

EVALUATION AND FITNESS CHECK (FC) ROADMAP			
TITLE OF THE EVALUATION/FC	REFIT Fitness Check of consumer law		
LEAD DG RESPONSIBLE UNIT	DG JUST, UNITS E2, E4	DATE OF THIS ROADMAP	12/2015
TYPE OF EVALUATION	Fitness Check	PLANNED START DATE	Q4 / 2015
		PLANNED COMPLETION DATE	Q2 / 2017
		PLANNING CALENDAR	<a href="http://ec.europa.eu/smart-regulation/evaluation/index_en.htm">http://ec.europa.eu/smart-regulation/evaluation/index_en.htm</a>
<b>This indicative roadmap is provided for information purposes only and is subject to change.</b>			

A. Purpose
(A.1) Purpose
<p>The Commission's 2010 Communication on Smart Regulation<sup>1</sup> introduced '<i>Fitness checks</i>' as comprehensive policy evaluations assessing whether the regulatory framework for an entire policy sector is fit for purpose. This Fitness Check will evaluate if EU consumer law is fit for purpose on the basis of the criteria of effectiveness, efficiency, coherence, relevance and EU added value of the existing EU legislation.</p> <p>The Fitness Check will also aim at identifying excessive regulatory burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time, as well as cumulative impact of the relevant instruments. The Fitness Check will explore ways to improve the application of the current EU legislation, and its results will determine if there is a need for further legislative action at EU level.</p>
(A.2) Justification
<p>Among the ten policy areas that President Juncker set out in his Political Guidelines for the European Commission<sup>2</sup> as part of the Agenda for Jobs, Growth, Fairness and Democratic Change is a 'Connected Digital Single Market', in which ambitious steps were announced, including modernising and simplifying consumer rules for online and digital purchases. Consumer protection features prominently in the subsequently adopted 'Digital Single Market' Strategy<sup>3</sup>. Consumer protection is also pertinent in the wider context of fairness that underpins many other actions foreseen in the Political Guidelines and the Commission working programmes such as the Framework strategy for 'A Resilient Energy Union with a Forward-Looking Climate Change Policy', the 'Internal Market Strategy', the 'Circular Economy Package' and Action plan on building a 'Capital Markets Union'.</p> <p>Plans for a Fitness Check of legal acts related to consumer rights and advertising were first announced in the 2013 REFIT Communication<sup>4</sup>. The Commission Work Programme 2015<sup>5</sup> included, as one of the REFIT actions in the area of Justice, Consumers and Gender Equality, a Fitness Check of key EU directives in the area of consumer rights and advertising:</p> <ul style="list-style-type: none"> <li>• Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive);</li> </ul>

<sup>1</sup> Commission Communication 'Smart Regulation in the European Union', 8.10.2010, [COM\(2010\)543](http://ec.europa.eu/com2010543).

- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (Sales and Guarantees Directive);
- Directive 93/13/EEC on unfair terms in consumer contracts (Unfair Contract Terms Directive).

The above-mentioned directives are part of the body of general EU consumer law. For consistency reasons and to ensure comprehensive evaluation the following Directives should also be subject to the Fitness Check:

- Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers (Price Indication Directive);
- Directive 2006/114/EC concerning misleading and comparative advertising (Misleading and Comparative Advertising Directive);
- Directive 2009/22/EC on injunctions for the protection of consumers' interests (Injunctions Directive).

The following Directive will be evaluated separately by the Commission in accordance with its Article 30:

- Consumer Rights Directive 2011/83/EU.

The outcome of this separate evaluation of the Consumer Rights Directive will feed into the conclusions of the Fitness Check.

The above-mentioned directives by no means constitute the entire body of EU consumer legislation since specific EU rules have been enacted in concrete sectors (for example, in electronic communications, passenger transport, energy, consumer financial services). These sector-specific EU consumer rules complement the requirements of the above-mentioned general Directives, for example, by specifying additional consumer information requirements and rules on modification and termination of contracts. Whilst these sector-specific EU consumer rules as such are not subject to the current Fitness Check, it will analyse, from the coherency prospective, the interplay of the general and specific EU consumer rules in the sectors concerned with a view to identify the possible overlaps and potential for streamlining and simplification.

The Directives subject to the Fitness Check mostly provide for one-off reporting obligation for the Commission. The relevant reports (communications) on their application have different levels of detail and comprehensiveness (regarding the main findings and conclusions of these reports, see section D1).

<b>Directive (year of adoption)</b>	<b>Reporting obligation</b>	<b>Previous report/ communication</b>
Unfair Contract Terms Directive (1993)	One-off	<a href="#">1999</a>
Price Indication Directive (1998)	One-off	<a href="#">2006</a>
Sales and Guarantees Directive (1999)	One-off	<a href="#">2007</a>
Unfair Commercial Practices Directive (2005)	One-off	<a href="#">2013</a>
Misleading and Comparative advertising Directive (2006)	N/A	<a href="#">2012</a>

<sup>2</sup> A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. [Political Guidelines](#) for the next European Commission, Strasbourg, 15 July 2014.

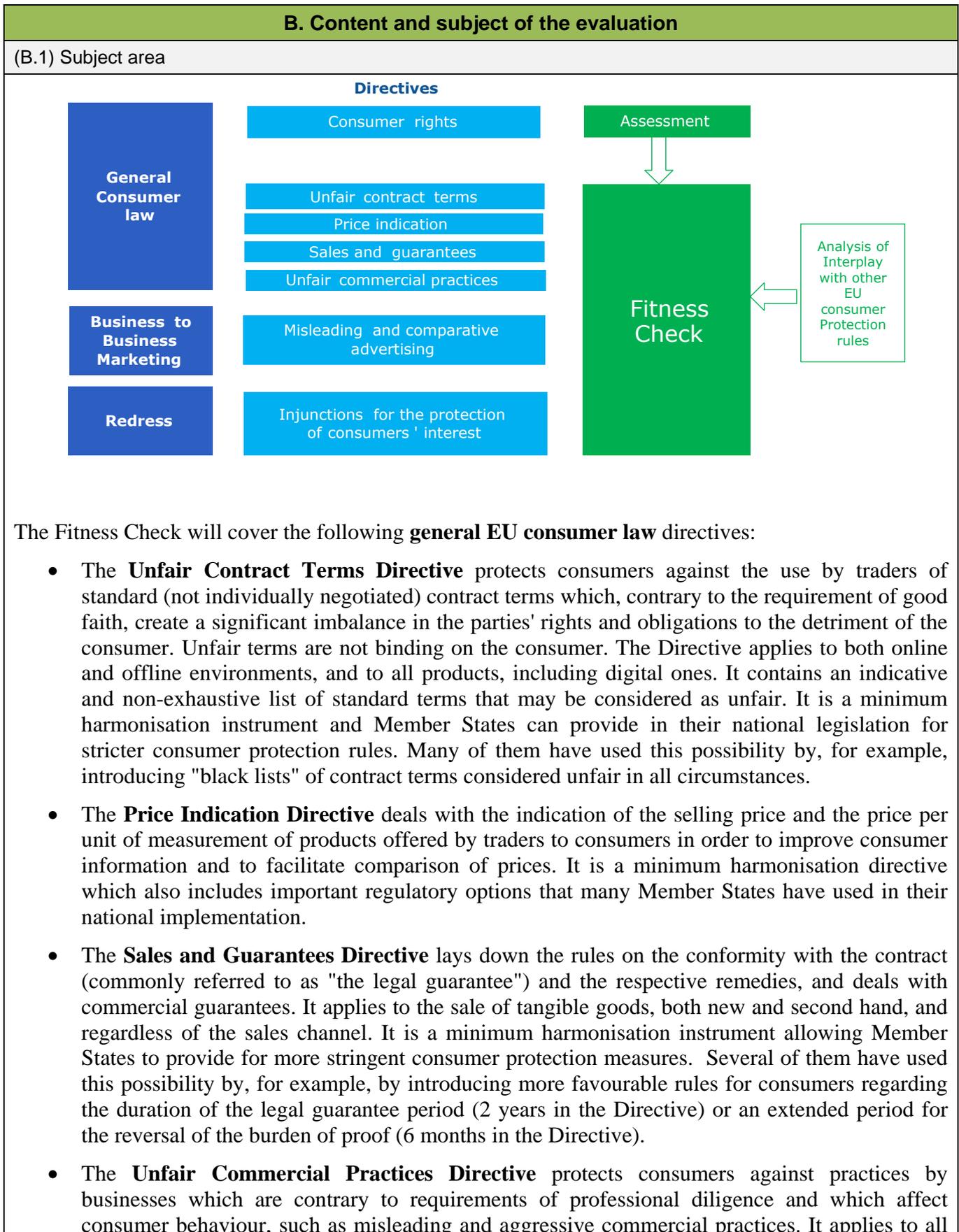
<sup>3</sup> Commission Communication "A Digital Single Market Strategy for Europe", 6.5.2015, [COM\(2015\) 192 final](#).

<sup>4</sup> [Commission Staff Working Document](#) "Regulatory Fitness and Performance Programme (REFIT): Initial Results of the Mapping of the Acquis".

<sup>5</sup> [Annex 3 to the Commission Work Programme 2015](#), item No. 62.

Injunctions	Every 3 years	<a href="#">2008</a> and <a href="#">2012</a>
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The Fitness Check will include also ex post evaluations of these individual directives.



commercial practices before, during or after the transaction, including in the online environment, and to all products, including digital. This Directive provides for full harmonisation of the respective rules across the EU with the exception of financial services and immovable property.

The remaining and most recent instrument of this horizontal consumer legislation – the Consumer Rights Directive – will be subject to a separate report by the Commission but its findings will feed into the conclusions of the Fitness Check.

These general EU consumer law directives are complemented by the existing sector-specific consumer protection rules in areas such as timeshare and holiday services<sup>6</sup>, package travel<sup>7</sup>, passenger transport, electronic communications, energy and consumer financial services. They also apply in conjunction with other EU legislation related to retail commerce such as e-Commerce Directive 2000/31/EC and Services Directive 2006/123/EC that contain, amongst others, consumer information requirements. The Fitness Check must accordingly address the interplay between these various instruments.

Furthermore, the **Misleading and Comparative Advertising Directive** should be included in the Fitness Check because it is also necessary to assess the scope of application of EU consumer law, in particular whether legal entities and persons other than consumers require protection comparable to consumers. The Misleading and Comparative Advertising Directive is a horizontal instrument which applies to all business-to-business (B2B) advertising and provides a minimum legal standard of protection across the EU against misleading advertising. It also lays down uniform rules on comparative advertising ensuring that it compares "like with like", is objective, does not denigrate or discredit other companies' trademarks and does not create confusion among traders.

Finally, the Fitness Check will also cover the **Injunctions Directive** which provides an important tool for both public and private enforcement of most of EU consumer law. It requires Member States to have in their national legal order a procedure for stopping infringements where the collective interests of consumers protected by EU consumer law (as listed in its Annex I) are harmed. The "qualified entities" enabled to initiate injunctions actions are, depending on the Member State, organisations or/and public bodies (e.g. a consumer organisation launches an action seeking to stop a trader using an unfair contract term in its contracts with consumers; a public authority responsible for consumer protection prohibits a misleading advertisement used by a trader on its website). The Directive also facilitates the use of injunctions in a cross-border context. Accordingly, the Fitness Check will evaluate the EU consumer law instruments in the broader context of EU policies aiming at effective enforcement of consumer rights under EU law by national authorities, courts and consumer organisations at national and European level<sup>8</sup>.

#### (B.2) Original objectives of the intervention

The overall objective of EU consumer law instruments is achieving a high level of consumer protection (empowering consumers to actively participate in the market) and removing barriers for EU market integration.

<sup>6</sup> The Interplay between the sector-specific Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts and the horizontal EU consumer legislation will be analysed in a separate report on the application of Directive 2008/122/EC; hence it is outside the scope of the Fitness Check.

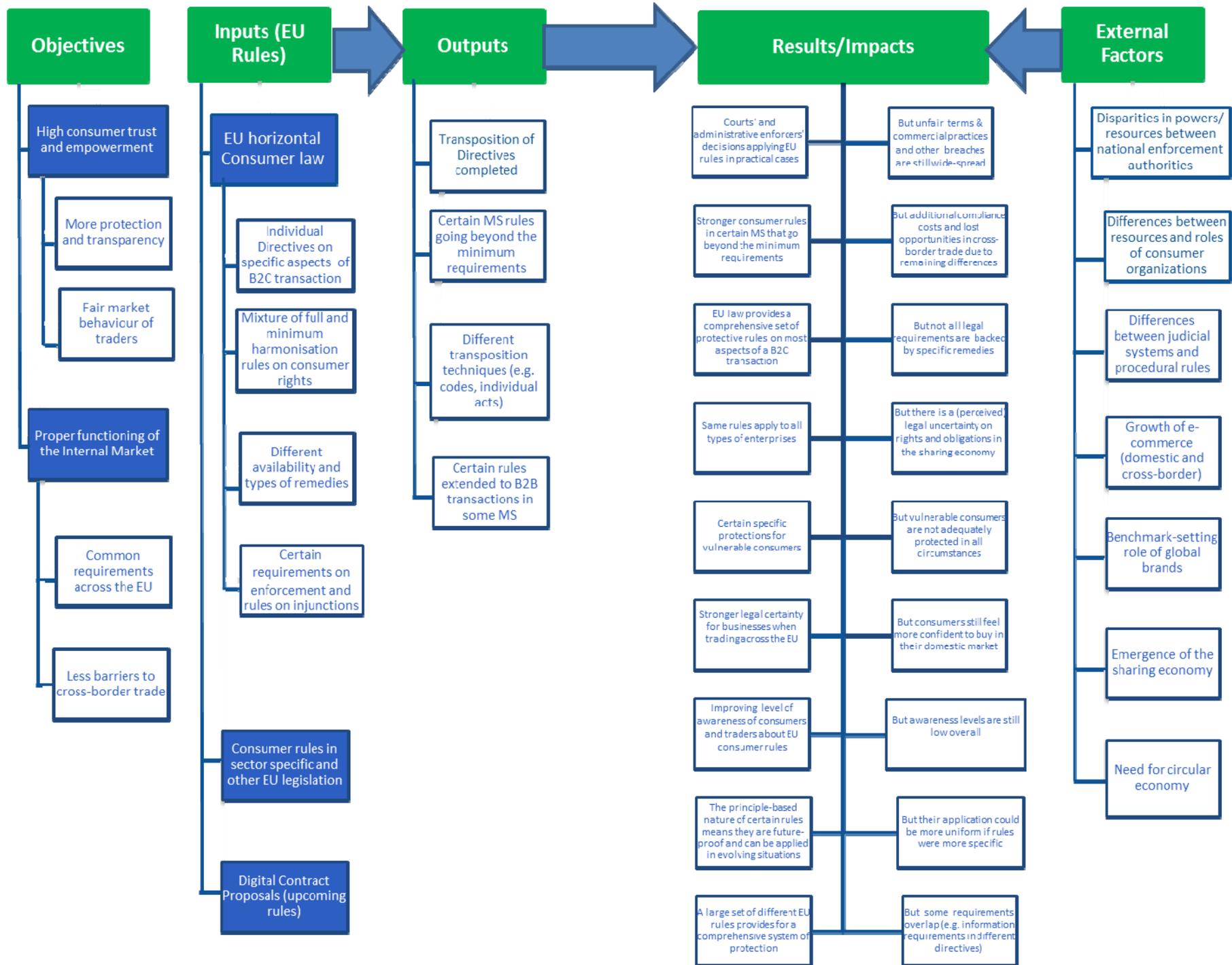
<sup>7</sup> The current Council Directive 90/314/EEC on package travel, package holidays and package tours has been just revised. The new Directive on package travel and linked travel arrangements is therefore outside the scope of the Fitness Check.

<sup>8</sup> The cross-border enforcement of court decisions is facilitated by the existing European Small Claims Procedure (Regulation (EC) No 861/2007), European order for payment procedure (Regulation (EC) No 1896/2006), as well as by Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). These instruments do not form the subject-matter of this Fitness Check.

The original objectives of the individual directives subject to the Fitness Check are set out below. These will be considered as building blocks for the more comprehensive definition of the general, specific and operational objectives of the system of rules under the scope of the Fitness Check.

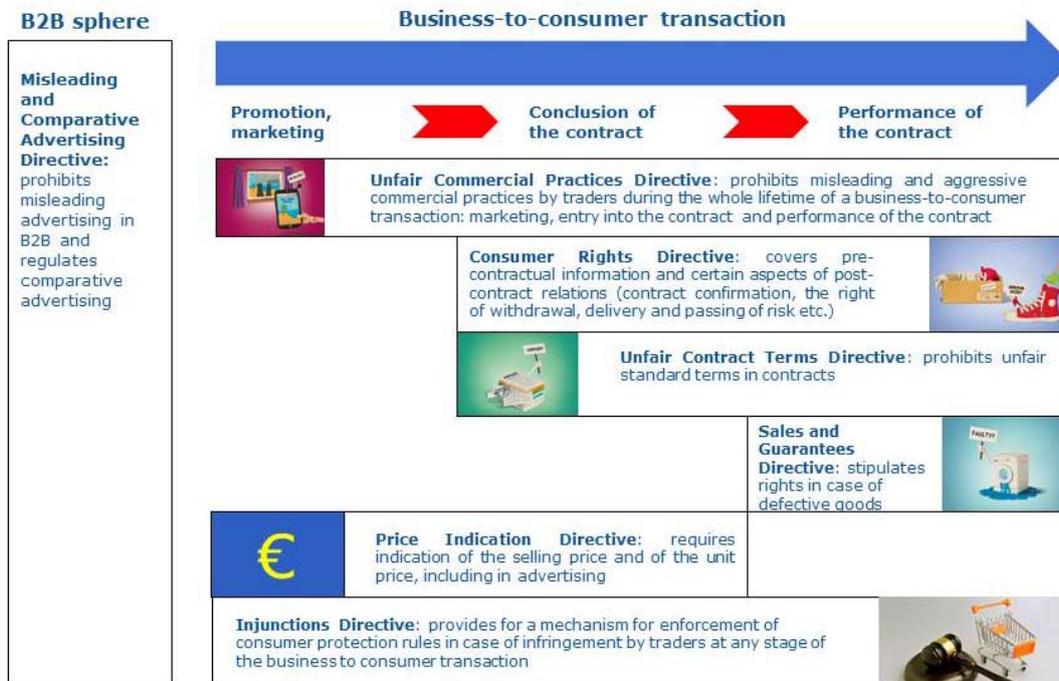
<b>Directive</b>	<b>Original objective</b>
Unfair Contract Terms Directive (1993)	Establish a high level of consumer protection and reduce obstacles to the Single Market by approximating national laws in the area of consumer protection against unfair standard contract terms
Price Indication Directive (1998)	Establish a high level of consumer protection through improved consumer information regarding the indication of the selling price and the price per unit of measurement of products
Sales and Guarantees Directive (1999)	Establish a high level of consumer protection and reduce obstacles to the Single Market by approximating national laws in the area of consumer rights to remedies in case of defective tangible goods
Unfair Commercial Practices Directive (2005)	Establish a high level of consumer protection and reduce obstacles to the Single Market by fully harmonising national laws in the area of consumer protection against unfair commercial practices
Misleading and Comparative Advertising Directive (2006)	Reduce obstacles to the Single Market by approximating national laws protecting traders against misleading advertising and the unfair consequences thereof.
Injunctions Directive (2009)	Ensure smooth functioning of the internal market through approximating national laws relating to actions for an injunction aimed at the protection of the collective interests of consumers

The following overall **Intervention Logic** illustrates the initial objectives, relevant external factors and the observed combined results and impacts of the EU consumer legislation subject to Fitness Check.



(B.3) How the objectives were to be achieved

The following diagram illustrates how the directives covered by the Fitness Check as well as the Consumer Rights Directive interact.



The directives subject to the Fitness Check protect the consumer throughout the business-to-consumer (B2C) transaction. Even at an earlier stage, the Misleading and Comparative Advertising Directive protects the traders against unfair business-to-business (B2B) marketing practices, which may have repercussions on traders' ability to offer products to consumers on best possible terms.

The business-to-consumer (B2C) transaction starts with the marketing stage, e.g. an advertisement, which is subject to the Unfair Commercial Practices Directive. It requires traders not to engage in misleading or aggressive activities that could lead the consumer to take a transactional decision that he/she would not have otherwise taken as well as to provide the information that the consumer needs to take a well-informed transactional decision. Already at this stage, the Price Indication Directive specifically requires sellers to indicate also the unit price whenever the advertising includes price.

These two directives continue to apply also at the pre-contractual stage of the transaction, e.g. when the consumer visits a brick-and-mortar shop or looks at the product descriptions in an online shop. In addition, at this stage of the transaction, traders must comply with the detailed pre-contractual information requirements under the Consumer Rights Directive.

During and after the conclusion of the contract, the Unfair Contract Terms Directive protects the consumer against unfair standard (i.e. not individually negotiated) contract terms (typically, the trader's general Terms and Conditions). Unfair terms are not binding on the consumer.

Once the contract is concluded, the Consumer Rights Directive continues to protect the consumer by, in particular, granting the right of withdrawal for contracts concluded at distance or outside the trader's business premises ("off-premises"). Also the Unfair Commercial Practices Directive continues to apply protecting the consumer against misleading or aggressive post-contractual practices such as non-contractual barriers to switching. The Consumer Sales and Guarantees Directive protects the consumer in case of defective tangible goods and the Unfair Contract Terms Directive protects the consumer from unfair treatment based on standard contract terms, such as unjustified unilateral modifications of

the contractual conditions by the trader.

The Injunctions Directive provides for a tool of enforcement of the consumers' rights granted, among others, by the Unfair Commercial Practices Directive, the Sales and Guarantees Directive, the Unfair Contract Terms Directive and the Consumer Rights Directive.

On the basis of the objectives of this legislation (discussed in section B.2) and taking into account the interaction of the legislative instruments as discussed in this section B.3, **the intervention logic** will be clearly and more precisely specified in subsequent phases of the Fitness Check.

## C. Scope of the evaluation/FC

### (C.1) Topics covered

In line with the intervention logic to be further developed, the topics to be covered will be specified more fully and in greater detail on the basis of the policy objectives of the respective legislative instruments.

It must be flagged already at this stage that, from a more dynamic point of view and in line with market developments, given the increasing importance of omni-channel distribution schemes as well as the need to ensure rules which are simple to apply for market participants and easy to enforce everywhere in the EU, consumers and traders should be able to rely on the same rules when buying at distance (in particular, online but also by using telephone or mail order catalogues) and by face-to-face means (in particular, in brick-and-mortar shops but also outside business premises), unless objectively justified.

In this regard, the Fitness Check will take into account the Commission's new proposal for a Directive on online and other distance sales of goods<sup>9</sup>, which the Commission has put forward in the context of the above-mentioned Digital Single Market (DSM) Strategy. This new Directive aims at further developing and harmonising EU consumer rules for distance sales of tangible goods. The Fitness Check – in its forward looking dimension – will determine if there is a need for further legislative action at EU level and will seek to ensure a coherent legal framework and high level of protection regarding goods sold both at distance and by face-to-face means. The consistency of rules for distance and other types of sales of goods is very important and the outcome of the inter-institutional negotiations on the above-mentioned proposal will have to be closely monitored and assessed.

The completion of the Single Market, be it digital or offline, requires a maximum level of harmonisation regarding consumer laws so as to enable traders and consumers to enjoy legal certainty and a level playing field when operating cross border. This should boost their confidence in the Single Market and limit to a maximum costs attached to trading or buying in another EU country.

EU consumer law instruments are without prejudice to the current and upcoming EU legal instruments on the protection of personal data, which lay down, amongst others, specific information requirements

<sup>9</sup> Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods, 9.12.2015, COM(2015) 635 final, adopted together with a Proposal for a Directive on certain aspects concerning contracts for the supply of digital content, 9.12.2015, COM(2015) 634 final. Both proposals and the accompanying Commission Communication are available at: [http://ec.europa.eu/justice/contract/digital-contract-rules/index\\_en.htm](http://ec.europa.eu/justice/contract/digital-contract-rules/index_en.htm).

<sup>10</sup> See e.g. Article 14 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Article 13(3) of Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications); Article 19 of the proposed General Data Protection Regulation (COM(2012) 11 final).

<sup>11</sup> In addition, Directive 95/46/EC as the main instrument has already been subject to evaluation and the Commission has already made proposals for simplification to the Parliament and Council. These include simplification for SMEs in the EU data protection reform proposals (see Commission follow-up to the "TOP TEN" Consultation of SMEs on EU Regulation (COM(2013) 0446 final)).

on data protection, in particular as regards the processing of personal data in relation to direct marketing and unsolicited communications.<sup>10</sup> As a consequence, the Fitness Check will not include these data protection instruments.<sup>11</sup>

EU consumer law instruments are also without prejudice to the existing EU rules of private international law, in particular Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast). This Fitness Check does not, therefore, extend to these instruments.

#### (C.2) Issues to be examined

The overall aim of the Fitness Check is to analyse the effectiveness, efficiency, coherence, relevance and EU added value of the policy framed by the directives subject to the Fitness Check. The focus of the Fitness Check will be to assess whether the fundamental objectives of these directives have been efficiently achieved and fully delivered.

In particular, it will assess whether these directives have efficiently achieved consumer protection and market integration objectives. It will analyse whether they have usefully contributed to the Single Market by enhancing consumers trust and confidence as well as by removing unjustified regulatory obstacles hindering cross-border trade in goods and services. As already highlighted in the context of the DSM Strategy and in the preparatory works for the above-mentioned proposal for a Directive on online and other distance sales of goods, the differences between national rules based on the minimum harmonisation nature of the Sales and Guarantees Directive have created Single Market barriers that impede businesses from offering goods across the entire EU and – as a result – consumer detriment.

The Fitness Check should also examine whether these instruments capture and reflect the current market trends and, in particular, changes in the markets and the behaviour of consumers. The questions related to redress will be an important part of the exercise. The Fitness Check should further assess how well these legal instruments fit within the overall Union's legal landscape, taking into account also its international dimension. The Fitness Check will also explore ways to improve the application of the current EU legal framework.

In addition, the Fitness Check should assess the potential for simplification in the current regulatory framework and the reduction of regulatory costs and burdens while guaranteeing a high level of consumer protection. The directives subject to the Fitness Check have been enacted at different periods of time and regulate specific aspects of consumer rights, whilst at the same time pursuing the same common objectives. The Fitness Check will therefore explore whether and to what extent a potential codification of EU consumer law into a single EU instrument could bring added clarity, remove overlaps, and fill any gaps.

For example, the Fitness Check should analyse the interplay between the information requirements provided in the Unfair Commercial Practices Directive, the Price Indication Directive and the Consumer Rights Directive to see if there is a room for clarification or simplification. The Fitness Check will also assess whether the provisions of the Unfair Contract Terms Directive could be reinforced by, for example specific rules on standard terms that are always prohibited (that already exist in certain Member States which have introduced rules beyond the minimum requirements of the Directive) and whether the current minimum harmonisation nature of this Directive constitutes a barrier to the Single Market. As regards the Sales and Guarantees Directive, the Fitness Check should in particular assess its relevance in promoting more durable products and contributing to a circular economy.

Next to their application in the business-to-consumer (B2C) relations, the Fitness Check will analyse the need and potential for the application of the existing consumer rules also in business-to-business (B2B) transactions, in particular the transactions with the SMEs, by taking account of the B2B rules already laid down in the Misleading and Comparative Advertising Directive, and in transactions between businesses and non-for-profit entities that do not qualify as consumers under the current rules. The Fitness Check will also analyse the issues arising in consumer-to-consumer (C2C) transactions

(increasingly relevant due to the rise of the sharing economy) and in consumer-to-business (C2B) relations.

In the context of this Fitness Check, the following general questions should be addressed:

### **Effectiveness**

- What progress has been made over time towards achieving the objectives of the directives subject to Fitness Check? Is this progress in line with the initial expectations?
- What is the level of compliance of businesses with their provisions?
- Which main factors (*e.g.* implementation by Member States, action by stakeholders) have contributed to or stood in the way of achieving these objectives?
- Beyond these objectives, have these instruments led to any other significant changes, both positive and negative?

### **Efficiency**

- What are the costs and benefits (monetary and non-monetary) associated with the application of these legal instruments in the Member States?
- What good practices in terms of their cost-effective implementation can be identified?
- What, if any, specific provisions in these instruments can be identified that make a cost-effective implementation more difficult and hamper the maximisation of the benefits? In particular, what is the (unnecessary/cumulative) regulatory burden identified?
- What are the specific challenges to SMEs, in particular micro enterprises, with respect to the implementation of these instruments?

### **Coherence**

- To what extent have the general principles and requirements set out in these legal instruments contributed to the coherence of consumer protection policy? To what extent have they proved complementary to other Union interventions/initiatives in the area of consumer protection?
- What, if any, specific inconsistencies and unjustified overlaps, obsolete provisions and/or gaps can be identified in relation to the entire EU regulatory framework in this policy area, including the forthcoming rules on online and other distance sales of goods proposed under the DSM Strategy, and other pieces of Union legislation? How do they affect the application/performance of these instruments?
- How do the general EU regulatory framework and the interactions between the different instruments subject to Fitness Check affect their separate and overall impacts?

### **Relevance**

- To what extent are the objectives of these instruments still relevant and valid? Are there any other objectives that should be considered in view of current needs and trends in consumer behaviour and in the markets?

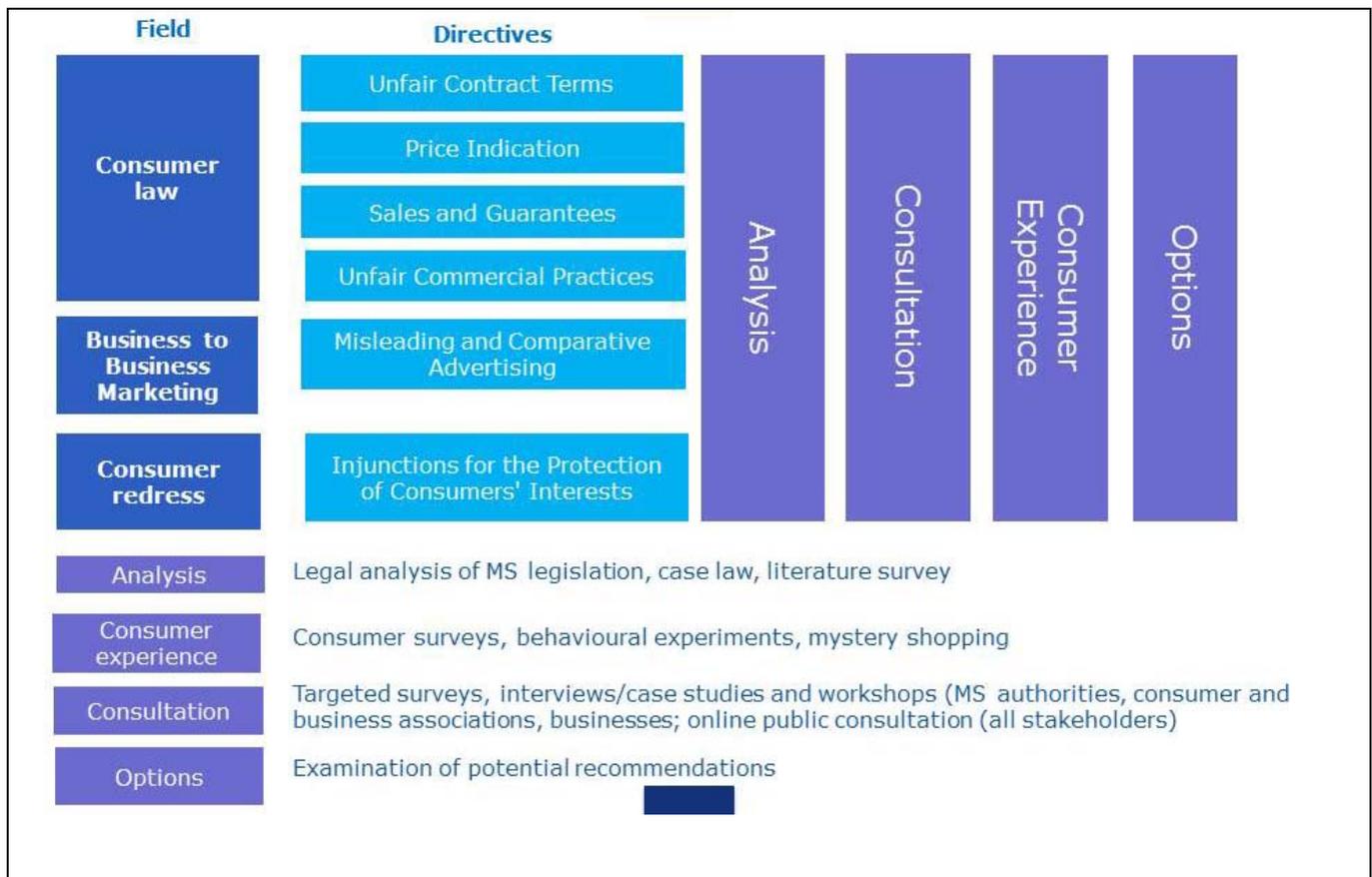
### **EU added value**

- What has been the EU added value of these instruments in the context of national horizontal and sector-specific, both substantive and procedural consumer law, and civil and commercial law?

## **(C.3) Other tasks**

The following diagram illustrates the various evaluation tasks to be undertaken within the Fitness Check<sup>12</sup>.

<sup>12</sup> Behavioural experiments and mystery shopping do not apply to the evaluation of the Injunctions Directive.



## D. Evidence base

### (D.1) Evidence from monitoring

The Directives subject to the Fitness Check include monitoring/ review clauses, except the Misleading and Comparative Advertising Directive. In most cases, these clauses refer to one-off reporting obligations by the Commission (see the reporting obligation table at the end of section A.2).

The contents and main findings of these previous reports are summarised below. These reports will be used for the Fitness Check when appropriate keeping in mind that their findings may well be outdated, in particular due to changes in the national legislation since their publication. In this respect, the findings of the more recent reports are likely to be more pertinent still today.

The 1999 Report on the **Unfair Contract Terms Directive** described the impact of the various activities by the Commission since 1993 - infringement procedures, market studies and information campaigns. It also suggested a number of improvements concerning the scope of the Directive and its limitations, the notion of unfair term and the indicative list of terms in the annex to the Directive. The report also highlighted the repercussions, which the Directive had had for consumers and the business community, the legislation of the Member States, national jurisprudence, the case law of the Court of Justice, and legal doctrine.

The 2006 Communication on the **Price Indication Directive** concluded that there was no evidence that the existing divergences between national laws on price indication raised significant internal market barriers, which would justify a regulatory intervention. It also concluded that the Directive had contributed to an increase in the protection of consumers, although the actual extent of its impact remained unclear – in particular because of the significant scope of regulatory options that result in diverging national implementations. Member States and consumer and business organisations were consulted on the need for further harmonisation of the price indication rules. Subsequently, in 2012, the Commission asked the European Consumer Centres (ECCs) and Member States for up-dated information on the functioning of the Directive. The Commission is currently gathering updated

information on the state of play regarding the Directive that will feed into the Fitness Check.

The 2007 Communication on the **Sales and Guarantees Directive** had a twofold objective. In its first part, it reported on the transposition of the Directive, including whether Member States had gone beyond the minimum harmonisation and used the regulatory options provided in the Directive. In its second part, the Communication examined the case for introducing direct liability of producers into EU legislation. The communication revealed divergences between national laws in this area but did not conclude to what extent these divergences affect the proper functioning of the Internal Market and consumer confidence. It also did not conclude on whether the lack of EU rules on direct producers' liability had a negative effect on consumers' confidence.

The 2012 Communication on the **Misleading and Comparative Advertising Directive** presented the development of EU rules on advertising in business relations, described how this Directive was implemented in Member States and assessed its functioning. Furthermore, it focused on prevalent problems related to marketing scams existing in the market and affecting SMEs, in particular the issue of misleading business directories. Finally, it proposed a revision of the Directive. This was due to the fact that the scale, persistence and financial detriment resulting from certain misleading marketing practices, at cross-border level in particular, had to be addressed in a more targeted and efficient manner at EU level. The need for a revision of the MCAD will be re-examined within the Framework of this Fitness Check.

The 2013 Communication and accompanying Report on the **Unfair Commercial Practices Directive** concluded that it did not seem appropriate to amend the Directive and that it had considerably improved consumer protection in and across the Member States. Instead it called for improved enforcement in the Member States. It was found that the principle-based rules of the Directive had allowed national authorities to adapt to fast-evolving products, services and sales methods, including to new online practices that were developing in parallel with the evolution of advertising techniques. By fully harmonising the national rules the Directive had contributed to the removal of obstacles to cross-border commerce and simplified the regulatory environment. The assessment also looked into the possibility of extending the Directive beyond business-to-consumer (B2C) transactions. It concluded that the vast majority of Member States and stakeholders did not support an extension of the Directive, whether to B2B transactions or to C2B or C2C. The Commission considered that there was no case for such extension at the time.

The first 2008 Report on the **Injunctions Directive** reported on its transposition by Member States, its application and obstacles for the use of the injunction procedure for cross-border infringements. The second 2012 Report provided for more detailed analysis of the use of the injunction procedure, reported on its impact on consumers and explored more in depth the question of its effectiveness. The two above mentioned Commission reports showed that the introduction – thanks to the Injunctions Directive – of the injunction procedure in all EU Member States has brought substantial benefits to the European consumers. Injunctions proved to be a successful tool for policing markets, especially to ensure fair contract terms. The injunction procedure has been largely used for national infringements but had had a much more limited impact on cross-border infringements. The two reports provided for an important analysis of the application of the Directive, responded to some extent to the evaluation questions and concluded that the application of the Directive should be further examined at the occasion of future Commission reports, in order to decide whether there is a need for its amendment.

In addition, the Commission's **2007 Green Paper on the Review of the Consumer Acquis**, which prepared the ground for the subsequent proposal for the Consumer Rights Directive, provided for a broad assessment of the EU consumer law in application at that time and included a consultation document on a range of issues, including under the Unfair Contract Terms Directive and the Sales and Guarantees Directive.

#### (D.2) Previous evaluations and other reports

Beside the Commission reports described previously, the Fitness Check will also benefit from the following reports and external studies:

- [Appraisal of Directive 98/6/EC](#) on consumer protection in the indication of unit prices of products offered to consumers (2004);
- [Study on the application of Directive 2005/29/EC](#) on Unfair Commercial Practices in the EU (2011);
- [Study on the application of Directive 2009/22/EC](#) on injunctions for the protection of consumers' interests (2011);
- [EC Consumer Law Compendium](#): The Consumer Acquis and its transposition in the Member States (2007);
- [Annual Consumer Scoreboards](#);
- [Study on the coverage, functioning and consumer use of comparison tools](#) and third-party verification schemes for such tools (March 2015);
- [Consumer Market Study on Environmental Claims](#) for non-food products (September 2015);
- [Report on the Functioning of the CPC Regulation](#) (2014) and External evaluation of the Consumer Protection Cooperation Regulation (December 2012);
- [Impact Assessment for the Digital Contracts Proposals](#) (December 2015);
- [Legal and Commercial guarantees market study](#) (December 2015).

And from a number of ongoing studies to be published:

- Study on consumer vulnerability across key markets in the European Union (planned to be published in 1Q 2016);
- Study on the impact of marketing through social media, online games and mobile applications on children's behaviour (planned to be published in 1Q 2016);
- Study on consumers' attitudes towards Terms and Conditions (planned to be published in the 1<sup>st</sup> half of 2016);
- Study on sharing economy and collaborative consumption (key deliverables planned for autumn 2016);
- Study on enforcement authorities' powers and national procedural rules in the application of Regulation 2006/2004/EC on Consumer Protection Cooperation (CPC Regulation) (planned in 2016);
- Study for the impact assessment on the review of the CPC Regulation (planned to be published in 2016);
- Study on procedural rules and the ex-officio assessment by the court in the area of consumer law (planned to be published in 2016);
- Consumer Market Study on the functioning of the retail electricity markets for consumers in the EU (planned to be published in 1Q 2016);
- Report on the implementation of the Consumer Rights Directive (due to be delivered in accordance with its Article 30) and the study supporting this report.

In addition, the Fitness Check will use the results of other available consumer evidence<sup>13</sup>, which document real-life consumers' actual decision processes and thus yield insight into their ability to make well-informed decisions. This is a most relevant issue when analysing the application of the concepts of "consumer", "vulnerable consumer" and "average consumer".

(D.3) Evidence from assessing the implementation and application of legislation (complaints, infringement procedures)

To ensure a comprehensive analysis, the Fitness Check should also take into account the complaints regarding the implementation of these instruments by Member States. Most of the consumer complaints received by the Commission in the area of general consumer law concern allegedly unfair terms in consumer contracts, in particular in the area of financial services, as well as misleading marketing practices. The tendencies and main issues raised in such complaints will also be analysed

<sup>13</sup> For example, the European Parliament [Study \(2011\) on Consumer behaviour in a digital environment](#).

within the Fitness Check.

Case law of the Court of Justice on the interpretation of the directives subject to the Fitness Check and case law of the national courts in their application should also be taken into consideration.

**(D.4) Consultation**

Transparency and stakeholder involvement are vital for the success of the Fitness Check. The relevant Stakeholders for this Fitness Check include consumers and industry (SMEs and larger businesses), organisations representing consumers and businesses, Member States (ministries, consumer enforcement authorities and sector-specific regulators) and the network of the European Consumers Centres.

There will be several types of consultations during the Fitness Check:

- Online public consultation of 12 weeks in order to provide an opportunity for the public to participate in the evaluation;
- Targeted consultation of representative organisations (Member states authorities, businesses and consumer and industry organisations) – by surveys, interviews and case studies performed by the Commission's external contractor;
- Targeted online consultation of a representative number of consumers in each Member State performed by the external contractor;
- Case studies with businesses in each Member State, in particular SMEs, performed by the external contractor.

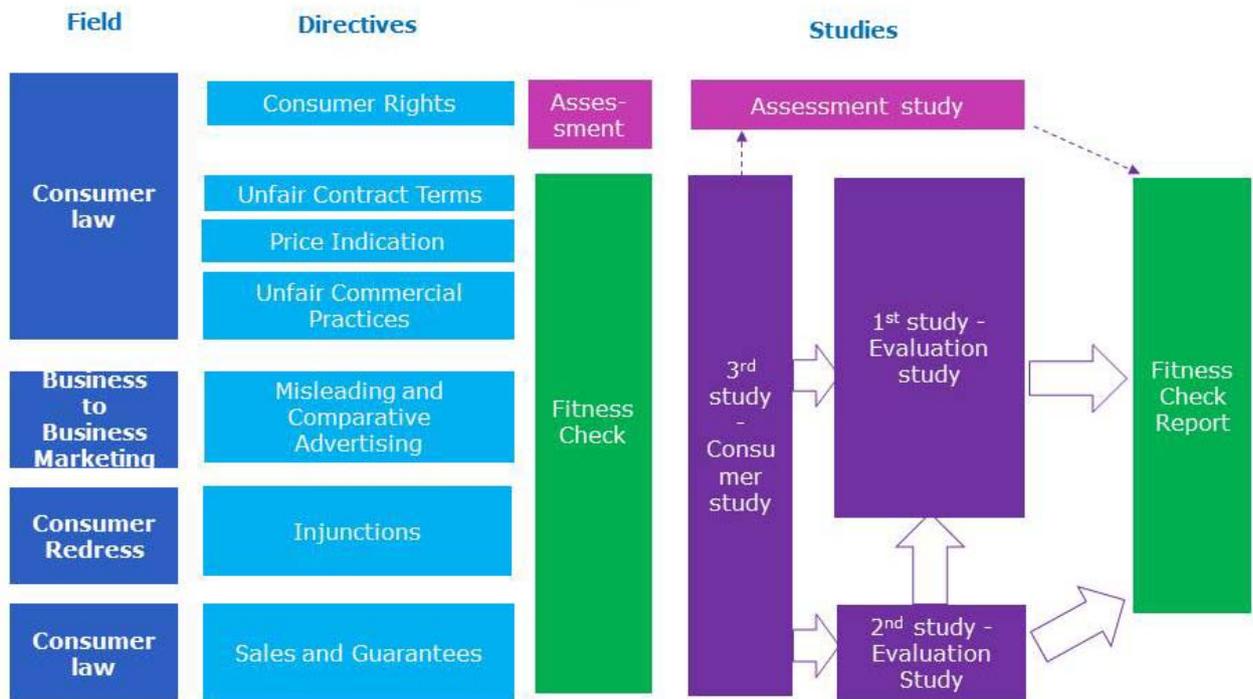
In addition, the Commission will organise 2 events for Member States experts and other stakeholders and will inform and consult them through the existing networks:

<b>Actors</b>	<b>Forum</b>
Ministries	CPN (Consumer Policy Network)
Consumer Enforcement Authorities	CPC (Consumer Protection Cooperation network)
European Consumer Centres	ECC (European Consumer Centres Network)
National and European Consumer organisations	ECCG (European Consumer Consultative Group )
Businesses	Small Business Act Follow Up Meeting (SME stakeholders in regular meetings organised by DG GROW)

Furthermore, using the good experience acquired in the preparation of the recently adopted proposals for a Directive on online and other distance sales of goods and a Directive on the supply of digital content, the Commission will also set up a Stakeholder Consultation Group bringing together the main EU umbrella consumer and business associations as well as selected representatives of the ECCG. This group would meet approximately 3 times to discuss the main chapters of the evaluation.

**(D.5) Further evidence to be gathered**

The following graph illustrates the studies that will be undertaken to specifically support the Fitness Check (and the evaluation of the Consumer Rights Directive) in order to gather the necessary data and complement the information already available or to be drawn from other sources.



Within the 1<sup>st</sup> (main) Evaluation study, the external contractor will be tasked with the evaluation of the Unfair Commercial Practices Directive, the Unfair Contract Terms Directive, the Price Indication Directive, the Misleading and Comparative Advertising Directive and the Injunctions Directive. The Study will also analyse the application of these instruments in conjunction with the relevant sector-specific and other EU consumer protection rules.

A separate 2<sup>nd</sup> Evaluation study will be commissioned to assess specific aspects of the Sales and Guarantees Directive. In view of the recent Commission's proposal for a Directive on online and other distance sales of goods, it is necessary to analyse as a priority the application of the Sales and Guarantees Directive to the goods sold by means other than distance, so that these data could feed into the progress of the legislative procedure on the proposed rules for distance sales of goods and be readily available for a possible alignment of the legal regimes for the face-to-face sales and distance sales of goods. The results of this specific study will also feed into the overall conclusions of the Fitness Check.

The 3<sup>rd</sup> – Consumer study – will be dedicated to specific tasks for gathering consumer evidence – consumer surveys, behavioural experiments and mystery shopping. Its results will be made available before the completion of the other two studies and will feed into their respective conclusions.

#### E. Other relevant information/ remarks