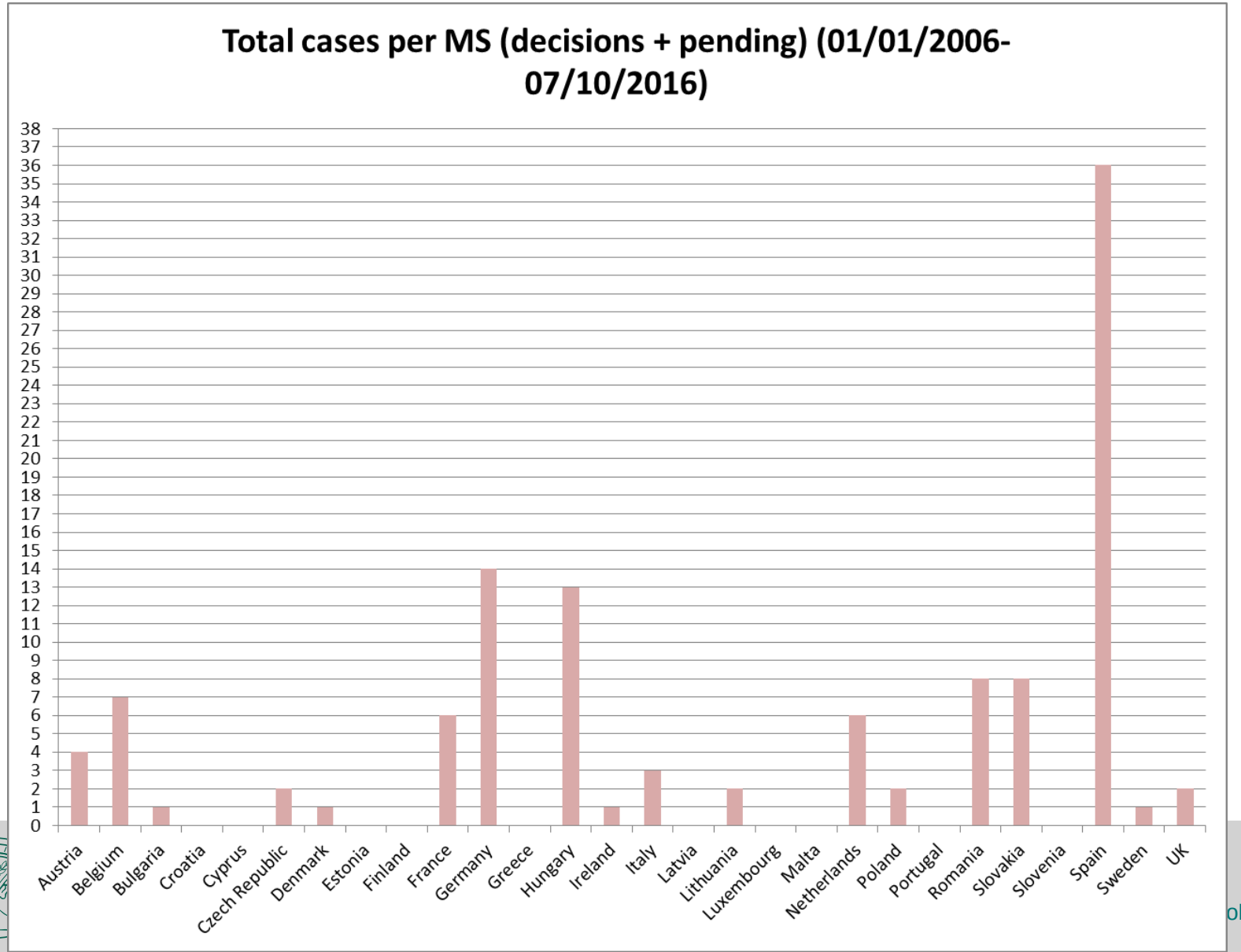
(1) the general power of the judge to raise consumer law of his/her own motion in the national procedural system;

(2) with regard to the nature of proceedings at which an ex officio assessment should be made (ordinary proceedings, default procedures, arbitration etc.)

(3) with regard to the stage of proceedings at which an ex officio assessment should be made (ex. enforcement of notarial deeds)

(4) in terms of whether the obligation is limited to or extends beyond the assessment of unfair contract terms.

Ex officio application of consumer law – an unclear concept of EU law



Tentative Conclusions

1. At present, EU-procedural consumer protection is unsatisfactory as the interplay between domestic procedures and applicable EU standards is not clear.
2. EU consumer law is lacking transparency and consistence.
3. The heterogeneity of the very concept of the consumer as well as the fragmented structure of the EU instruments do not permit uniform solutions.
4. The present situation of providing for three pillars of the enforcement of EU consumer law (civil litigation, consumer ADR and collective redress) seems to be adequate. However, each pillar needs to be assessed for improvement.
5. Regarding the adjudication of consumer disputes**, a sectorial directive (providing for better definitions, procedural minimum standards and rules in specific areas) might be envisaged** in order to guarantee a balance between consumer ADR and court proceedings.

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Thank you for your attention.