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Study on the application of the Consumer Rights Directive 2011/83/EU

Final Report

Centre for Strategy & Evaluation Services

EPRD Policy & Development

RPA Risk & Policy Analysts

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Justice and Consumers

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Unit E.2 Consumer and marketing law

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Directorate-General for Justice and Home Affairs
Unit E.2 Consumer and marketing law

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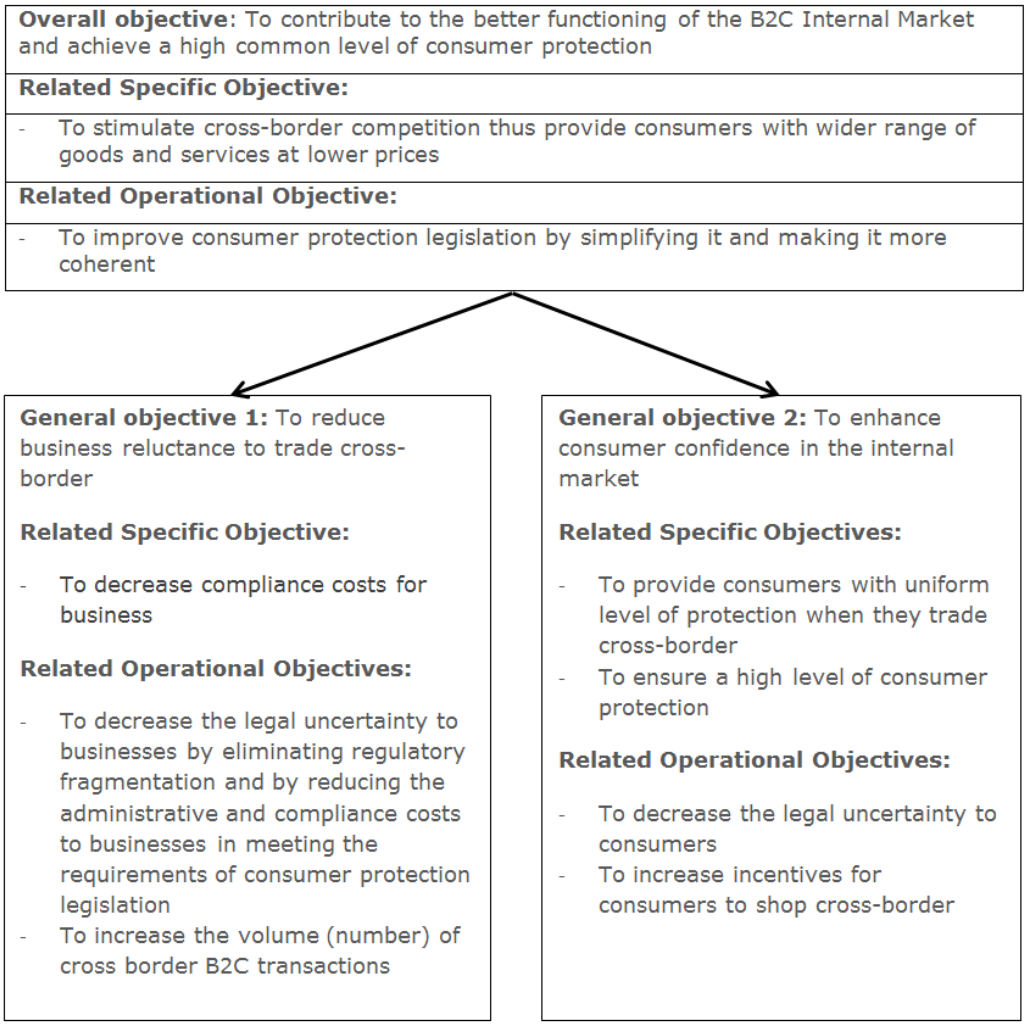
1 Introduction

1.1 Background

Directive 2011/83/EU of 25 October 2011 on consumer rights (hereafter the "Consumer Rights Directive" or CRD) had to be transposed into the national laws of all EU Member States (MS) by 13th December 2013 and was expected to apply from 13th June 2014. It replaced two previous directives, Directive 85/577/EEC to protect consumers in respect of contracts negotiated away from business premises and Directive 97/7/EC on the protection of consumers in respect of distance contracts. It also 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 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 (EC, 2008[1]). Figure 1-1 illustrates the objectives of the intervention.

Figure 1-1: Objective tree – CRD



[1] Source: CEC (2008): Commission Staff Working Document accompanying the proposal for a directive on consumer rights Impact Assessment Report

The CRD has fully harmonised certain consumer protection rules applying to off-premises and distance purchases of goods and services, as well as the provision of digital content, mainly related to pre-contractual information requirements and the right of withdrawal. It has also fully harmonised requirements regarding the conclusion of distance and off-premises contracts, and rules on delivery and the passing of risk applicable to all consumer sales contracts, as well as rules on fees for the use of means of payment and fees for communication by telephone applicable to all type of contracts.

In parallel with this evaluation, the European Commission carried out an open public consultation (OPC) for the Fitness Check of EU consumer and marketing law from 12 May to 12 September. This was conducted from May 2016 to September 2016 and looked into key EU directives in the area of consumer rights and advertising, including:

- Directive 93/13/EEC on unfair terms in consumer contracts (Unfair Contract Terms Directive);
- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (Sales and Guarantees Directive);
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive);
- 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); and
- Directive 2009/22/EC on injunctions for the protection of consumers' interests (Injunctions Directive).

This consultation also covered the CRD. A total of 436 responses were received from stakeholders across the EU, as well as from non-EU countries.

The results of this study will contribute to the overall Fitness Check above. Similarly, responses to the OPC have fed into this study on the evaluation of the CRD implementation.

1.2 Objectives of the study

The overall objective of this study is to assess the *effectiveness, efficiency, coherence, relevance, and EU added value* of the Consumer Rights Directive (Directive 2011/83/EU).

The study establishes the degree to which the objectives of the Directive have been achieved, with respect to a high level of consumer protection and the contribution to the proper functioning of the internal market. This involves an evaluation of the legal and economic impacts that have occurred as a result of the modifications made to the two predecessor Directives and the new rules introduced.

1.2.1 Geographical scope

This study covers the 28 MS of the European Union.

To investigate some aspects in greater detail, e.g. future changes to the CRD, specific problems with implementation, costs and benefits, among others, targeted consultation has also been undertaken on a sample of MS. These were chosen to ensure a high level of representativeness (according to geographical coverage, population (i.e. large vs small countries), as well as the level of consumer protection that existed prior to the

adoption of the Directive) and, following agreement with the Commission, to match with the sample of countries used in other studies conducted for DG JUST.

The final list of countries was agreed with the Commission at the kick-off meeting, and two countries (Bulgaria and Finland) were added to the original proposed list; the final list of 18 MS chosen for targeted consultation are presented in Table 1-1.

Table 1-1: Targeted consultation countries

	Country	Geographical location
1	Bulgaria	Eastern Europe
2	Cyprus	Southern Europe
3	Czech Republic	Eastern Europe
4	Germany	Western Europe
5	Estonia	Baltic region
6	Finland	Northern Europe
7	Greece	Southern Europe
8	France	Western Europe
9	Ireland	Western Europe
10	Italy	Southern Europe
11	Lithuania	Baltic region
12	Netherlands	Western Europe
13	Poland	Eastern Europe
14	Portugal	Southern Europe
15	Romania	Eastern Europe
16	Sweden	Northern Europe
17	Slovakia	Eastern Europe
18	United Kingdom	Western Europe

1.2.2 Legislative scope

This study focuses on Directive 2011/83/EU and the legislative acts that transpose its provisions at the MS level. However, given the overall objective in terms of assessing the legal and economic impacts of the modified and new rules introduced by the Directive, consideration is also given to the legislation that was in force at MS level before the new provisions of the Directive were transposed at the national level.

Finally, in order to assess the criterion of coherence, other related Directives (both horizontal and sectorial) have been included in the analysis.

1.3 Approach and methodology of the study

As noted above, the evaluation has covered all EU MS and focused on the impacts since the Directive's application in 2014 focusing on the different CRD provisions, that is, looking at the different articles of the CRD. Impact on traders has been measured for both large companies and SMEs but also by sector (as the Directive distinguishes between goods, services and digital content).

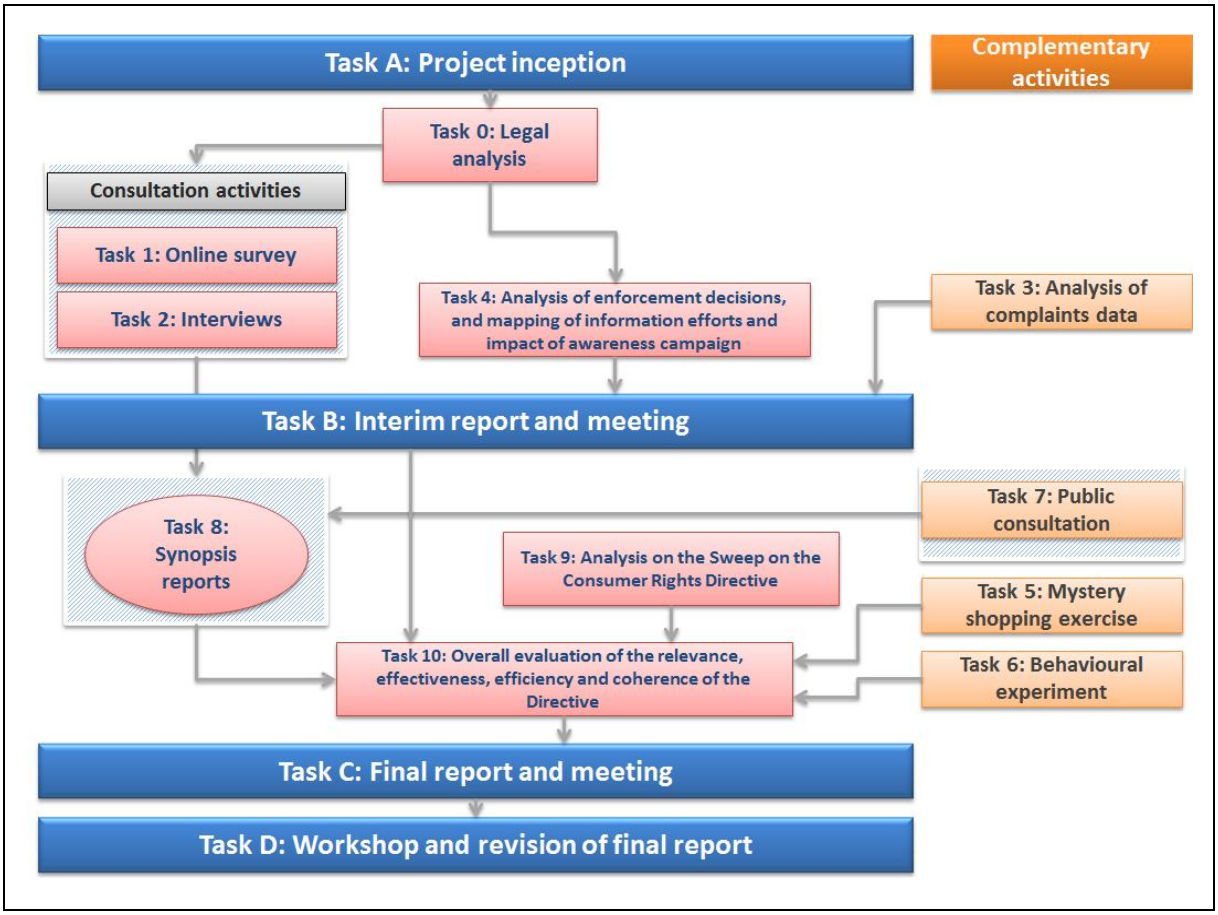
The approach to the study consists of both a literature review based on desk research, including documents on the legal implementation of the Directive in different MS and other relevant studies, as well as stakeholder consultation, by means of bespoke online surveys and a programme of interviews. More information on consultation activities can be found in the synopsis report (see Annex 4).

The main sources of data for this evaluation are listed in Table 1-2.

Table 1-2: Research methods for data collection – Evaluation of the CRD
Online survey - online 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.
Interview programme – interviews with 64 CRD stakeholders (e.g. competent authorities, ECCs, EU trade associations and consumer associations). These were invited to be interviewed when submitting their online survey and interview arrangements were followed at their convenience. Minutes of the interviews have been taken and confidentiality concerns addressed.
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 MS. 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. In particular, the results from the Open Public Consultation (OPC) of the Consumer and Marketing Law Fitness Check and the consumer summit; an evaluation report by the European Economic and Social Committee Report (EESC) on the CRD; a mystery shopping exercise and a behavioural experiment carried out within the Consumer and Marketing Law Fitness Check. An EU-wide sweep was also conducted in 2015, the results of which have fed into the CRD evaluation.

The study approach is depicted in **Figure 1-2**.

Figure 1-2: Study approach



The evidence 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). Most opinions have been summarised and referred to in grey boxes throughout the report, even though they may not have influenced the overall assessment of each judgement criterion.
- 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 RoW)
- 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 and attempting to avoid extreme bias.

The different sources of information are described in the sub-sections below.

1.3.1 Online survey (task 1)

The online survey targeted the following types of stakeholders:

- Individual consumers;
- Individual traders;
- National consumer associations;
- National trade associations;
- National enforcement authorities and responsible ministries (National Competent Authorities); and
- European Consumer Centres (ECCs).

The development of questionnaires was necessary to collect useful information to answer the evaluation questions of this study (*relevance, efficiency, effectiveness, coherence and EU added value).* All the questionnaires had a concluding question asking if the respondent would be willing to be interviewed as part of this study (see Task 2). Different questionnaires were developed for each stakeholder group. These were translated into the different official languages for the individual consumers and traders.

Contacts were derived from both the Commission's database as well as the consultants' own database of contacts from previous studies; additional channels used to contact relevant MS authorities included the Consumer Protection Cooperation (CPC) Network. In a few cases, both roles (of implementation and enforcement) are undertaken by one single organisation.

ECCs were contacted both directly and through the ECC-Network. The rationale for including the ECCs was that they would have a good overview of the problems that consumers face when trading cross-border. Thus, they could provide useful information on the effectiveness of the Directive in terms of increasing consumer trust when shopping elsewhere than in domestic markets.

The MS authorities and ECCs were targeted in all 28 MS. The survey for the other groups of stakeholders focused on a final list of 18 MS to investigate specific aspects in greater depth. The number of people contacted is set out in Table 1-3 (grey shading indicates the 18 countries selected). After enquiries from other MS stakeholders, stakeholders not included in the selected 18 countries were also invited to fill in the survey.

Table 1-3: Numbers contacted per MS and stakeholder type

Member State	MSA* contacts	ECC contacts	Trade association contacts	Consumer association contacts	Total number contacted
Austria	1	1	0	1	3
Belgium	1	1	0	0	2
Bulgaria	1	1	4	8	14
Croatia	1	1	0	0	2
Cyprus	2	1	3	3	9
Czech Republic	2	1	6	5	14
Denmark	1	3	0	0	3
Estonia	3	1	7	5	16
Finland	3	4	8	5	20
France	1	1	7	9	18
Germany	1	1	13	5	20
Greece	1	1	7	37	46
Hungary	2	1	0	0	3
Ireland	1	2	7	2	12
Italy	3	1	8	7	19
Latvia	1	2	0	0	3
Luxembourg	1	1	0	0	1
Lithuania	3	1	6	10	20

Member State	MSA* contacts	ECC contacts	Trade association contacts	Consumer association contacts	Total number contacted
Malta	1	1	0	1	3
Netherlands	3	1	8	2	14
Norway	0	1	0	1	2
Poland	2	2	10	4	18
Portugal	4	3	9	8	24
Romania	1	1	3	1	6
Slovakia	1	1	5	23	30
Slovenia	1	1	0	0	2
Spain	11	1	0	0	12
Sweden	1	2	6	3	12
United Kingdom	5	5	7	1	18
**MSA – Member State authorities*					

In terms of hosting the online questionnaire, it was agreed with the Commission that study would use Survey Monkey (www.surveymonkey.com). Access to the questionnaire for most stakeholders was via RPA's website, with a webpage developed specifically for this purpose: http://rpaltd.co.uk/consumer_rights_directive.

The consultation opened on 7th July 2016. Consultees were emailed and invited to forward the link to the survey on to other stakeholders known to them (e.g. trade associations to their members). Five reminders were sent throughout the summer (see Table 1-4). Owing to the limited number of responses during the summer period and following weekly monitoring of responses, it was agreed with the Commission that the survey deadline should be extended, as per the dates specified below.

Table 1-4: Dates emails were sent

Email	Date sent
Initial email	Either 07/07/16 or 12/07/16
1st reminder	19/07/16
2nd reminder	28/07/16
3rd reminder	10/08/16

Email	Date sent
4th reminder	23/08/16
5th reminder	01/09/16 or 02/09/16
Extension of survey duration	16/09, 21/11 and 16/12

In addition to the emails, the study disseminated the survey via RPA's Twitter account, Facebook page and LinkedIn page, with the Commission re-tweeting (see screenshot below). The Facebook post was promoted with the target audience set to males and females aged 18 to 65+ across the 18 EU counties selected in this study; the post was seen by 6,963 people.

The total number of responses are summarised below. The total numbers are not dissimilar to those from the OPC on the consumer law and marketing acquis.

Table 1-5: Responses received to online consultation

Survey type	Total	Complete	Yes to interview
Consumer	358	255	53
Traders	284	157	24
Consumer associations	61	24	10
Trade association	66	25	15
ECCs	54	28	16
Ministries	26	16	7
Enforcement authorities	36	24	9
Grand totals	**885**	**529**	**134**

Notes: Amongst National Competent Authorities, some are both ministries and enforcement authorities. A complete survey is defined as one where the respondent has completed at least one of the last three or four questions (depending upon the questionnaire.)

In summary:

- There was a total of 255 complete responses from consumers; Greece, Cyprus and the UK were the MS with the largest number of completed responses. Retail outlets and the internet are the preferred methods to buy by consumers and the latter is more prominent for cross-border purchases Doorstep selling was not popular among respondents with nearly 90% stating that they had never purchased goods or services in this way so the impacts from the Directive on this group of buyers may be under-represented (on the other hand, doorstop selling is unlikely to be as popular as other types of selling);
- Representing the interests of consumers, national consumer associations were also canvassed about the implementation of the CRD in their country. There were a total of 24 complete responses to the survey;
- A total of 157 complete responses was received from traders. 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% provide services;
    - 8% provide digital content; and
    - 8% provide free-online services.
- There was a total of 25 complete responses from trade associations of which:
    - 89% represent traders selling goods;
    - 68% represent traders selling services; and
    - 50% represent traders providing digital content both paid and free.
- There were 24 completed responses from enforcement authorities and 16 from ministries; and
- 28 ECCs responded to the survey[2].

The summary statistics are given in Annex 2. The results of the online survey have been used to assist with both the quantitative and qualitative analysis of the CRD evaluation (for all criteria). To maximise the value of responses to the questionnaire, the detailed analysis of responses to individual questions includes responses from non-completed questionnaires.

1.3.2 Stakeholder interviews (Task 2)

The aim of this task was to conduct interviews with relevant stakeholders to gather further insights into the application of the CRD and the associated outcomes and costs.

The majority of interviews were conducted by telephone, with a small number conducted face-to-face. In addition, interviews were also undertaken with EU-wide associations (including trade and consumer associations). Interview minutes were prepared and sent to the stakeholders to check and approve before use.

The evaluation team used a semi-structured interview approach that provided a set of questions to be tackled during the interview while allowing the interviewer to ask follow-

[2] For one country, more than one person answered from the same organisation and in another two responses were received but is uncertain whether they are from the same organisation.

up questions. That approach enabled the evaluation team to obtain the largest possible volume of information during each interview.

The set of questions was tailored to each interviewee based on their response to the online survey. The use of tailored interview guidelines ensured that information provided was specific to each stakeholder group. Any issues requiring clarification from the survey responses were sought, 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?

A total of 64 interviews were held; the following table summarises the interviews conducted by type of stakeholder.

Table 1-6: Number interviews held

Member State	MSA	ECC	Trade Associations	Consumer Associations	Consumers	Traders	Total
Bulgaria	1	1					2
Cyprus				1			1
Czech Republic	1	1	0	0	1		3
Estonia	1						1
Finland	2			1			3
France	1	1	0	0	0		2
Germany	1		1	3			5

Member State	MSA	ECC	Trade Associations	Consumer Associations	Consumers	Traders	Total
Greece	1	1	0	1	0		3
Ireland	0	1	0	0	0		1
Italy	2			1			3
Lithuania	2	1	0				3
Netherlands	1		1			1	3
Poland		1	2				3
Portugal	2	0		1			3
Slovakia	1	1	1	1			4
Sweden	2	1	2	1		1	7
United Kingdom			1	1		1	3
EU level			14				14
Total	**18**	**9**	**22**	**11**	**1**	**3**	**64**

1.3.3 Analysis of complaint data (Task 3)

The aim of this Task is 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 online 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.

1.3.4 Analysis of enforcement decisions, information mapping and Impact of awareness campaign (Task 4)

Task 4 required the contractor to collect and analyse data and information on enforcement procedures relating to the implementation of the CRD since it came into effect in June 2014. In addition, it required data collection and analysis in relation to mapping of current information efforts by national consumer enforcement authorities

and data collection and analysis in relation to assessing the impacts of the European Commission's awareness-raising campaign.

The analysis of enforcement decisions involved a qualitative analysis of the cases identified and a quantitative assessment of the number of legal cases by country and by Article/ sub-Article. In addition to desk research and input from the legal experts on the team, the recently updated European Consumer Law Database[3], undertaken by DLA Piper on behalf of DG JUST, has been used to complement the analysis. It should be emphasised that the mapping of legal cases is non-exhaustive, since whilst some cases may be included in national legal databases, there may be difficulties in accessing judicial and administrative court decisions at every level of the judicial system, including lower level courts, since not all court cases are published, or made easily accessible through databases.

The online survey also asked about pre-enforcement actions (such as enforcement bodies writing initial warning letters to alert traders to possible breaches of the CRD) and non-regulatory mechanisms such as information campaigns conducted by the national authorities and aimed at strengthening compliance with the CRD. This has been the main source to map the current information efforts in addition to the interview programme.

The Consumer Rights Awareness Campaign organised by the European Commission, which ran between March 2014 and March 2016, aimed to increase general knowledge amongst traders and consumers about EU-wide consumer rights, stemming from the transposition of EU directives into national law. There was a particular focus on the CRD but other Directives were also covered, including the UCPD, the Unfair Contract Terms Directive and the Consumer Sales and Guarantees Directive[4].

EU consumer rights awareness campaign in 14 EU Member States

The campaign was intended to increase awareness and understanding of consumer rights with a call to action to find out more from EUROPA+.

The campaign focused on consumers and traders identified as those in greatest need:

- Consumers aged 15-24 and those aged 60+; and
- Small companies, particularly micro-SMEs.

There were **four main goals**:

1. Increase general awareness among consumers and traders about the existence of EU-wide consumer rights;
2. Transmit information about specific rights and obligations that they have, what these mean in practice and how to exercise them;
3. Raise awareness of the provision of EU legal instruments and Directives (in particular the Directive on Consumer Rights (CRD); and
4. Direct target groups to the youreurope.eu section on EUROPA.

The overarching message of the campaign was: "**the EU empowers consumers**", with detailed **messages** tailored to the two target groups, as depicted below:

[3] The update was commissioned in 2016 but covers 10 Directives and not just the CRD.

[4] See European Commission webpage on Consumer Rights Awareness Campaign, available at: http://ec.europa.eu/justice/newsroom/consumer-marketing/events/140317_en.htm

Consumers	Traders
You have the right to return goods purchased online within 14 days (Art. 9 CRD)	Respect your consumers' rights, your customers will come back for more
You have the right to truthful advertising	
You have the right to have defective goods repaired or replaced for free	
You have the right to contracts without unfair clauses	
You have the right to free assistance by European Consumer Centres	

An evaluation of the EC awareness campaign was conducted in 2016[5]. The evaluation conducted an in-depth analysis of monitoring data. This was supplemented with additional data and evidence gathered through a representative omnibus survey, interviews, a case study focussing on the implementation of the campaign in four target countries and a benchmarking report which compared the campaign with campaigns sharing similar characteristics. The evaluation findings have then been triangulated taking into account the primary data collected from the surveys and interviews as to the reasons for explaining the effectiveness of the CRD and its provisions (with particular regard to the level of awareness of consumers and traders).

1.3.5 The mystery shopping exercise (Task 5)

A mystery shopping exercise is generally aimed at replicating as closely as possible real consumers' experiences. The mystery shopping exercise conducted by GfK aimed to assess the level of compliance of traders with specific rules of the CRD. It covered eight MS, namely: Bulgaria, Finland, France, Germany, Greece, Netherlands, Poland, and Portugal.

The study focused on real consumers' experiences when purchasing online goods or digital content, in particular the purchase of four different items was tested: a computer mouse, a memory stick, security software, and music downloads. The specific provisions of the CRD covered under the exercise included:

- Pre-contractual information requirements;
- Formal requirements for distance contract (in particular Art. 8(2) and 8(3));
- Ban on extra fees for the use of means of payment;
- Ban to use pre-ticked boxes to infer the consumer's consent with regard to additional payments; and
- Consumers' Right of Withdrawal (RoW).

The findings of the mystery shopping study have been included in the section on effectiveness and factors affecting this, such as lack of compliance.

1.3.6 The behavioural experiment (Task 6)

A behavioural experiment was also commissioned in 2016. Experiment 4 focused on the CRD in relation to pre-contractual information and the RoW.

[5] Coffey & Deloitte (2016): Evaluation of the 2014-16 consumer rights awareness campaign in 14 EU Member States Final report, November 2016

Behavioural Experiment 4 on the CRD

Behavioural experiments are a method that can be used in the policy and market analysis. During such an experiment, actual behaviour of a consumer is observed in simplified settings that mirror the key features of the market.

In particular, Experiment 4 aimed to answer the following research questions:

- Are the information units in the CRD comprehensible and relevant to consumers?
- Do consumers use this information?
- Finally, do consumers consider (some) information requirements in the UCPD as redundant as they are also provided under the CRD?

The behavioural experiment on the CRD included both goods and digital content, in particular smartphones and streaming content. The results have been included in the assessment of effectiveness but also in the future recommendations as it included aspects such as the use of icons for pre-contractual information.

1.3.7 Open public consultation for the Fitness Check of EU consumer and marketing law (Task 7)

In addition to the 436 survey responses to the OPC, 56 position papers were provided to and subsequently reviewed by the study team. Each paper was assessed for information relating to the coherence, effectiveness, efficiency, added value and relevance of the CRD, as well as for opinions and comments on the individual provisions (including the regulatory choices). Several papers presented general opinions on the Fitness Check of EU Consumer and Marketing legislation, whilst a few included full responses to each question posed by the open public consultation. Although some papers only included comments on the six directives within the Fitness Check[6], the majority incorporated opinions on the CRD as well. In order to conduct the analysis, we used NVivo software.

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 that were received in English, or for which there was an English translation, 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:

- Consumers (too general)
- Directive (too general)
- Law (too general)
- Rules (too general)
- Rights (too general)
- Commercial (outside scope – majority of comments relate to UCPD)

[6] These include the Unfair Contract Terms Directive 93/13/EEC; Consumer Sales and Guarantees Directive 1999/44/EC; Unfair Commercial Practices Directive 2005/29/EC; Price Indication Directive 98/6/EC; Misleading and Comparative Advertising Directive 2006/114/EC; and Injunctions Directive 2009/22/EC (see Review of EU Consumer law (Fitness Check), accessed at: http://ec.europa.eu/consumers/consumer_rights/review/index_en.htm on 28th November 2016.

- Regulation (too general)
- European (too general)
- Marketing (outside scope)
- Advertising (outside scope)
- Services (outside scope – majority of comments related to Distance marketing of Financial Service Directive)
- Unfair (outside scope – majority of comments relate to UCPD)
- Terms (outside scope – majority of comments relate to Unfair Contract Terms)
- Products (too general)
- Goods (too general)
- Customer (too general)
- Legislation (too general)
- Regulatory (too general)
- New (too general)

Using the 'word tree' function of NVivo, it was then possible to explore the use of these most frequently used words in context, and furthermore to explore sub trees which identify particular issues

The information from the OPC has supported the evaluation of the CRD with particular regard to aspects of coherence but also to gain a further understanding of the main issues faced by stakeholders by analysing qualitatively their position papers.

1.3.8 Analysis of the sweep (Task 9)

2015 CRD Sweep

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.

The latest sweep conducted in 2015 focused on the quality of pre-contractual information available to consumers online before making a purchase, as regulated by the CRD. EU MS 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.

1.3.9 Other sources of information

Other sources of information include the information collected during the European Consumer Summit held on the 17 October 2016 and the report issued by the European Economic and Social Committee (EESC) on the CRD. The finding of this evaluation has been particularly useful for the criteria of effectiveness and relevance and in order to triangulate the findings of this study.

European Economic and Social Committee (EESC) evaluation of the CRD

During 2016, the EESC evaluated the perception and experience of EU civil society organisations (CSO) in the implementation of the Consumer Rights Directive (2011/83/EU). In particular, it gathered information and proposed solutions based on the result of a questionnaire, five fact-finding missions (Riga, Rome, Warsaw, Madrid and Brussels) and an Expert Hearing. Secondary data collection drew on the EESC's past work on the subject, such as EESC opinions, reports of conferences, missions and public hearings.

The EESC carried out an evaluation analysis based on:

- Awareness and perception
- Implementation
- Scope of the Directive
- Impact of the Directive

In particular:

- The questionnaire asked civil society organisations about how they perceive and experience the implementation of the Consumer Rights Directive. The questionnaire 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 on the questionnaire was open during the first half of September 2016. The total number of civil society organisations that replied to the questionnaire is 54.
- The fact-finding missions included semi-structured interviews with local civil society organisations, largely following the structure of the questionnaire.
- The expert hearing was organised at the EESC in Brussels on 14 September. Participants included the members of the EESC study group and experts representing the organisations of employers, employees and various interests (including consumer organisations), as well as national regulators and academia.

The 2016 Consumer Market Scoreboard has also been used to support some of the analysis in this evaluation.

2016 Consumer Market Scoreboard

The Consumer Scoreboards monitor how the single market is performing for EU consumers and signal potential problems. Published since 2008, they aim to ensure better monitoring of consumer outcomes and provide evidence to inform policy.

Scoreboard findings are used by national policymakers and stakeholders to assess the impact of their activities over time and benchmark the situation against other MS. Scoreboards also serve as a key reference for evaluations and impact assessments for policy development and orientations, including in the context of the European Semester.

There are two types of Scoreboards, published in alternate years:

- The Consumer Conditions Scoreboard monitors national conditions for consumers in 3 dimensions (knowledge and trust, compliance and enforcement, complaints and dispute resolution) and examines progress in the integration of the EU retail market based on the level of business-to-consumer cross-border transactions and the development of e-commerce.
- The Consumer Markets Scoreboard surveys consumers with recent purchasing experiences to track the performance of over 40 consumer markets on key indicators such as trust that sellers respect consumer protection rules, comparability of offers, the choice available in the market, the extent to which consumer expectations are met, and detriment caused by problems that consumers encounter. Other relevant indicators are also monitored and analysed, such as switching and prices.

1.4 Limitations of the findings

Although the statistics suggest an increase in online shopping over the last few years, it is too early to establish causality between this and the CRD. In other words, it is difficult to establish with accuracy the impacts that the CRD might have had on the behaviour of market actors since the Directive was only required to be transposed by 13 December 2013 and became applicable in all EU Member States from 13 June 2014. Moreover, such an indicator is only a proxy for the impact of the CRD, rather than a direct impact, since there are methodological difficulties in establishing attribution. The increase in sales may be due to other factors such as the economic recovery since the 2008 economic crisis and not just linked to a perceived increase in consumer protection and the removal of differences in consumer legislation from a full harmonisation Directive. It will in future continue to be difficult to establish direct attribution, given that extraneous factors influence consumer shopping volumes and trends, although perception-based surveys, supported by qualitative interviews, can help to overcome such methodological challenges.

Despite the survey and interview programme containing questions on the costs and the benefits, it has been difficult to gather quantitative data on the impacts of the CRD (and it appears that these data are not available to stakeholders consulted). Available data on the CRD benefits, costs and impacts have been found to be sparse. The analysis is thus more qualitative in nature and is mainly limited to highlighting the issues with implementation and interpretation of key provisions, including the barriers to an effective application, rather than on benefits and impacts on general objectives.

Key limitations of the study

Stakeholders 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 (and given in Section 4).

The literature review has been sparse on the costs and benefits due to the short time since the Directive has been transposed (in addition MS have only got a requirement to report on the regulatory choices under Art. 29).

The only source of estimates is the Impact assessment (IA). The earlier IA estimated the administrative burden to distance sellers according to the number of MS they traded in and the different regulatory requirements. This however did not distinguish between the different MS and an overhead figure applied to the total number of companies engaged in cross-border selling.

Another limitation to the study is that 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. This may, in turn, provide more weight to their arguments versus others' that remained indifferent so their views may be over-represented in the study findings.

In order to remedy the above limitations with collecting necessary data, data triangulation has been carried out across the long list of different sources and relevant studies (as reviewed above). The team also took part in the Consumer Summit, presenting the study to stakeholders, in order to gain their buy-in and publicise the

study. Most of the findings across the relevant literature seem to coincide with very few exceptions and these exceptions are presented in the remainder of this report. It is not believed that these hinder the importance of the study findings.

Notwithstanding these limitations, the evaluation is based on a review of best available qualitative evidence of causality between actions and effected changes. It has made extensive use of stakeholders' and experts' view on the functioning of the different provisions of the Directives and has been able to flag some of the more significant impacts on traders and consumers to date with relevance to specific provisions.

1.5 Structure of this report

The remainder of this Report has been organised as follows:

- Section 2: The CRD and its implementation in MS;
- Section 3: Evaluation of CRD and its Effectiveness;
- Section 4: Evaluation of CRD and its Efficiency;
- Section 5: Evaluation of CRD and its Coherence;
- Section 6: Evaluation of CRD and its Relevance;
- Section 7: Evaluation of CRD and its EU Added Value; and
- Section 8: Summary of findings and recommendations

2 The CRD and its implementation in Member States

2.1 Overview of Section

The EC's 2008 Impact Assessment supporting the proposal of the Directive noted that *consumers were not reaping the benefits of a fully integrated retail market with increased choice and lower prices*[7] (CEC, 2008). The main reason 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.

Directive 2011/83 aims to support the development of the business-to-consumer (B2C) internal market, whilst providing a high level of consumer protection by addressing legal fragmentation and the related uneven level of consumer protection across the EU.

This Section presents the summary of the legal mapping of the different provisions of the Directive. In order to identify which provisions in the Directive are new, a comparative assessment was carried out between the legal text of the CRD (2011/83/EC) and its predecessors, i.e. Directive 97/7/EC on the protection of consumers in respect of distance contracts and Directive 85/577/EEC in respect of contracts negotiated away from business premises. The Commission's Roadmap to the Evaluation has also been used to focus on the key provisions of the CRD[8].

In addition, whilst most Articles within the CRD are implemented on the basis of a maximum harmonisation approach, there are a number of regulatory choices available to the MS on its implementation. Differences in regulatory choices as well as in enforcement arrangements and level of penalties across MS could compromise achieving the objectives of reduced fragmentation, thus affecting the CRD's effectiveness overall. This section presents a summary of the implementation of regulatory choices in the different MS. It also provides selected examples of national enforcement approaches and civil, administrative and criminal penalty regimes.

The following information sources have been used in assessing legal implementation and key changes:

- MS' legal information portals;
- Information published on the website of DG Justice;
- Interviews with key national stakeholders to verify legal mapping information;
- Legal journals focusing on national legal implementation of the CRD; and
- Studies such as the Consumer Market Study on Legal and Commercial Guarantees.

The analysis of legal aspects relating to enforcement has made use of the following additional sources:

- Eur-Lex; and
- The updated EU Consumer Law Database[9] gathered by the EC contractor who is currently building the Consumer law section of the e-Justice Portal. In addition, information on case-law related to the CRD has been gathered by the study team.

[7] CEC (2008): Commission Staff Working Document accompanying the proposal for a directive on consumer rights Impact Assessment Report, Health and Consumer Directorate-General, 2008.

[8] Available at http://ec.europa.eu/consumers/documents/roadmap_of_the_crd_evaluation.pdf

[9] DLA Piper was tasked in autumn 2016 with updating the EU Consumer Law Compendium of April 2007 (http://ec.europa.eu/consumers/archive/cons_int/safe_shop/acquis/comp_analysis_en.pdf) .

Interviews and email-based communication with national level stakeholders have also helped in the clarification of certain aspects of implementation at MS level.

This Section is focused on providing factual information with regard to implementation and the situation pre- and post-CRD. Table 2-1 sets out the different legislative pieces that implement the CRD at MS level. The full country fiches are provided in Annex 1. It is important to note that in some cases the CRD has been implemented by amending existing legislation. The dates of implementation in the table are then given in reference to such amendments.

It should be noted that the evaluation questions are not addressed in this section but are covered in subsequent sections.

Table 2-1: Implementing legislation by MS

Country	Main implementing legislation	Date of implementation
Austria (AT)	Verbraucherrechte-Richtlinie-Umsetzungsgesetz (the "Austrian Act")	July 2014
Belgium (BE)	Book VI of the Economic Law Code on Market Practices and Consumer Protection (the "Book VI Act")	December 2013
Bulgaria (BG)	Consumer Protection Act of 25 July 2014 amending Consumer Protection Act of 10 June 2006	July 2014
Croatia (HR)	Consumer Protection Act (CPA) NN 41/14 = Zakon o zaštiti potrošača (ZZP)	March 2014
Cyprus (CY)	The 2013 Law on Consumer Rights, Law 133(I)/2013	November 2013
Czech Republic (CZ)	Act No. 89/2012 Coll. (i.e. Civil Code)	January 2014
Denmark (DK)	Danish Consumer Rights Act (Lov om forbrugeraftaler)	December 2013
Estonia (EE)	Estonian Law of Obligations Act (the 'ELOA'), and the Consumer Protection Act	January 2014
Finland (FI)	Finnish Consumer Protection Act	June 2014
France (FR)	French Law on Consumer Protection (Law no. 2014-344)	February 2014
Germany (DE)	Act Implementing the Consumer Rights Directive (CRD) and amending the law regulating the property agency (Gesetz zur Umsetzung der Verbraucherrechterichtlinie und zur Änderung des Gesetzes zur Regelung der Wohnungsvermittlung)	June 2013
Greece (EL)	Joint Ministerial Decision No Z1-891/2013 amending Law No.2251/1994 on consumer protection	June 2014
Hungary (HU)	Government Decree 45/2014 of 26 February 2014 laying down detailed rules for contracts between consumers and undertakings	February 2014
Ireland (IE)	European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013	December 2013

Country	Main implementing legislation	Date of implementation
	(S.I. No. 484 of 2013) (the "Irish Regulations")	
Italy (IT)	Legislative Decree No. 21/2014	February 2014
Latvia (LV)	Consumer Rights Protection Law ("CRPL")	April 2014
Lithuania (LT)	Lithuanian Law on Consumer Protection (10 November 1994, No. I-657)	June 2014
Luxembourg (LU)	The Law of 2 April 2014 (amending the 2011 Luxembourg Consumer Code)	April 2014
Malta (MT)	Consumer Rights Regulations 2013	June 2014
The Netherlands (NL)	Dutch Civil Code (as amended)	June 2014
Poland (PL)	Act dated 30 May 2014 on Consumer Rights	May 2014
Portugal (PT)	Law Decree n. 24/2014 (Decreto-Lei n. 24/2014, de 14 de fevereiro)	February 2014
Romania (RO)	Government Emergency Order No 34/2014 on consumer rights under contracts concluded with traders, and amending certain legislative acts	2014
Slovakia (SK)	Act No. 102/2014 Coll. "On consumer protection in the sale of goods or provision of services under remote agreements or agreements executed outside business premises of the Seller"	June 2014
Slovenia (SI)	Consumer Protection Act (Official Gazette of RS, No. 98/2004, 126/2007, 86/2009, 78/2011, 38/2014)	May 2014
Spain (ES)	Law 3/2014 of 27 March 2014 amending Royal Legislative Decree 1/2007 of 16 November 2007	March 2014
Sweden (SE)	Swedish Consumer Sales Act (SFS 2014:11)	January 2014
The UK (UK)	Consumer Rights Act 2015 ("CRA")	October 2015

2.2 The key provisions from the Directive

The key provisions of the CRD relate to the following:

a. The pre-contractual information requirements for on-premises contracts laid down by Article 5(1) in conjunction with the additional pre-contractual information requirements introduced by the Member States in line with Article 5(4);

b. The pre-contractual information requirements for distance and off-premises contracts (Article 6(1));

c. The specific provisions on digital content, such as (Art. 5(1)(g) and (h), Art. 6(1)(r) and (s), 8(7)(b), Art. 14(4)(b) and Art. 16(m));

d. The formal requirements for distance and off-premises contracts (Articles 7 and 8);

e. The fully harmonised period for the right of withdrawal for distance and off-premises contracts (Article 9);
f. The exceptions from the right of withdrawal (Article 16);
g. The new rules on delivery and passing of risk (Articles 18 and 20);
h. The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Article 21);
i. The requirement to eliminate unjustified surcharges for the use of means of payments (Article 19). Importantly, this provision (along with Articles 8(2) and 22) applies also to the passenger transport services sector;
j. The provision banning pre-ticked boxes (Article 22). This Article foresees the obligation for the trader to seek the express consent of the consumer to any extra payment in addition to the remuneration agreed upon for the trader's main contractual obligation; and
k. The provision on inertia selling (Article 27) – the consumer is not obliged to pay for any unsolicited supply of goods, water, gas, electricity, district heating.

A summary of the provisions of the CRD and the pre-existing regulatory situation in the EU is given in Table 2-2 with reference to the articles.

Table 2-2: Summary of provisions in the CRD

Key provision	Summary of current provisions in the CRD	Comparison with previous situation prior to the CRD
Pre-contractual information requirements for contracts (Arts. 5(1)) and Art.6(1))	Articles 5(1) sets out the pre-contractual information requirements for on-premises contracts leaving MS free to maintain or adopt additional requirements, while art. 6(1) fully harmonises pre-contractual information requirements for distance and off-premises contracts. Under Article 6(6) of the CRD, if a trader fails to inform consumers about any additional applicable charges, they do not have to pay the additional charge (Article 6(6))	Pre-contractual information requirements were not harmonised by the distance and door-to-door selling directives (Directive 97/7/EC and Directive 85/577/EEC) although there was a requirement that the trader inform the consumer about their right to return goods to the supplier within a period of not less than seven days of receipt
Better consumer protection in relation to digital content (Art. 6(1)(r) and (s); Art. 5(1)(g) and (h); art. 8(7)(b),Art. 14(4)(b), Art. 16(i) and (m))	Articles 5 and 6 also contain pre-contractual information requirements on digital content (regarding functionality, including technical protection measures, and interoperability). Consumers have a RoW from digital content contracts unless the performance has begun with prior express consent and acknowledgment that he/she loses his RoW (Article 16(m)). In case of digital content supplied on a tangible medium, the consumer loses his RoW if the software, audio or video recording has been unsealed (16(i)). Art. 14(4)(b) provides for the consumer's right to use digital content for free if he/she has not been informed in advance and given prior express consent in accordance with Art. 8(7)(b) and Art. 16(m)	There was no legislation addressing the right of withdrawal and information about the characteristics of digital content
Formal requirements for off-premises (Art. 7) and distance contracts (Art. 8)	Traders are obliged to provide the consumer with a copy of the signed contract or confirmation on paper or durable medium. For distance contracts, traders need to make the consumer aware of an obligation to pay prior to the consumer placing the order (Article 8(2)). Article 8(3) states that "Trading websites shall indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply and which means of payment are accepted"	There were no similar provisions under earlier EU legislation. Under Directive 97/7/EC on distance contracts, there were no provisions that specifically dealt with delivery restrictions. Only delivery costs and arrangements for delivery had to be specified under prior information requirements
Right of withdrawal (RoW) (Article 9)	The period during which consumers can withdraw from distance and off-premises contracts is fully harmonised EU-wide to 14 calendar days. The consumer is not required to give any reason for exercising his or her right of withdrawal within this 14-day period. The burden of proof of having withdrawn within the common 14 day time limit is on the consumer. Under Article 10, if the trader fails to provide information on the RoW, this shall expire 12 months from the end of the initial withdrawal period	Under Directive 85/577/EEC, the right of cancellation was a minimum of 7 days. Directive 97/7/EC also included similar rules (Art. 6 - "… the consumer shall have a period of at least seven working days…without penalty and without giving any reason"). The consequences of failure to inform consumers about this were set by case law ("the Heininger case"): if the consumer was not informed, this right would be unlimited

Key provision	Summary of current provisions in the CRD	Comparison with previous situation prior to the CRD
Introduction of an EU-wide model withdrawal form (Art. 6 and 11)	For both distance and off-premises contracts, consumers have to be provided with a model withdrawal form (Art. 6 (h)). An exemplar is set out in an annex to the CRD, which consumers can (but are not obliged to) use, in line with Art. 11	Prior to the CRD, there was no obligation to provide a withdrawal form. There were also different practices as to whether written confirmation was required for the consumer to exercise their RoW and whether the RoW could be exercised orally or had to be in writing
Obligations of the trader in the event of withdrawal (Art 13)	Traders must, within 14 days of consumer exercising the RoW, reimburse all payments received from consumers including the cost of delivery (Art. 13(1)). However, the trader can withhold reimbursement until the moment he receives the goods back or when the consumer has supplied evidence of having sent the goods back, whichever is the earliest (Art.13 (3))	The effects from cancellation were governed by national laws, particularly regarding the reimbursement of payments and the return of goods (no harmonisation). Prior to the CRD, there was no obligation on consumers to return used goods within the cancellation period, and no provision for the trader to account for diminished value
Delivery (Art. 18)	On the timing of the delivery of the goods, unless the trader and consumer have agreed otherwise, the trader must deliver the goods by transferring physical possession or control of them to the consumer without undue delay, and not later than 30 days from the conclusion of the contract (Article 18(1))	Previously, goods needed to be delivered within the time frame agreed with the seller. If no time frame was agreed, the seller had 30 days from the day after they received the order to deliver the goods
Passing on risk (Art. 20).	The risk passes to the consumer only when the consumer acquires physical possession of the goods, unless the consumer has commissioned a carrier which was not offered by the trader (Article 20)	There were no rules relating to the passing of risk in the two predecessor laws. However, some MS had such provisions in national consumer law
Fees for the use of means of payment (Article 19)	Art 19. ensures that traders are not able to charge consumers more for paying by credit card (or other means) than what it costs the trader to offer such means of payment. This provision also applies to the transport services sector	Under Council Directive 85/577/EEC and Directive 97/7/EC, there were no Articles concerning the means of payment and prohibiting excessive charges. However, under the Payment Services Directive 2007/64/EC, which has recently been updated, EU MS may voluntarily prohibit debit / credit card charges altogether
Communication by telephone (Article 21)	This article ensures that consumers are not charged above the basic rate when contacting the trader by phone once the contract has been concluded	There was no equivalent EU legislation
Additional payments (Article 22)	This article provides that optional extras (requiring additional payment) which are often offered to consumers during the online purchase process can no longer be offered through "default options" or so-called 'pre-ticked' boxes. This also applies to passenger transport services (such as for travel insurance or car rental)	There was no equivalent in Directive 97/7/EC on distance contracts but air transport specific legislation did include a similar prohibition (Article 23(1) of Regulation 1008/2008)
Inertia selling (Article 27)	*The consumer shall be exempted from the obligation to provide any consideration in cases of unsolicited supply of goods, water, gas, electricity, district heating or digital content or unsolicited provision of services*	There was no legislation exempting consumers from providing consideration in cases of inertia selling at European level prior to the CRD; although Directive 97/7/EC (Art. 9) encouraged MS to take the measures necessary to avoid it

As it can be seen from Table 2-2, the new rules have, overall, increased the level of protection available to consumers on a wider range of contracts, with the new provisions covering digital content. Consumers are entitled to receive more information when conducting their shopping than previously, thus reducing information asymmetries. The period for exercising the RoW has also increased and the obligations and effects of withdrawal have been streamlined with reference to earlier EU legislation.

It needs to be said that, in addition to the 35 articles of the CRD, the Directive contains a total of 67 recitals. The key provisions of the Directive need to be read in parallel with the Directive's recitals which are complementary. Whilst some recitals set out the wider policy and legislative backdrop, others provide more detailed explanation as to the application of the CRD articles. Table 2-3 sets out the recitals and articles where provisions are referenced and cross-referenced.

Table 2-3: Key provisions - reference and cross-reference in the CRD

Key provision	Recitals	Relevant articles
Definitions	17, 19, 20, 21, 22, 23, 24, 25, 26, 60	Art. 2
Pre-contractual information requirements	9, 12, 34, 35, 36, 38	Art. 5(1), Art. 6(1), Art. 6(6) and Art. 10
Better consumer protection in relation to digital content	19	Art. 6(1)(r) and (s); Art. 5(1)(g) and (h), Art. 8(7)(b), Art. 14(4)(b), Art. 16(i) and (m)
Formal requirements for off-premises (and distance contracts	39	Art. 7 and Art. 8
Right of withdrawal (RoW)	19, 37, 40	Art. 9 and Art. 16 (dealing with exemptions)
Exercising the right of withdrawal (RoW)	44, 46, 47, 48, 49 and 50.	Art. 11, Art. 12, Art. 13 and Art. 14
Introduction of an EU-wide model withdrawal form	45	Art. 6 and 11
Delivery	51, 52	Art. 18
Passing on risk	53	Art. 20
Fees for the use of means of payment	27, 54	Art. 19
Communication by telephone	-	Art. 21
Additional payments	38, 39	Art. 22
Inertia selling	60	Article 27
Information about payment means	27, 38	Article 8.3

In order to help stakeholders to interpret the different provisions outlined in the Articles of the CRD, the Commission published a guidance document[10] concerning the implementation of the Directive in 2014. As with any non-binding guidance document, the guidance is not a formal interpretation of EU law, but provides practical illustrations of ways in which the law might be implemented. The survey did not ask directly for views on the usefulness and quality of the interpretative guidance. However, positive feedback has been obtained through the interviews on the perceived usefulness and quality of guidance. The Guidance includes references to the different recitals of the Directive.

A more detailed analysis of the implementation of the above provisions across MS, with detailed country fiches provided in Annex 1, has revealed the following:

- Prior to the CRD, in almost all MS consumers were not protected by legislation specifically concerning digital content. The only exception is SK, where digital products to be delivered in a tangible medium[11] (e.g. a DVD, a digital download on a memory stick) were mentioned in former legislation in relation to withdrawal rights;
- The level of pre-contractual information which traders are required to provide to consumers under Art. 5 and Art. 6 has increased in all MS as a result of implementing the CRD. Moreover, for traders who fail to provide pre-contractual information to consumers on RoW for distance and off-premises contracts (under Art. 10), the withdrawal period has been increased from 3 months to 12 months from the end of the initial withdrawal period in 26 MS. However, in two countries, BE and DE, failure to provide information about the RoW has been reduced from an unlimited time period to one year;
- The duration of the withdrawal period for distance and off-premises (Art. 9) has increased in several MS, where previously the duration of the RoW was between 7 and 10 days (AT, BG, ES, FR, HR, IE, LT, LU, NL[12], SK[13], UK), 8 days (HU) and 10 days (IT, RO and PL). In a number of other MS, there was already a 14-day withdrawal period in national legislation for both distance selling and off-premises contracts (BE, CY, CZ, DK, EE, EL, FI, LV, PT, SE and SI) before the entry into force of the CRD. This was also the case in CY, where it was possible for the trader and the consumer to mutually agree on a different time period. Only two MS had a higher level of consumer protection prior to implementing the CRD was the DE, where the period for the RoW was previously 30 days and MT (15 days);
- Prior to the CRD, traders were able to prepare their own model declaration of withdrawal form as part of the contract rather than being obliged to use a standardised model. Several MS had already formal notification procedures in national legislation regarding exercising the RoW prior to the CRD (DE, DK, EL and CY) although the use of withdrawal forms was optional. In a number of MS, such as PL, LT and the UK, among others, all traders were able to prepare their own model

[10] DG Justice Guidance Document concerning 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 - DG Justice (2014)

[11] This is in contrast to the CRD, which anticipates the provision of digital content either from a tangible medium or through other non-tangible means, such as downloading and streaming.

[12] For **distance sales,** the previous cooling-off period was 7 working days. However, Dutch legislation previously provided that the cooling-off period for **off-premises** sales (with a minimum value of EUR 34) was 8 calendar days after receipt of the product.

[13] It should be noted that, for SK, the introduction of a 14 days' withdrawal period does not always present an advantage in terms of a time gain. Under the pre-existing regulatory regime, the 7-day withdrawal period accounted for **working days** only. That means that a withdrawal period that started on 21st December 2015 would continue until 7th January 2015 (because there are many bank holidays during the Christmas period). However, in line with new rules set by CDR, the withdrawal period accounts for **all days**, including weekends and bank holidays. Therefore, the withdrawal period starting 21st December would expire on 4th January 2015. See legal mapping annex.

declaration of withdrawal from the contract. In some MS, exercising the RoW (Art. 11) had to be explicitly made in writing (e.g. LT, PL). In others it could be either made orally or in writing (e.g. SE, UK);

- Pre-CRD, the most common timeframe for a reimbursement following the RoW was 30 days (BE, BG,[14] CZ, DE, DK, EE, EL[15], ES, FI, FR, HR, HU,[16] IE, IT, LU,[17] LV, NL, PL, RO, SE and the UK), which has now been reduced to 14 days. In AT, the pre-CRD legislation did not specify the refund period for traders to comply with. In PL, the duration for the refund period was already 14 days and in LT and SK the equivalent period was within 15 days of the consumer giving notice.

Concerning the amounts for reimbursement, the situation varied from country to country. In LT, there was no requirement previously that refunds should include regular delivery costs. In DE, the previous legislation stipulated that the refund had to include the costs of delivery, but the consumer was obliged to bear these costs if the goods had a value below EUR 40. With regard to the return costs of delivery in PL, under the previous legislation, the trader had to return to the consumer all costs which resulted from delivery[18];

- Prior to the CRD, the rules on delivery varied across MS. A minority of EU countries (BG[19], DK, EL[20], HR, HU[21], NL,[22]) already had a delivery period limit of 30 days. However, many MS did not have a specific time period for delivery (CZ, EE, ES, FR, IE, LV, MT, PT, SK, FI, SE[23] and the UK). In BE, and for off-premises contracts, traders had to deliver goods as soon as there was an agreement. In some MS (IE, SE, UK), the delivery period, where this had not been specified in the contractual agreement between the parties, was required to be within a "reasonable" time period;
- In relation to the passing of risk (Article 20 of the CRD), a few MS shared similar rules (e.g. CY, FR, ES, IE, IT, LT and NL and SK), but these were marginally less favourable to consumers pre- CRD. In the UK and PL, there were similar levels of protection for consumers but the new rules have brought greater clarity. In SE and FI, the passing of risk was made when the consumer had physically taken control of the goods. However, the good was also considered to have been delivered when handed over to an independent courier service. Likewise, in DK and PL, delivery took place when the goods were in possession of the buyer. Therefore, in a few MS, the CRD has not meant any major changes in respect of the passing of risk, although the rules have reduced legal uncertainty. However, there were no rules specifically concerning the passing of risk in the meaning of Article 20 of the CRD in BG and EL;

[14] Distance contracts only: there was no mention in the previous Bulgarian legislation of refund rights for off-premises contracts.
[15] Distance selling contracts only.
[16] The old HU legislation referred to distance contracts only. There were no refund deadlines for off-premises contracts.
[17] Distance contracts only.
[18] The consumer should only bear the cost of returning the goods to a trader in connection with the withdrawal from the contract. This interpretation resulted from the decision of the Court of Justice of the European Union C -511/08.
[19] **Distance contracts** only; no rules in BG covering **off-premises** contracts.
[20] Distance selling contracts only.
[21] Ibid.
[22] Written notification was also required to put the seller in default of his delivery obligations under the previous NL legislation (Articles 6:81 and 82 Dutch Civil Code). Notification does not have to be in written form under Article 18(2) of the CRD.
[23] Note that in FI and SE, the rules on delivery are broadly similar under the CRD, but with some minor changes.

- A majority of MS had no provisions in their national legislation protecting consumers against excessive surcharging prior to the CRD (Art. 19) under the 2007 Payment Services Directive (2007/64/EC)[24]. These included BE, FR, HU and SE;
- The ban on charging above the basic standard telephone rate (Art. 21) for contacting the trader by phone, for contracts already concluded, is a new requirement in most MS. In EL and HU the previous laws required that consumers be informed about any additional costs of communication over and above the basic rate but such charges were still allowed;
- The ban on pre-ticked boxes (Art. 22) provided for by the CRD is a new requirement in all MS except for DE and SE, where they were already prohibited under national legislation; and
- The provision on inertia selling (Art. 27) in the CRD in respect of distance contracts is new in most MS with the following exceptions: AT, CY, CZ, EL, IE and SK.

2.3 Implementation in MS of regulatory choices

Despite the Directive being a full harmonisation Directive, there are a number of regulatory options available to the MS on its implementation following the principles of subsidiarity and allowing some flexibility to the MS. The following articles of the CRD offer a regulatory choice:

- 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;
- Article 6 (7) – to impose language requirements regarding the contractual information for distance and off-premises contracts;
- Article 6 (8) – to impose additional information requirements in accordance with Directive 2006/123/EC and Directive 2000/31/EC regarding distance and off-premises contracts;
- Article 7 (4) – not to apply a simplified information regime for off-premises contracts to carry out repairs or maintenance;
- Article 8 (6) – to introduce specific formal requirements for contracts concluded by telephone; and
- 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.

Table 2-4 sets out the regulatory options that have been adopted by MS. These must be reported to the EC under Article 29. In addition, under Art. 5 (4) MS may adopt or maintain additional pre-contractual information requirements for contracts other than distance or off-premises contracts. However, Art. 5 (4) is not covered by Article 29, so MS do not have to report its implementation.

[24] The Directive allows MS to prohibit all surcharges voluntary basis. Some MS have already prohibited surcharges irrespective of the means of payment.

Table 2-4: Application of the CRD regulatory choices by MS

Country	Article 3 (4)	Article 6 (7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9 (3)
Austria (AT)	Yes; limit 50 EUR	Not used	Not used	Not used	Yes; only for services contracts	Not used
Belgium (BE)	Yes, 50 EUR but only for contracts with a humanitarian purpose	Not used	Not used	Possibility retained but not yet used[25]	Possibility retained but not yet used [25]	Yes, 7 days, but does not apply to off-premises contracts concluded in shows, fairs and exhibitions
Bulgaria (BG)	Not used	Yes	Not used	Not used	Yes	Not used
Croatia (HR)	Not used	Yes	Not used	Not used	Not used	Not used
Cyprus (CY)	Yes; limit of €20	Yes	Yes	Not used	Yes	Not used
Czech Republic (CZ)	Not used	Yes	Not used	Not used	Not used	Not used
Denmark (DK)	Yes, limit 350 DKK (46 EUR)	Yes; Danish, if marketing done in Danish	Not used	Not used	Not used	Not used
Estonia (EE)	Yes, limit is €20	Yes	Not used	Not used	Yes. Article applies only when the professional calls the consumer	Not used
Finland (FI)	Yes[26]	Not used	Not used	Not used	Not used	Not used
France (FR)	Not used	Yes	Not used	Not used	Yes. Article applies only when the a sales	Yes -7 days

[25] The unofficial translation notes that Belgium has made use of this option but it is the King who has the possibility of introducing a lighter arrangement for providing information. Similarly under Art 8, it is the King who has the possibility of designating sectors to which the requirement will apply. It is uncertain whether it has been used.

[26] According to a consultatee this is €30.

Country	Article 3 (4)	Article 6 (7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9 (3)
					professional calls the consumer[27]	
Germany (DE)	Yes, limit is €40	Not used	Not used	Not used	Not used but there was a prior legislative requirements of this kind for certain sectors	Not used
Greece (EL)	Yes, limit is €30	Not used	Not used[28]	Not used	Yes	Yes - during the withdrawal period
Hungary (HU)	Not used	Not used	Yes[29]	Not used	Not used	Not used
Ireland (IE)	Yes, limit is €50	Not used	Not used	Yes	Not used	Not used
Italy (IT)	Yes, limit is €50	Yes, if the consumer requests it	Not used	Not used	Yes	No. No promissory note with a due date less than 15 days after delivery of goods
Latvia (LV)	Yes, limit is €35	Not used	Not used	Not used	Not used	Not used
Lithuania (LT)	Yes, less than 100 LTL (approx. €29)	Yes	Not used	Yes	Yes	Not used
Luxembourg (LU)	Yes, limit is €50	Not used	Not used	Not used	Yes	Not used
Malta (MT)	Yes. Limit is 30 €	Yes, either official language is required	Not used	Not used	Yes	Yes, deposit can only be collected 14 days after the conclusion of the

[27] Section 5, Article L221-16 of the French consumer code stipulates that it is illegal to conclude contract through an unknown telephone number (blocked number). - Article L221-17.

[28] Greece have transposed the text of Art 6(8) of the Directive (almost word-by-word) in the form of Article 3β(7) of their Law 2251/1994 (as amended) but they have not introduced any concrete additional information requirements. Interviews have confirmed that no real action has been taken in this area.

[29] It has laid down additional requirements on the provision of information on warranties and guarantees, right to conciliation and Information on electronic correspondence. The unofficial translation is available at: http://ec.europa.eu/justice/consumer-marketing/files/hu_reg_choices_art_29_en_version.pdf

Country	Article 3 (4)	Article 6 (7)	Article 6(8)	Article 7(4)	Art 8(6)	Article 9 (3)
						contract
the Netherlands (NL)	Yes, limit is €50	Not used	Not used	Yes	Yes (limited application)	Not used
Poland (PL)	Yes, limit is 50 PLN. [approx. €12]	Yes	Not used	Not used	Yes. Article applies only when the sales professional calls the consumer	Not used
Portugal (PT)	Yes, but only to subscription of periodical items for a limit of €40	Yes	Not used	Yes	Yes. Article applies only when the sales professional calls the consumer	Not used
Romania (RO)	Yes, limit is €50	Yes	Not used	Not used	Yes	Not used
Slovakia (SK)	Not used	Not used	Not used	Yes	Yes	Yes – until the end of the withdrawal period
Slovenia (SI)	Yes, limit is €20	Yes	Not used	Yes	Yes	Not used
Spain (ES)	Not used	Yes	Not used	Yes	Yes. Article applies only when the sales professional calls the consumer	Not used
Sweden (SE)	Yes, limit is €43[30]	Not used	Not used	Not used	Not used	Not used
The UK (UK)	Partial exemption: off-premises < €50 exempt from certain information and RoW	Not used	Yes, in part – for energy providers and estate agents	Not used	Not used	Not used

[30] The amount is 400SEK.

In summary, the regulatory choices examined include:

- Art. 3 (4) gives the option to exclude from the application of the Directive off-premises contracts for which the payment does not exceed 50 EUR. The different MS have made use of this choice to a varying degree. Twelve MS (CY, DK, DE, EE, EL, FI, LV, LT, MT, PL, SI, SE) have set out value limits for contracts to be excluded from the scope of the directive whilst three MS (BE, PT and the UK) have applied a partial exemption. The remaining MS have not made use of this Article.
- According to Art. 6(7), for distance and off-premises contracts, MS may maintain or introduce language requirements in contractual information. More than half of all MS have made use of this regulatory choice. In MS 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. In other countries, it is required to use the language in which the contract is concluded (CZ) or if requested by the consumer (IT)
- Art. 6(8) allows MS to impose additional information requirements in accordance with Directive 2006/123/EC and Directive 2000/31/EC regarding distance and off-premises contracts. Only three EU MS have made use of this option: UK, HU, CY, 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.
- Art. 7(4) on simplified information requirements have been used by IE, LT, NL, PT, SI, SK and ES but not in other EU MS. In BE, this possibility has been retained but has not yet been used.
- Art. 8(6) allows MS to set out a requirement to confirm the contract if this is to be concluded by telephone. The majority of MS[31] have decided to apply this regulatory option but in some MS it only applies when the professional calls the consumers (and not when the consumer makes the first contact).
- Prohibition to collect payment during a given period after the conclusion of the contract: Only a few MS have applied this provision: BE, FR, EL, MT and SK. The periods that have been set up are 7 days and 14 days (see Table 2-4).

Thus, only a few MS have taken up the regulatory choices offered by the CRD. The most frequent provision taken by MS is the language requirements for distance and off-premises contracts; followed by simplified information requirements for repair and maintenance work and the need to confirm the contract concluded by phone.

2.4 Enforcement and penalties

Enforcement and penalties can have the effect of enhancing effectiveness by dissuading traders from being non-compliant and breaching the provisions of the CRD. According to Article 23(1) MS shall ensure that adequate and effective means exist to ensure compliance with the Consumer Rights Directive. According to Article 24(1) of the CRD MS shall lay down the rules on penalties applicable to infringements of the national provisions implementing the Directive and shall take all measures necessary to ensure that they are implemented. The penalties must be *effective, proportionate and dissuasive.*

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

Table 2-5 provides an overview of institutional responsibilities for enforcement and the level of penalties that can be imposed on traders in a few MS. The selection of countries was based on the readily available literature and is offered as an illustration of the different approaches and arrangements. The table also specifies whether penalties that can be applied are civil, administrative or also criminal.

Generally, most enforcement activities relating to the CRD across EU-28 MS are undertaken by enforcement authorities, including the competition authorities, taking legal action against traders in case of non-compliant practices that affect consumer interests (e.g. PL, LT, UK) or on the basis of received complaints (including complaints of qualified entities under the Injunctions Directive) (e.g. IT, LT and PL). In other countries, such as SE, a dedicated ombudsman administers complaints and brings strategically important legal cases to court against traders on behalf of consumers. The Trading Standards bodies in the UK adopt a similar approach i.e. may interest themselves in certain cases that have strong potential to have a deterrent effect (although since the CRD came into effect, there have been no cases as yet, but there were such cases in respect of distance and off-premises contracts under the previously applicable legislation).

The national competent authority responsible for enforcement varies between countries. A broad typology of enforcement approaches has been identified as follows:

- A body directly under a Ministry - e.g. State Consumer Rights Protection Authority in LT under the Ministry of Justice and the Competition and Consumer Protection Commission in Ireland under the Department of Jobs, Enterprise and Innovation;
- A public organisation or agency not linked to a specific government Ministry - e.g. the Competition and Markets Authority (UK) is a non-ministerial department, and the national competition authority AGCM in IT is an independent body, as is the Consumer Ombudsman in SE;
- A centralised approach where enforcement falls under the direct responsibility of a Ministry – in EL, the enforcement function has been centralised, and the Ministry directly imposes fines on traders and issues recommendations; and
- An approach whereby enforcement is mainly the responsibility of consumer organisations and individual consumers. In DE, there is no single public authority competent to enforce the provisions of the CRD and enforcement is mainly left either to private individual consumers (e.g. taking cases to court or reaching an agreement with traders through an ADR mechanism. This may serve to encourage the trader to become compliant with the provisions of the CRD in future so as to avoid complaints from consumers or legal problems in future). Alternatively, as in the UK, consumer organisations may choose to take on a limited number of strategic deterrent cases.

In terms of penalties, a distinction can be made between penalties imposed in the context of civil, administrative or criminal proceedings.

It can be noted that the types of penalties that may be imposed under the CRD vary, and the way in which they are integrated into national law also varies, depending on whether the CRD has been transposed into a single piece of legislation, a consumer code that combines several different pieces of legislation etc.

In the following table, an overview of enforcement approaches and penalties in selected Member States is provided. It should be noted that a comprehensive mapping across all EU Member States was not required. The findings from the analysis are provided after the table in landscape.

Table 2-5: Enforcement and penalties in selected Member States

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
AT	Austrian Law provides for administrative penalties, but there is no tradition in Austria of enforcing administrative penalties at this level. Civil consumer law is mainly enforced by the civil courts. The enforcement of consumer civil law is mainly ensured through a high level of activity of consumer associations, such as the Consumer Information Association (Verein für Konsumenteninformation) and Chamber of labour	1450 EUR for every administrative breach of the CRD[32]
DE	The enforcement of the obligations of businesses under the CRD is mainly left to private actors: 1. Individual consumers can enforce their rights granted under the CRD against businesses in the ordinary courts[33]. 2. Consumer and business organisations, individual competitors and Chambers of Industry and Commerce are entitled to litigate in the ordinary courts against businesses which infringe EU consumer legislation. Legal basis: Unterlassungsklagengesetz (Act on Injunctions for the Protection of Consumers' Interests); Gesetz gegen den Unlauteren Wettbewerb (Act Against Unfair Competition) Only in specific sectors (e.g. financial services, telecommunication) specific authorities such as the Federal Financial Supervisory Authority [BaFin] or the Federal Network Agency (BNetzA) are competent to act against businesses that infringe consumer law. There is no general authority competent to issue 'cease and desist' letters or to fine businesses. Only when contacted from abroad under the Regulation on consumer protection cooperation 2006/2004, the Federal Ministry of Justice and Consumer Protection may take some measures	As a rule, only civil penalties (which are, in general, considered as effective). In certain sectors (e.g. financial services, telecommunication) administrative penalties (e.g. fine up to €300,000 for 'cold calling', § 20 Gesetz gegen den Unlauteren Wettbewerb (Act Against Unfair Competition). If litigation is successful against a trader, then the plaintiffs have their costs reimbursed by non-compliant business(es). The judgement may be published on costs of the business as a deterrent. In cases where the nature of the non-compliance breach was especially significant, businesses may also be ordered to pay damages, but this is rare in practice. Criminal penalties only under the Criminal Code (e.g. for fraud).

[32] http://www.wolftheiss.com/fileadmin/content/6_news/pdf/WT_Client_Alert_VRUG_20140602_english.pdf
[33] See: http://www.osborneclarke.com/connected-insights/publications/consumer-rights-directive-implications-online-businesses/

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
	against businesses in Germany. In 2015, the Ministry received only 10 such enforcement requests[34]. Recently, the Ministry announced that it plans to close some of the remaining enforcement gaps by introducing a new authority (or to entrust an existing authority) with some competences for the administrative enforcement of consumer law.[35]	
DK	The Danish Competition and Consumer Authority (Konkurrence- og Forbrugerstyrelsen) is the enforcement authority for any consumer complaints. A new process has been introduced whereby all complaints have to go through a mediation process between the consumer and the trader to try to reach an amicable resolution. The Centre for Complaints Resolution (Center for Klageløsning) at the Authority will assist in this process for a fee of DKK 100 (+/- €14). If a solution cannot be reached in this way, only then can the complaint be put to the Consumer Complaints Board (which is an independent body made up of a chairman - professional judge -, 2 consumer and 2 business representatives appointed for a 4-year term by the Minister for Economic and Business Affairs). The Board can only consider complaints made by consumers (against a fee of DKK 400/€55). If the Board decides in favour of the consumer, the fee is reimbursed. There is a value limit for goods or services at the root of the complaint (between DKK 800 - DKK 100,000€?). Complaints are considered in writing and the parties are not present. A case can take up to 12 months to be resolved	The trader has to cover the legal costs related to the proceedings run by the Consumer Complaints Board (up to DKK 1,000 if an agreement is reached (EUR 134.5) and DKK 6,000(807.4 EUR) if the consumer wins a case). The trader has 30 days to comply with the Board's decision. If they do not, their name will be published on the 'Business Check' (Firmatjek) which is a type of blacklist. The consumer can also bring the case to court, where an additional fine may be imposed. There are examples of fines being levied following court cases of circa DKK 20,000 (€2,700).
EL	A court action can be initiated before the Civil Courts by a consumer or/and a consumer association. Pursuant to article 10(16) of Joint Ministerial Decision No Z1-891/2013, a class action36 against a particular trader brought by a consumer associations that have more than 500 members and have been	14 fines have been imposed by the Consumer General Secretariat (with a total value of €83,000) and 4 recommendations were made following the transposition of the Directive. Those cases did not concern digital content contracts but rather sales and services contracts. Fines have ranged between €1,500 and €25,000 per case. Nine of the 14 cases related to

[34] See BMJV report: http://www.bmjv.de/SharedDocs/Downloads/DE/PDF/Verbraucherportal/Berichte_VerbraucherschutzdurchsetzungsG/Bericht_fuer_das_Jahr_2015.pdf?__blob=publicationFile&v=2

[35] See BMJV (http://www.bmjv.de/SharedDocs/Artikel/DE/2016/04152016_Verbraucherrechtstage.html)

[36] A class action is a type of lawsuit where one of the parties is a group of people who are represented collectively by a consumer association or a third party such as a legal firm.

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
	registered in the consumer association's public registrar for at least one year. In the latter case, the Multi-Member Court of First Instance of the place of residence of the defendant has jurisdiction. The Consumer General Secretariat of the Greek Ministry of Economy, Development and Tourism imposes fines and collects statistics on enforcement cases relating to the CRD. At the time when the EC's 'sweep' for the implementation of the Directive took place, it had been observed on websites of some companies that shortly before the completion of an order the total cost was not given (i.e. extra charges were not disclosed and included to the overall price). Recommendations were thus made (this related to an airline as well as telemarketing companies selling so-called 'smart' products)	information requirements and 10 cases related to the right to withdraw. Courts may also issue pecuniary and non-pecuniary damages37. The most common infringement of the provisions of the Directive (as transposed) was that of pre-contractual information obligations (Article 3β of Law 2251/1994 as amended) and the right to withdraw (Article 3ε of Law 2251/1994). For instance, the consumer had no access to the details of the supplier and other pre-contractual information, they were not provided details of their right of withdrawal, nor was the product/service accompanied by a model withdrawal form. As far as pre-contractual information requirements are concerned, the main problem is when the consumer is not provided with complete information, e.g. who the trader is, where they are based, what their telephone number is.
FR	The French Authority for Competition Policy, Consumer Affairs and Fraud Control, also known as the French Consumer Protection Authority (DGCCRF), is responsible for enforcement	A summary of penalties in the revised 2016 French Consumer Code[38], which replaced earlier legislation for different provisions of the CRD is now summarised. It should be noted that the associated penalties for all the provisions are common across the different Articles of the CRD as transposed into the 2016 French consumer code with a fine of up to EUR 3,000 (natural persons) or EUR 15,000 (legal persons) for each of the following:. If the trader does not inform the consumer about their RoW from the contract, then the RoW is extended to a period of 12 months. If this information is provided during a 12 month period then the withdrawal period expires 14 days after the relevant information was communicated to the consumer. Previously under French Law, the cancellation period for failure to provide sufficient information was 3 months. Articles L131-1 to L131-4 of the revised code deal with general pre-contractual information obligations. Returns costs (Article R131-1) - The fact that a professional seller or

[37] See Greek Law Digest (http://www.greeklawdigest.gr/topics/consumer-protection/item/110-consumer-protection-regulations)
[38] 2016 French Consumer Code - https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069565&dateTexte=29990101&categorieLien=cid

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
		service provider fails to furnish to any interested person who so requests a copy of the agreements he usually proposes, in breach of the provisions of Article L. 114-1, is a punishment with a fine of the 5th class. Recidivism is punishable in accordance with the provisions of Articles 132-11 and 132-15 of the Criminal Code. Inertia selling is dealt with in Paragraph 1: Civil penalties (Article L132-16) and in Paragraph 2: Penal penalties (Articles L132-17 to L132-18). Subsection 6: Premium Telephone Number (Article L132-21). Any failure to comply with the obligations relating to the telephone number of consumer assistance referred to in Article L. 121-16 is liable to an administrative fine (for the same amount as stipulated earlier above). This fine shall be imposed in accordance with the conditions laid down in Chapter II of Title II of Book V of the French consumer code. Subsection 7: Additional payment without express consent (Article L132-22). Any breach of the obligation to collect the express consent of the consumer under the conditions provided for in Article L. 121-17 is liable to an administrative fine (see amount above). Subsection 8: Collection and return costs (Article L132-23). The violation of the prohibition on collection costs mentioned in Article L. 121-21 is punishable by imprisonment for two years and a fine of 300,000 euros. The amount of the fine may be increased proportionately to the benefits derived from the offense by 10% of the average annual turnover calculated on the last three known annual turnovers at the date of the offense.
IE	Responsibility for enforcement is mainly the responsibility of the Competition and Consumer Protection Commission (CCPC), which was established in 2014. However, in some sectors, other regulators, such as the telecoms regulator, also have regulatory powers to investigate breaches of consumer protection legislation	Mainly civil and administrative penalties but, criminal penalties can be imposed in particular circumstances. Quite a large number of fines have been issued, but the average size of fine per breach (€300) is quite low. Sometimes fines are imposed for multiple breaches. For example, the Irish telecoms regulator issued 850 individual fines of the CRD confirmation requirement of €300 against a single trader. The majority of consumers' complaints are resolved without recourse to legal action in Ireland, through voluntary resolution between the

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
		consumer and the trader using an ADR. In addition, as part of its enforcement powers, the CPCC is able to launch pre-enforcement actions and write to traders that they have found to be in breach of the provisions of the CRD. In the majority of cases, a letter to the trader pointing to areas of non-compliance in order to bring a trader's attention to non-compliance has been sufficient to get the trader to take steps to become compliant. However, in its capacity as the national enforcement authority, some cases have gone to court and in total, about 20 enforcement actions have been taken by the CCPC. Monetary penalties can be sought if summary proceedings are instituted in a lower court. In such a case, the maximum can be increased to €3000 / breach. If an indictment for a criminal case takes place through the Department for Public Prosecutions, then a higher court can impose a maximum penalty of €60,000.
IT	The Italian Competition Authority *(Autorità Garante della Concorrenza e del Mercato (AGCM www.agcm.it))* is an administrative independent Authority There is no difference in Italy in enforcement powers when enforcing the UCPD or the CRD. The powers are set out in Art. 27 of the consumer code. Compared with some other national enforcement authorities, the AGCM has more of a judicial-like approach with only formal proceedings and no informal relations with traders or an advisory role and the authority does not issue ex-ante guidelines on how to comply with the law to either consumers or traders.	Art. 27 sets out the minimum fine of €5,000 and a maximum financial penalty of €5,000,000. These amounts apply both to infringements in respect of either the UCPD, CRD or both in parallel. In the event of repeated non-compliance, the Authority may order the trader to suspend trading for a period which shall not be more than thirty days. The amount of a fine issued is not sector-specific, nor does it depend on which consumer legislation has been infringed (e.g. the CRD or the UCPD). Rather, the general criteria for imposing administrative fines on traders are set out in Italian law (law 689/81). The amount is decided according to the seriousness of the infringement, the size of the trader, the number of consumers potentially affected, which depends among other factors on the means of communication used (internet, telephone, etc.), whether harm to consumers was intentional or unintentional and on the length of time of the infringement (even if this has ceased). If breaches by a trader apply under more than one Directive, then the fine is imposed for each

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
		illicit conduct separately. To date, 7 fines have been issued to companies in the energy sector[39].
LT	The State Consumer Rights Protection Authority (http://www.vvtat.lt/) is responsible for enforcing the application of the CRD	The SCRPA may impose a fine of €144 to €1448 on a trader for failure to comply with the requirements of the CRD as transposed into the Civil Code implementing provisions. In the first 2 years of implementation, 5 fines were issued to traders. In the first year of implementation, there was a horizontal governmental policy that no fines would be issued but rather written warnings would be sent to traders in potential breach of the CRD provisions (this was only applicable until December 31 2015 since when fines have been issued)
PL	The Office of Competition and Consumer Protection (UOKIK) has administrative enforcement powers, and can carry out proceedings concerning practices infringing collective consumer interests. As a result of such proceedings, the President of UOKIK may order the enterprise concerned to cease practices which were found to be objectionable and impose a fine	The Office of Competition and Consumer Protection takes action when collective consumer interests are breached. It can issue an administrative decision and impose a fine. In 2015, the financial, energy and telecommunications and e-commerce sectors were among the most problematic sectors[40]. The Authority initiated 106 proceedings concerning practices infringing collective consumer interests, and 473 preliminary proceedings. It issued 144 decisions, including 80 obliging traders to change a practice. Another 24 ordered the cessation of prohibited activities and 40 the cessation of a practice. Soft interventions also figured prominently in the protection of consumer interests: of the 523 conducted, 357 were completed, with 98% of traders following UOKiK's indications. Not all these cases related to the CRD but many did so. Under Polish consumer law generally, the UOKIK can issue a fine of up to 10% of the enterprise's previous year revenue
SE	At national level, the Swedish Consumer Agency (www.konsumentverket.se) is the responsible national enforcement authority and is a Swedish government agency under the Ministry of Agriculture, Food and Consumer Affairs. The	In relation to the proceedings brought by the Consumer Ombudsman, the Market Courts and consumer rights agency can issue penalties (i.e. fines) for non-compliance. https://data.riksdagen.se/fil/CD3E4387-C369-4EB7-816A-59AA6DE7558E

[39] See AGCM: (www.agcm.it/en/newsroom/press-releases/2283-ps9769-ps10000-ps9815-ps9999-ps9578-ps9406-ps9834-fines-of-%E2%82%AC6-0-million-to-7-companies-providing-electricity-and-gas-services-for-the-activation-of-unsolicited-supplies.html)

[40] See UOKIK (https://uokik.gov.pl/news.php?news_id=12592)

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
	Swedish Consumer Agency is headed by a Director General who is also the Consumer Ombudsman (Konsumentombudsman, KO). The Swedish Consumer Ombudsman plays a role in taking up complaints and legal cases on behalf of consumers that could have a potential deterrent effect on malpractice by traders	The level of fines that can be issued varies from SEK 5,000 (€512) upwards with a maximum fine of SEK 5m (€512,017). However, fines at the upper end of the spectrum can only be imposed in instances where it has been proven that there have been market-distorting behaviours.
UK	At national level, the Competition and Markets Authority ("CMA"), a non-ministerial department, has statutory powers to investigate compliance with the CRD. Local authority Trading Standards Services and standards officers also have enforcement and investigatory powers	The Consumer Rights Act 2015 sets out a framework that clarifies the maximum penalties that the regulator of premium rate services can impose on non-compliant and rogue operators. Among the penalties are warning letters for unfair business practices, investigations by the regulatory body, injunctions or even compensation claims from consumers[41]. To ensure traders comply with the reformed consumer law, a number of 'enforcers' are granted investigatory powers to consider possible breaches. The 2015 Act looks to consolidate, modernise and simplify these investigatory powers to improve their transparency and accessibility for both traders and enforcers. Enforcers have also been afforded greater flexibility, through Enhanced Consumer Measures (ECMs), which aim to provide consumers with the best outcomes. There are three types of enforcers in the UK: • Domestic enforcers, including Trading standards • Public designated enforcers • Unfair contract terms enforcers, including Ofcom and Which? With regard to criminal offences under the Act, a person will commit a criminal act if they commit an obstruction offence in relation to an enforcer should they: 1) Intentionally obstruct an enforcer 2) Intentionally fail to comply with instructions given by an enforcer and 3) Fail to give an enforcer assistance or information reasonably required.

[41] See UK Government (http://www.legislation.gov.uk/ukpga/2015/15/contents)

MS	Enforcement system	Penalties and illustrations of the typical level of penalties for non-compliant traders
		This includes making a statement or reckless statement which the person knows is false or misleading. If found guilty of this offence, a person may be fined up to GBP 1,000. Under the 2015 Act it is also an offence for a person to falsely act as an officer by purporting to use the powers prescribed in Schedule 5. A person found guilty of this offence may be fined up to GBP 5,000.

National competent authorities were asked whether any of the applicable penalties relating to non-compliance with the Directive have been enforced; 78% of national competent authorities responded positively. When asked for further details as to the level of penalties, information provided by national competent authorities has shown that penalties are quite varied and can range from fixed amounts ranging from €144 to €1448 in one country (i.e. LT) to a maximum of €100,000 in another (i.e. LV).

Free text from National Competent Authority Survey Q15 - If penalties have been applied, please provide further details in the space below

Penalties

We have imposed a fine on a webshop for not complying with the rules for reimbursement. The company appealed against this decision. We expect to impose fines on other webshops for not complying with information requirements shortly.

… may impose a fine amounting from €144 to €1,448 on a seller, service supplier for the failure to comply with … provisions of CRD. In a 2 year period there have been only several penalties imposed to traders and several warnings submitted (according to national rules warnings had been applicable till 2015 December 31).

…For non-compliance with the national provisions transposing the CRD together with unfair commercial practices we have imposed a penalty in one case - EUR 50,000.

ECC's were also asked whether they were aware of any legal cases resulting from the CRD taken by enforcement authorities; 20% of the EECs responded that they knew of actions within their own country and 17% knew of cross-border action (from a total of 30 answers). The details of such enforcement cases are provided in the next box.

Free text from ECC survey Q 6: If you indicated above that you are aware of previous or forthcoming legal cases relating to non-compliance with the CRD by traders, please provide further details below:

Consumers buy furniture through a British webpage and pay in advance. The trader does not deliver the products. Instead the date of delivery is postponed again and again. The consumers want to withdraw. The trader rejects the withdraw claiming that the consumers would have bought customized products.

The Italian competition Authority fined two traders for not respecting the rules established (formal requirements of the contract) with regard the tele-selling. Furthermore, several telephone services providers were fined because they charged consumers for unsolicited goods

…in 2015 in Ireland, the Competition and Consumer Protection Commission (CCPC) reviewed the websites of a number of telecommunications providers and online retailers and, in particular, the information given to consumers in relation to their cancellation rights. Following the review of their websites, seven Irish traders were considered not to be compliant with different aspects of the CRD. The CCPC issued Compliance Notices notifying each of the companies that they had breached consumer protection legislation, directing them to correct the information they provide and to change their cancellation process.

A fake web-store under the Polish name carrying out the sale of branded shoes at unexpectedly attractive prices. It turned out the commercial trap as contracts are not concluded and no deliveries are realised. There were up to 900 complaints lodged with

the ECC Poland.

The Danish CPC is investigating companies dealing with subscription traps on behalf of CPC´s in several other countries

Contract concluded on a fair that happens once a year.

In respect of penalties, in most MS (with the exception of the UK and IE), civil and administrative penalties can be imposed upon traders. In DE, criminal penalties are only allowed under the Criminal Code for fraud. However, it was pointed out that criminal penalties are only appropriate in the case of serious cases, for instance, where breaches of the CRD were part of an overall pattern of fraudulent and / or misleading behaviour by traders.

In relation to the level of penalties imposed by enforcement authorities on non-compliant traders, key findings were that:

- The level of financial penalties varies significantly between MS;
- Some MS are able to impose more significant fines than others, especially for breaches that constitute market distorting behaviour. Other MS face significant constraints in terms of the maximum level of fine they are able to impose; and
- There is a lack of evidence as to what impact differences in the level of financial penalties have had in terms of the level of compliance by traders (and therefore the overall effectiveness of CRD implementation). However, some interviewees from enforcement authorities expressed concern that the minimum and maximum level of fines they are able to impose are low, and could be an insufficient deterrent.
- The point in time when penalties are issued was found to vary. In some MS (e.g. IT, LT), fines are issued immediately either by the court or the responsible enforcement authority following the initial court action. Conversely, in other MS (e.g. SE), whilst a press release setting out the nominal amount of the fine is released, the fine can only actually be issued upon a repeat breach.

Through desk research and email correspondence with the relevant enforcement authority, several cases were identified relating to significant fines issued of a total of €6 million by AGCM, the Italian competition authority on seven energy producers in Italy in 2015 for violating the contract rules set out in the Italian Consumer Code and the CRD and UCPD[42]. A further fine of €14 million was placed on several energy producers for aggressive practices in 2016 (including failure/delay in repayments, charging of default interest for late payment, and poor management of the cases were the billing for electrical or gas consumption differed from the actual measurements)[43].

However, it was emphasised by some stakeholders that the level of penalties in many MS is relatively modest, unless market-distorting behaviour can be identified and proven. In SE, theoretically, a fine of up to SEK 5m (€512,017) can be issued but only for very significant breaches of the Directive with a significant impact for large numbers of consumers. Several stakeholders interviewed pointed to the low level of financial penalties being an insufficient deterrent to tackle non-compliance, although the greatest challenge was seen as continuing lack of traders' awareness about the detailed rules compared with predecessor legislation. Traders do not appear to be motivated to be non-

[42] http://www.kwm.com/en/uk/knowledge/insights/agcm-steps-up-enforcement-against-companies-guilty-of-selling-unfair-consumer-contracts-20151211

[43] http://www.agcm.it/en/newsroom/press-releases/2292-fines-exceeding-14-million-euro-imposed-on-acea,-edison,-eni,-enel-energy-and-electricity-service-for-aggressive-billing.html

compliant by the lack of deterrent of sufficient fines, rather than central problem is that until alerted by enforcement authorities they are not aware that they were non-compliant at all. This is confirmed for instance in the findings from the European Consumer Sweep which shows that most traders took swift action to comply with the provisions of the CRD, but only when informed by enforcement authorities that they were non-compliant in the first place.

Taking some examples of the level of penalties that can be applied and differences between MS:

- The highest possible sanction in the EU in the selected Member States where data on the level of penalties was available appears to be Italy (financial penalty of €5,000,000).
- With regard to the lowest, there appear to be a large number of countries where the minimum fine for a breach of the CRD is in the order of EUR 100-200.
- Some specific illustrations of country-specific differences are now provided:
  - In DK, fines of €134.5 to €807.4 if resolved by the Consumer Complaints Board, with fines of around €2,700 if cases go to court;
  - In EL, fines issued to date range between €1,500 and €25,000 per court case;
  - In FR, €3,000 (natural persons) or €15,000 (legal persons i.e. firms). Criminal penalties are applied with a maximum sanction of 2 years of imprisonment and a fine of €150,000; and
  - In LT, the minimum fine is €144 and maximum is €1,448.
  - In HU, the fines that can be sanctioned are: 2014:735.000 HUF (2,384.26 EUR), in 2015:275.000 HUF (EUR 892)
  - In SK, the Slovak Trade Inspection can impose a fine at a maximum of 66,400 (EUR)

No evidence was identified in terms of a clear pattern between the level of penalties and the effectiveness of enforcement. For instance, taking two countries that have experienced a high number of court cases relating to the CRD to date as an example, whilst Germany has set only modest levels of penalties, in Italy, the responsible enforcement authorities can impose a high level of penalties. The fact that legal cases have arisen even when fines are high (e.g. energy sector in Italy) makes it difficult to establish a direct correlation between the size of fines and the deterrence effect.

A further difference between MS relates to the stage of the enforcement process when penalties can be imposed. For example, in SE, after a court reaches a judgement regarding non-compliance, punitive fines are issued along with a press release ("naming and shaming"), however the fines are designed to serve as a deterrent and are not actually imposed upon the trader unless there is a repeated breach.

The evaluation research identified heterogeneity in approaches to enforcement and in the civil and administrative (and in a few countries also criminal) penalties that can be imposed. This raises an issue as to whether the effectiveness of the CRD could be further enhanced if penalties and enforcement approaches were to become more harmonised, or at least if the level of divergence were to be reduced. One possibility could be to provide guidelines in the DG JUST interpretative guidance on common minimum suggested

thresholds regarding the maximum amount of penalties at national level for breaches of EU consumer legislation.

In addition, it can be noted that in the survey, stakeholders expressed the view that the need to further strengthen enforcement should be more of a priority at Member State level in order to improve the effectiveness of the Directive's implementation. Further details as to views on enforcement are set out in the effectiveness section (see Section 2.4.3 - Enforcement by competent authorities).

2.5 Summary of findings – comparison between the situation pre-CRD and post-CRD

The comparative analysis of the legislative situation pre-CRD and post-CRD has highlighted that, for many of the key provisions of the CRD, consumer protection has been strengthened in most, if not all, MS. This is because there was either no such protection previously (e.g. for digital content and prohibiting default options on websites) or, where there was already some degree of protection, 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 MS consumers were not protected by legislation specifically concerning digital content. The only exception is the SK;
- The level of pre-contractual information which traders are required to provide to consumers under Art. 5 and Art. 6 has increased in all MS and there are now greater consequences if traders fail to provide such information, with the withdrawal period increasing to 12 months in 26 of the MS but in BE and in DE the failure to provide information about the RoW has been reduced from an unlimited time period to one year;
- The period for the RoW (c.f. Art. 9) has increased in 15 Member States; remained the same in 11 (BE, CY, CZ, DK, EE, EL, FI, LV, PT, SE and SI), and been reduced in two (DE, MT);
- Refund periods have now been shortened across most MS and the amounts that consumers are entitled to receive can now include the delivery costs;
- 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);
- Although in cases it is quite difficult to determine whether the rules on the passing of risk have strengthened consumer protection in some countries (e.g. SE, DK, FI and the UK), the rules appear to be clearer; and
- Previously, a majority of MS had no provision in their national legislation protecting consumers against additional payments, excessive telephone charges and inertia selling.

Moreover, the examination of national legislation in the different MS prior to the CRD implementation has shown quite a significant degree of variation concerning the rules on consumer protection among MS. For instance, the rules on delivery varied as did the periods for the RoW. Thus, the CRD has reduced differences among MS, contributing to the reduction of regulatory discrepancies and increasing regulatory certainty across MS for those traders and consumers selling and buying cross-border.

Table 2-6 summarises for each MS whether the level of consumer protection has been increased, reduced or stayed the same as a result of transposing various key provisions of the CRD into national legislation compared with the pre-existing legislation, which was mainly (but not exclusively) derived from the two predecessor Directives, Directive

97/7/EC and Directive 85/577/EEC. The table focuses only on the key provisions of the CRD.

Table 2-6: Consumer protection level in Member States (MS) compared with nat. legislation before CRD

Arts.	Key provisions	Current level of protection higher than pre- CRD	Current level of protection similar to pre-CRD	Current level of protection lower than pre-CRD
Art. 5 and 6 -	Information requirements	All MS	-	BE (partially)
Art. 9	Harmonised 14-day withdrawal period	AT, BG, ES, FR, HR, HU, IE, IT, LT, LU, NL, PL, RO, SK, UK	BE, CY, CZ, DK, EE, EL, FI, LV, PT, SE and SI	MT, DE
Art. 10 -	Omission of information on the right of withdrawal	AT, BG, CY, CZ, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK, UK	-	BE, DE
Art. 11	Exercising the right of withdrawal	All MS, note: DE, DK, EL and CY already had model withdrawal forms (previously optional)	-	-
Art. 16	Exceptions from the right of withdrawal			All MS
Multiple articles (see next column)	Protections for digital content Digital content - Art 6, 9, 11, 12 Art 14(4)b, Art. 19, 21, 22 and 27	All other MS	SK	-
Art. 22 and Art. 27	Additional payments and Inertia selling (Failure to inform about hidden charges)	All MS	-	-
Art. 13(1)	Refund rights (Obligations of the trader in the event of withdrawal)	AT, BE, BG, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK	CY, PL	-
Art 13 (1)	Refund rights (Obligations of the trader in the event of	AT, BE, BG, CZ, CY, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT,	PL	-

Arts.	Key provisions	Current level of protection higher than pre- CRD	Current level of protection similar to pre-CRD	Current level of protection lower than pre-CRD
	withdrawal)	LT, LU, LV, MT, NL, PT, RO, SE, SI, SK, UK		
Art. 18	Rules on delivery	AT, CZ, CY, EE, DE, EL, ES, FR, IE, IT, LT, LU LV, MT, PT, , RO, SI, SK, UK	BG, DK, FI, HR, HU, NL, PL, SE[44]	BE
Art. 20	Passing of risk[45]	AT, BE, BG, CY, CZ, DE, EE, EL, ES, FR, HR, HU, IE, IT, LT, LU, LV, MT, PT, SI SK, NL, , RO	PL, DK, FI, UK, SE	-
Art. 22	Additional payments (ban on pre-ticked boxes on websites)	AT, BE, BG, CY, CZ, DK, EE, EL, ES, FI, FR, HR, HU IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI, SK, UK	DE, SE	-
Art. 19	Elimination of unjustified surcharges on credit cards	AT, BG, CZ, CY, DE, DK, EE, EL46, ES, FI, HR, IE, IT, LT, LV, LU, MT, NL, PL, PT, RO, SI, SK, UK,	BE (implied), FR HU (partial)	SE
Art. 21	Standard rate number	All MS		
Art. 27	Inertia selling	BE, BG, CY, DE, DK, EE, ES, FI, FR, HR, HU, IT, LT, LU, LV, MT, NL, PT, RO, SE, SI, UK	AT, CY, CZ, EL, IE and SK	

With regard to regulatory options, some MS have taken up these regulatory choices offered by the CRD. The most frequent provision taken by MS, in order of magnitude, is the exclusion of the scope based on the value of the contract (with different limits being applied), confirmation of contract concluded by phone and language requirements for distance and off-premises contracts; followed by simplified information requirements for

[44] Note that in Finland and Sweden, the rules on delivery are broadly similar under the CRD, but with some minor changes.

[45] It should be noted that it is quite difficult to determine whether the rules on the passing of risk have strengthened consumer protection in some countries since they had broadly similar protection in previous national legislation (e.g. SE, DK, FI and the UK) but there is now further clarity with regard to responsibility for delivery costs in the case of returns.

[46] Initially, the Directive was transposed using the text of the Directive itself. Later however, Greek Law 2251/19994 was amended to abolish all fees charged by traders. Therefore, Greek law currently provides enhanced protection to consumers in comparison to the Directive.

repair and maintenance work and the need to confirm the contract concluded by phone. Although the low level of uptake of the regulatory options could suggest that regulatory fragmentation remains minimal, stakeholders to this study have been given a chance to provide their opinions on the impacts of these regulatory options on the effectiveness of the CRD. Their opinions are given in the subsequent relevant sections below (refer to Section 7 on added value).

3 The CRD and its effectiveness in ensuring consumer protection

3.1 Overview of Section

Effectiveness is concerned with assessing how far the CRD has made progress towards, or has already achieved its objectives (as reflected in Figure 1-1). 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 list of evaluation questions related to effectiveness are set out in the next box[47].

- How effective has the Directive been in eliminating the obstacles for businesses carrying out economic activities in several EU Member States?
- What have been the impacts on consumer confidence and welfare?
- What factors influenced the achievements observed?
- What is the level of business compliance and how does this affect effectiveness?
- How effective has the enforcement of the Directive been?
- Have there been any unintended effects?
- To what extent did different factors influence the achievements observed?

The different stakeholder surveys included questions relating to the effectiveness of the CRD in general and to its specific provisions. Some of the questions from the questionnaires are given in the next box. Some of these were close-ended but others were open questions so that the stakeholders could provide their views in greater depth (e.g. factors affecting effectiveness).

Sample of questions from online survey related to effectiveness

- How do you rate the level of protection for consumers when buying domestically/in other EU countries?
- How do you rate the different provisions of the CRD?
- What are the main reasons for not selling cross-border?
- Are you aware of any factors hindering the effectiveness of the CRD?
- What is the level of consumer awareness of the CRD and its provisions?
- What is the level of traders' awareness of the CRD and its obligations?

In addition to the targeted consultation undertaken for this study on the effectiveness of the Directive, other important sources of data have been used, as described in Section 1.3.3.

[47] These evaluation questions were provided in the original proposal and based on the Better Regulation Guidelines on effectiveness.

3.2 Consumers and consumers associations' views on effectiveness of the CRD

The surveys asked about the effectiveness of the different provisions of the Directive, as well as the level of confidence in regard to the level of protection offered by the CRD in general. In particular, consumers were asked how they would rate the level of protection when purchasing domestically and cross-border. Their responses are depicted in the following figures, Figures 3-1 and 3-2.

Figure 3-1: Consumers views on the level of protection when purchasing a good or service when buying domestically (Q24)

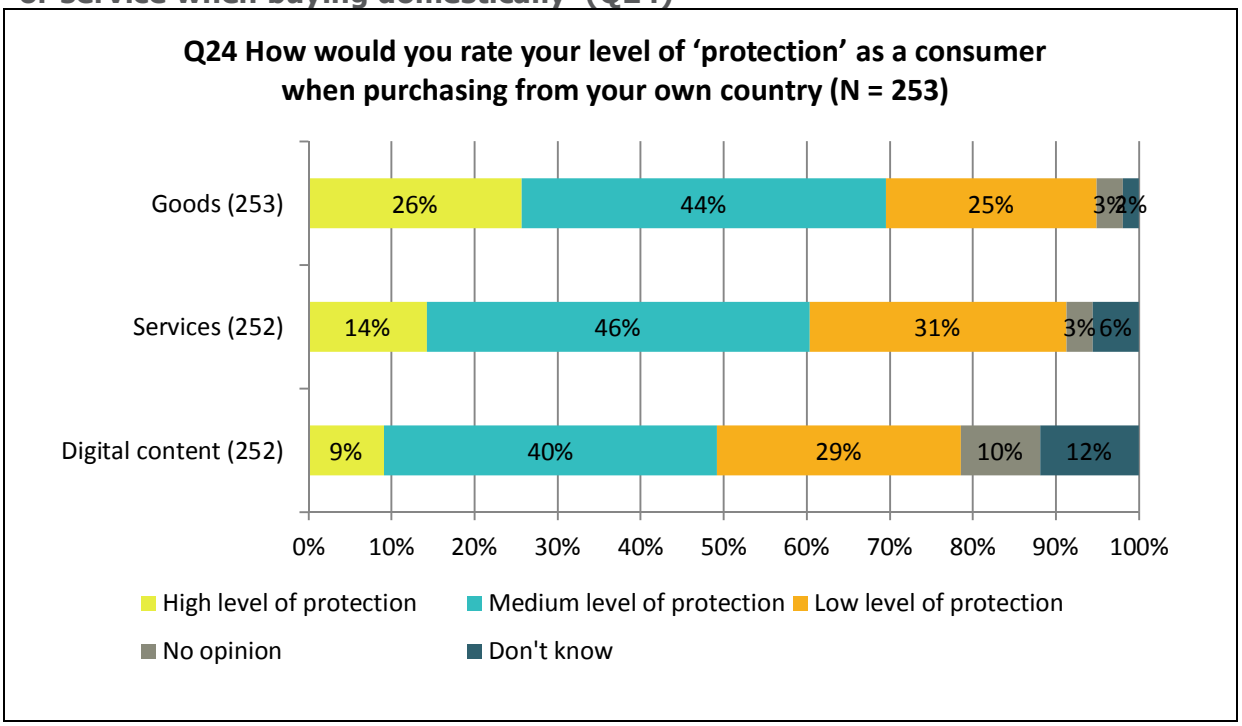
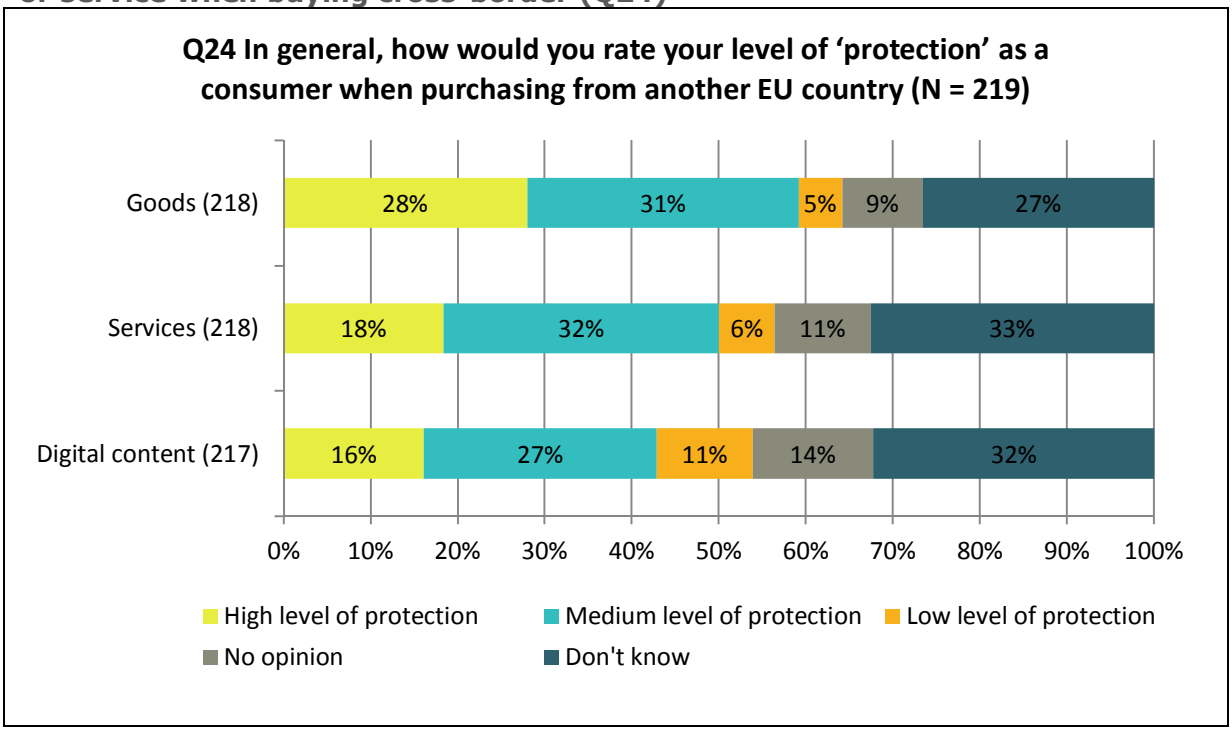


Figure 3-2: Consumers views on the level of protection when purchasing a good or service when buying cross-border (Q24)



Overall, most consumers answering the survey felt that the level of protection was moderate or high when buying goods and services domestically; similar responses were seen for consumers buying goods and services cross-border[48]. Interestingly, digital content remains a key area where consumers do not feel as protected, particularly when buying domestically (refer to Figure 3-1).

As for consumer associations' views, over 60% of the associations answering this question[49] considered the CRD to be either quite effective or very effective for goods when buying domestically. The two most positive provisions according to consumer associations are the following:

- The RoW, where nearly three-quarters of respondents agreed that the provision had been very positive when buying domestically and 65% agreed that it was very positive when buying cross-border; and
- The pre-contractual information requirements for distance and off-premises contracts. Most respondents also agreed that this provision had been either positive or very positive, both domestically and cross-border.

Their opinion on digital content was similar to that of consumers, with 43% of consumer associations stating that the CRD has not been effective for consumers when buying digital content domestically and 30% thought it was not effective when buying cross-border. Yet consumer associations' views about the specific provisions on digital content are generally positive (as shown in Figure 3-3 and 3-4). In their view, the low level of effectiveness relates both to the lack of enforcement and difficulties with the implementation of specific provisions in the context of digital content, with particular regard to the RoW. The following box provides some comments by consumers and their associations in relation to "digital content".

Example comments from the consumers and consumer associations on digital content

In the case of digital content, there is a lack of effective data protection. The laws are in order, but it is a matter of enforcement.

lots of information about consumer rights for goods but I don't know very much about how this applies to digital content.

digital content it is a little worse, because due to the fact that things are "untouchable"

The very specific and difficult exemption of the right of withdrawal concerning digital content (f.e. downloads)

In particular, the application of the right of withdrawal to digital content does not match the realities of the modern app economy.

[48] It should be noted that a higher % of respondents did not/could not answer or did not have an opinion on the level of protection for cross-border purchases.

[49] 23 consumer associations' responses were received for this question concerning level of protection when buying domestically. Fewer consumer associations responded to the same question regarding cross-border sales.

Figure 3-3: Consumer associations' rating of provisions when buying domestically (Q 6)

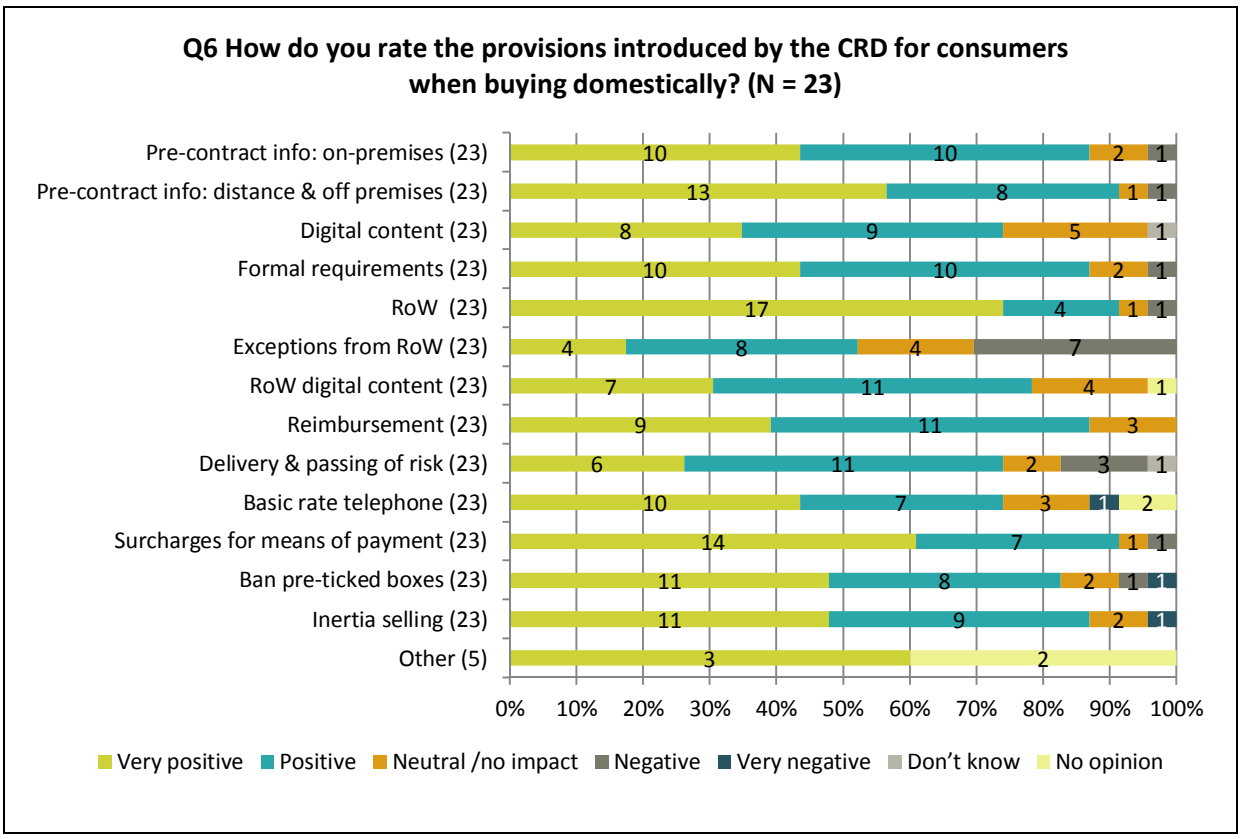
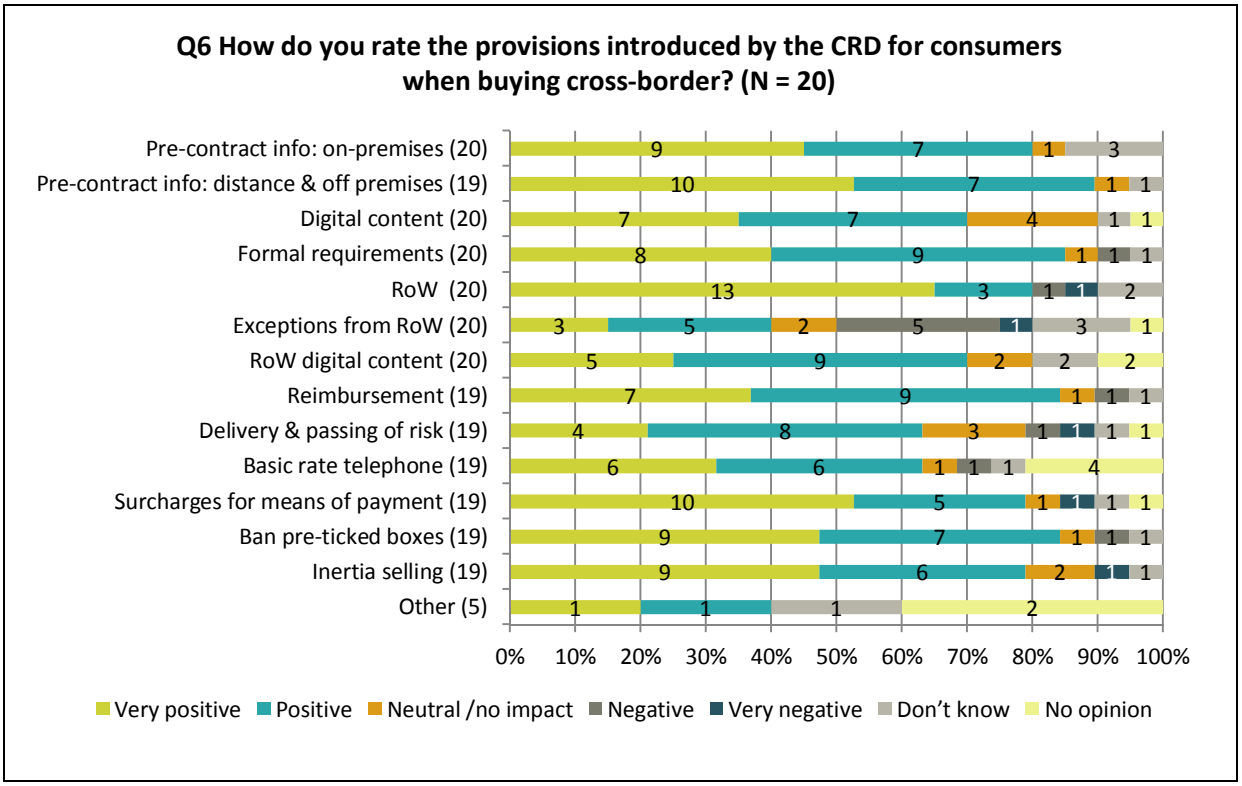


Figure 3-4: Consumer associations' rating of provisions when buying cross-border (Q6)



Additional text provided by consumer associations generally indicated positive views towards the CRD in terms of consumer protection; however, concerns have been raised that consumers are not fully aware of their rights with regard to the RoW. Some associations also commented that there are too many exemptions from the RoW under Art. 16.

Free text from: Q3 - How effective would you consider the Consumer Rights Directive to be for consumer protection in respect of the following activities…

The RoW is quite known but consumers often don't know exactly the rules. They especially don't know the number of days (14) and when starts or expires the RoW.

Consumer rights are only effective if the businesses fulfil their obligations and consumers know their rights and can enforce them properly.

Free text from: Q6 - How positively or negatively do you rate each of the following provisions introduced by the CRD for consumers when buying…?

Generally the provisions of the CRD are positive for consumers but they have to be fulfilled by the businesses and consumers should know their rights ... There are too many exceptions from the RoW. There should be e.g. a RoW from contracts relating to leisure activities.

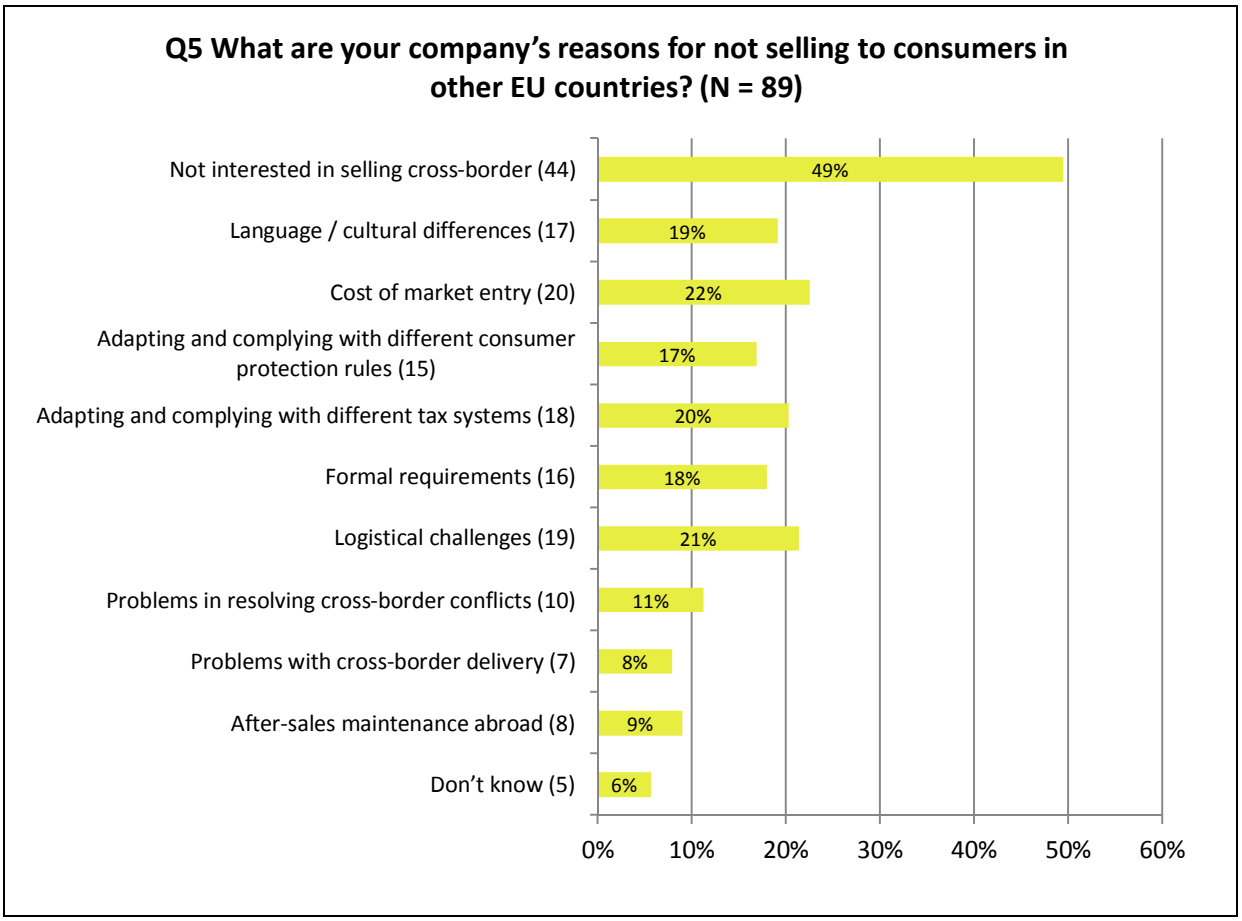
Regarding the provision (art. 14(3)) that states that if the consumer exercises the RoW from a service contract or for the supply of water, gas, or electricity […] the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3), … in order to avoid discrepancies and practical problems of implementation it would have been valuable to establish the calculation formula. […]Also, in our opinion, it is highly criticisable the fact that the Directive establishes that if the total price is excessive, the proportionate amount shall be calculated on the basis of the market value. But the problem is what shall be considered excessive…. In relation to the formal requirements for distance and off-premises contracts, we understand that it should be expressly provided the consequence in case of non-compliance with the providing of the copy of the contract. Although we consider positive the provisions regarding the reimbursement, we find negative the obligation to pay for diminished value of goods used during the withdrawal period.

3.3 Traders and traders associations' views on the effectiveness of the CRD

One of the problems that the Directive aimed to address was the fragmentation of the internal market and barriers to cross-border trade from different legislative requirements.

Traders were asked about the main reasons for not selling to consumers in other EU countries. Nearly half of the respondents replied that they are not interested in selling cross-border. Taking into account the fact that only 89 traders responded to this question, the results should be read with caution but it is still worth highlighting that only 15 traders (representing 17% of the total) indicated differences in national consumer legislation as a reason for not selling cross-border. Findings from the interview programme suggests that other factors, such as language/ cultural differences, and logistical challenges in selling cross-border have a stronger influence than regulatory fragmentation.

Figure 3-5: Traders' reasons for not selling cross-border (Q 5)

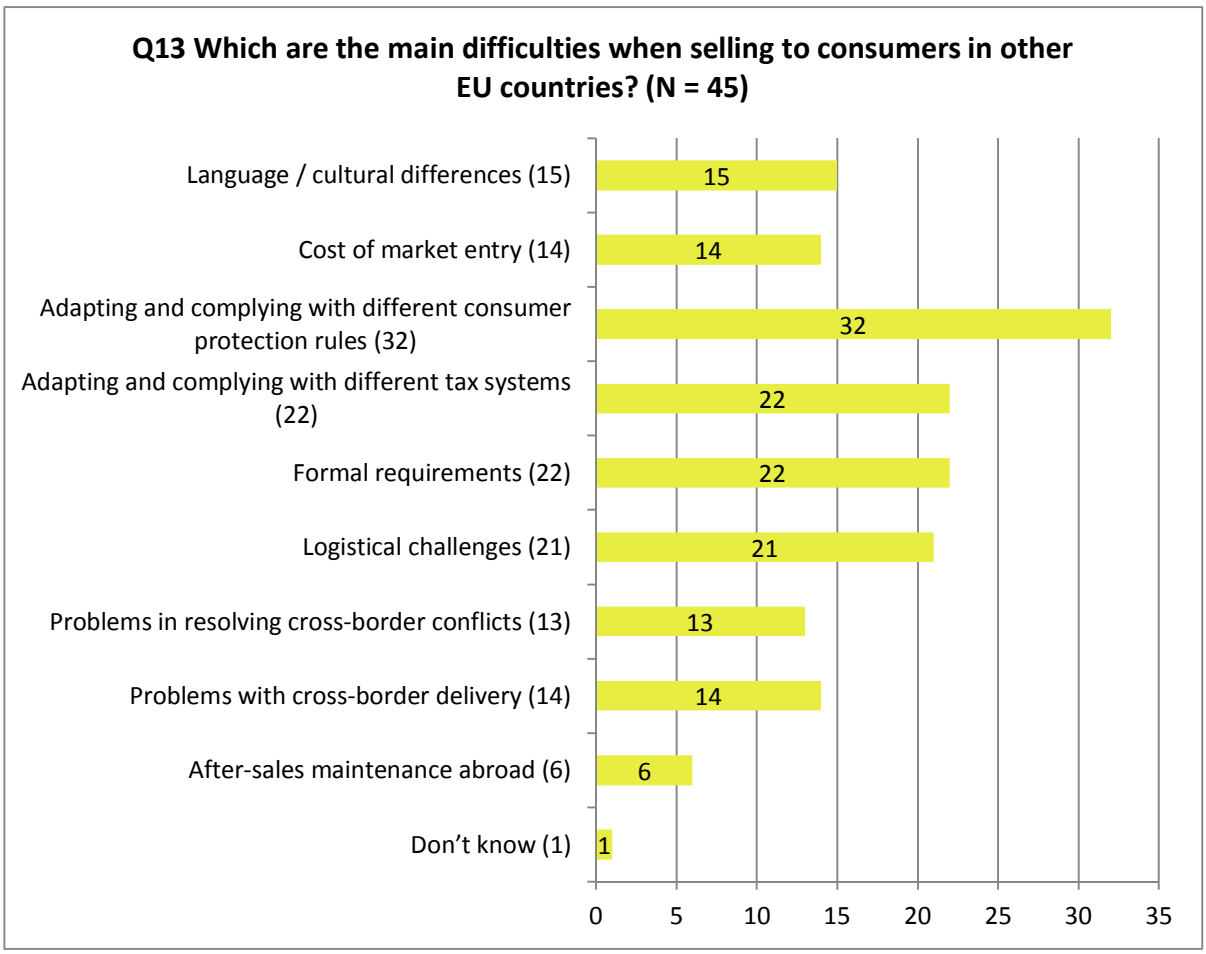


NB Figure 3-5: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

For those that do trade cross-border (114 traders responding[50]), 38% responded that there were no difficulties when trading cross-border and 47% mentioned that there are some minor or significant difficulties. Of those that mentioned that there are some minor or significant difficulties, 71% agreed that differences in national legislation were one of the main difficulties when selling in other EU countries (32 traders indicated this as a difficulty). This view was shared by the other stakeholder groups too. For example, a respondent to the OPC commented that the CRD did not fully harmonise all aspects of distance selling, given that there are also a number of regulatory choices for MS under certain Articles, so traders still had to check for differences in national rules. Generally however differences in consumer legislation remaining after the implementation of the Directive are not considered to be a barrier to cross-border trade, owing to the few responses confirming this. Thus, it can be concluded that the CRD has been successful in removing barriers to trade due to consumer legislation, due to its full harmonisation approach based on survey responses referring to the differences in regulatory regimes not being a main obstacle to cross-border trade (only 17% of traders mentioned this as a reason for not selling cross-border).

[50] To the question: Are there any difficulties faced by your company when selling to consumers in other EU countries? (Q12)

Figure 3-6: Traders: What are the main difficulties when selling cross-border? (Q 15)

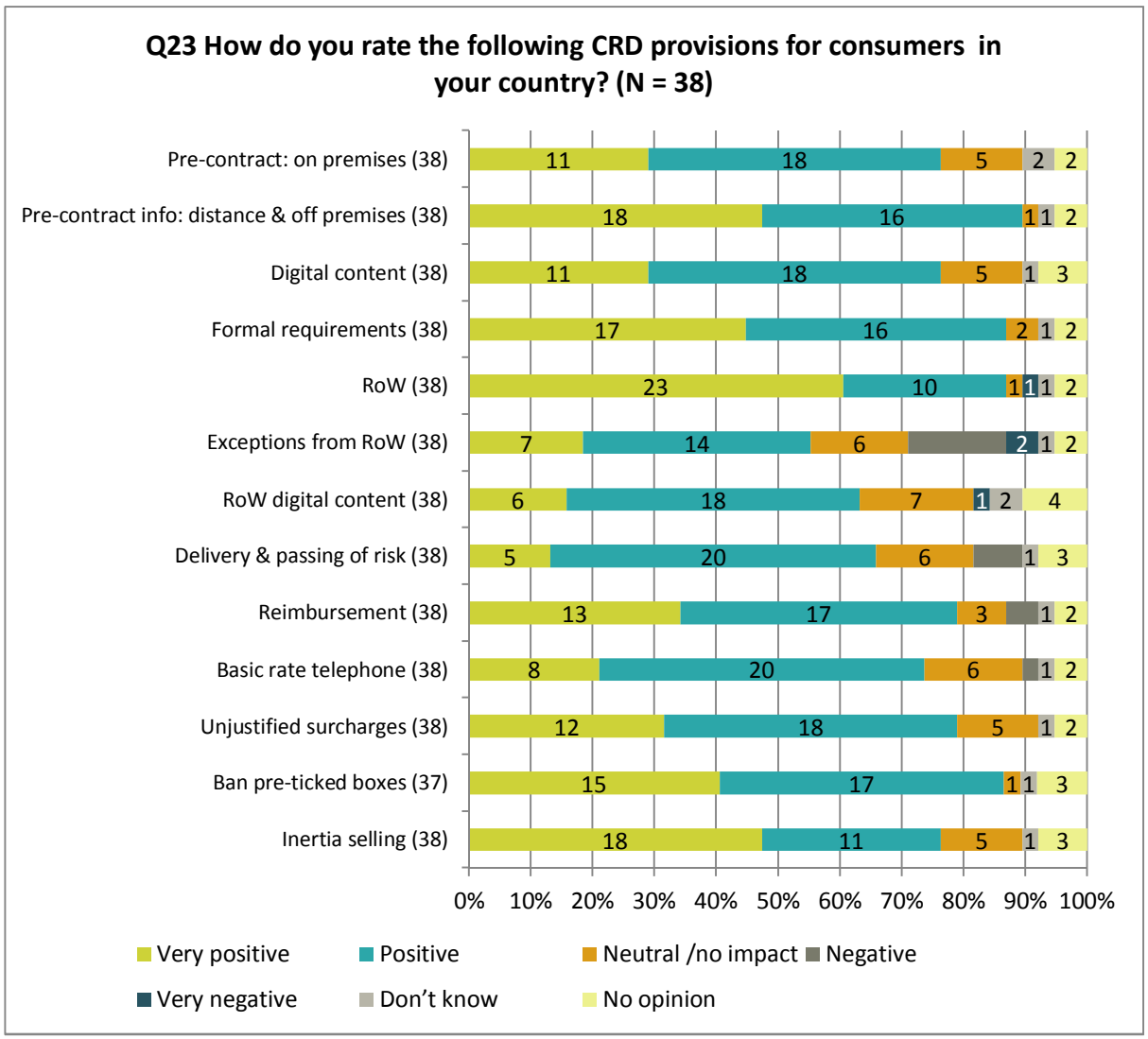


NB Figure 3-6: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

3.4 National competent authorities view on effectiveness

National competent authorities were asked to rate the different provisions of the CRD for consumer protection. Figure **3-7** shows their responses. Similar to the consumer associations, national competent authorities believed that provisions on the pre-contractual information requirements for distance and off-premises and RoW are either positive or very positive for consumers. Their views on the exemptions from the RoW as well as withdrawal from digital content contracts are not as positive; this was also highlighted in many of the interviews.

Figure 3-7: National competent authorities' views on CRD provisions for consumers (Q 23)



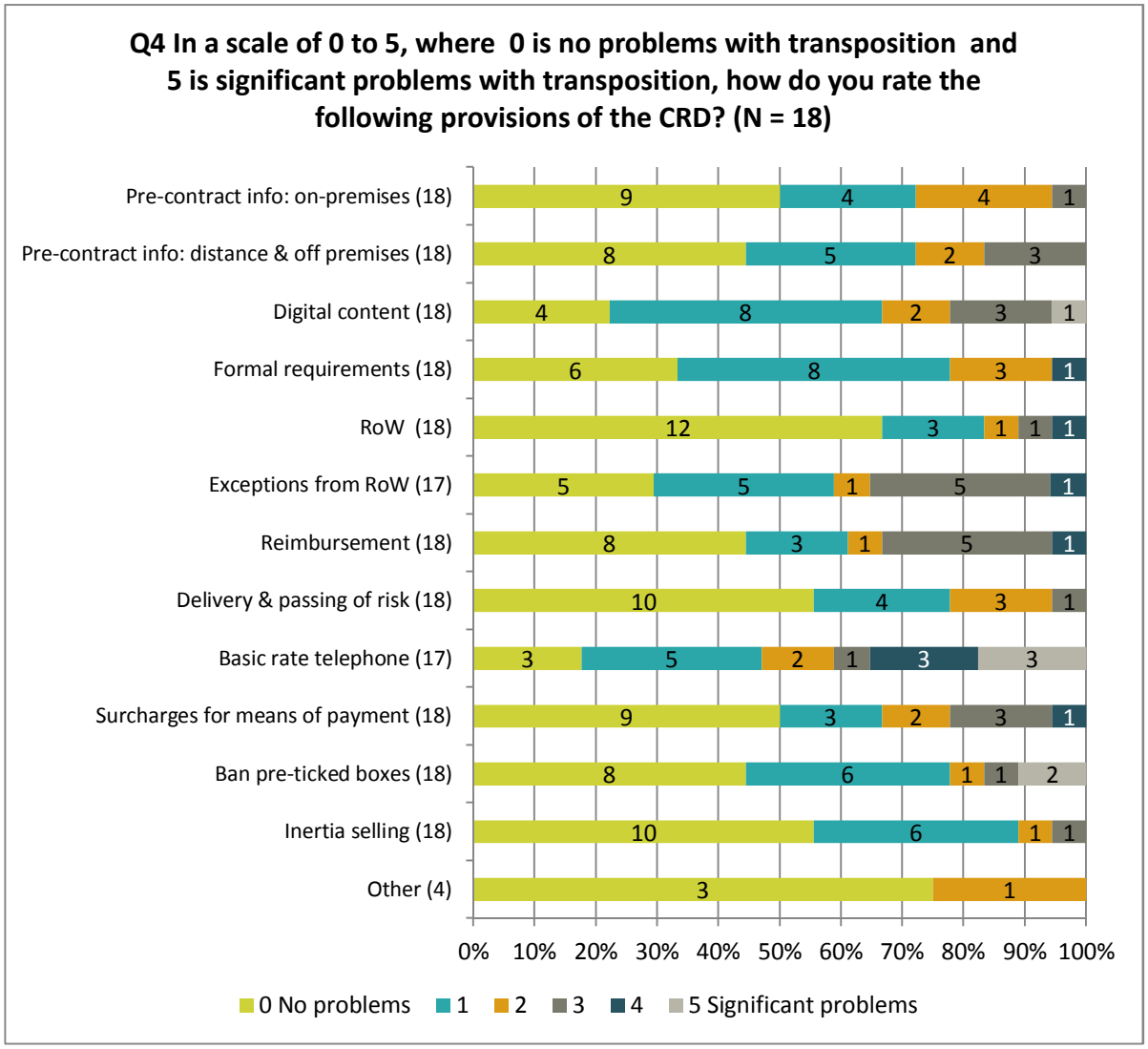
MS' competent authorities were asked whether they had had any difficulties in interpreting any of the provisions within the CRD that may explain the lack of effectiveness. Figure 3-8 details their responses. Most of the difficulties have been encountered in the transposition of Art. 16, i.e. exceptions from the RoW, and also in relation to ensuring the provision of access to basic telephone rate once contracts have been concluded, i.e. Art. 21. The CRD does not define basic rate for the application of Art. 21 on communication by phone. As a result, following a recent request for a preliminary ruling from the Regional Court in Stuttgart (Germany) to interpret the Concept of 'basic rate', the opinion of the advocate general only given in November 2016 has been the following:

> *where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer calling the after-sales service of the trader must not incur charges higher than the normal costs which the consumer would incur for calling a standard (geographic) fixed or mobile number.*

The judgment issued on 2 March 2017 by the European Court of Justice stated that the concept of "basic rate" "*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".

Figure 3-8: Competent authorities – How do you rate transposition of the provisions..(0= no problems, 5= significant problems) (Q4)



More information on specific difficulties was also provided, in relation to pre-contractual information and the exceptions from both the pre-contractual information requirements and the RoW, also for other contracts than off-premises and distance contracts, and for digital content. Some stakeholders highlighted that different obligations for the different type of contracts, on-premises and off-premises and distance, can raise uncertainty; a view which was shared during the Consumer Summit. Their opinions on the problems with interpretation of the provisions from the on-survey responses are given in the next box[51].

[51] The opinions from stakeholders are given as provided in the survey responses and do not reflect the opinion of the consultants or the EC.

Competent authorities' problems with interpreting CRD provisions (Q4)

Unclear is the exemption for day-to-day transactions (Art 5 para 3). For instance: buying a CD could be interpreted as such a day-to-day transaction - the trader would then not be obliged to inform about functionality and interoperability (lit g and f).

The omission of pre-contractual information for instance concerning additional costs (Art 5) doesn't lead to any sanctions. Whereas in off-premises and distance contracts the consequence is clear: consumers don't have to carry the costs when they have not received the relevant information in an adequate way. A clarification for on-premises contracts is necessary.

Art 5 …It should be clarified that the trader is obliged to provide all contact possibilities.

RoW and exceptions: In practice, the trader's information obligations when the consumer has no right to withdraw from the contract can be misleading for consumers. The trader firstly has to inform consumers about their RoW and secondly to inform that in this concrete case the consumer has no right. We would appreciate a simplification of this information procedure, of course securing a high level of consumer protection.

The wide range of exceptions of the right of withdrawal, now applicable to both off-premises and distance contracts, therefore lowered the level of consumer protection in the area of off-premises and has consequently led to two different "withdrawal systems" for off-premises contracts in Austria. The list of exceptions is too extensive.

Unclear terms: "urgent repairs or maintenance", "basic rate" "the supply of goods made to the consumer's specifications or clearly personalized" – are modular concepts to be subsumed? "service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent, …"

The information obligation concerning the total price (Art 6/1 e and Art 22) can be problematic and needs to be clarified.

We had problems with application of some provisions of CRD in specific sectors (e.g. supply of water, gas, electricity or district heating) due to the peculiarities of these type of contracts and their conclusion.

We have had problems concerning the exact meaning of the basic rate requirement provided in Article 21 of the CRD. Namely we have had questions whether the aim of this provision was to exclude the trader from profiting from charging the consumer more than the basic rate or if the aim was to avoid a situation where the consumer had to pay more than the basic rate even if the trader does not get any direct benefits from using such a number, only the telecommunications service provider receives higher fees.

Article concerning the basic rate (Article 21) was the most demanding Article in this regard, since the Article was not discussed in the Council working group and at the same time the effect of the Article seemed to be significant for the markets depending on its interpretation.

Concerning contracts on digital content, there is still no common understanding among MS as to the question of whether free digital content contracts are covered by the provisions of the directive or not. In the context of Articles 14 and 16, the rules on digital content and those on services are incoherent. There is no rule on the passing of risk when goods are returned to the seller by the consumer. The notion of "basic rate" is not defined in Union law.

Contracts concluded at fairs and fairs should automatically be contracts concluded outside premises.

Those providing position papers for the OPC shared their views on the transposition of the CRD. A respondent commented that the process of implementing the CRD had been different in different MS, with some having a smooth process and others encountering issues relating to the interpretation and application of the Directive (sometimes even at regional or local levels). A number of responses showed uncertainty with definitions, in particular whether contracts were classed as on- or off-premises and hence their implications in terms of traders' obligations to provide information, the RoW, etc.

Article 2(9) – definition of off-premises contracts

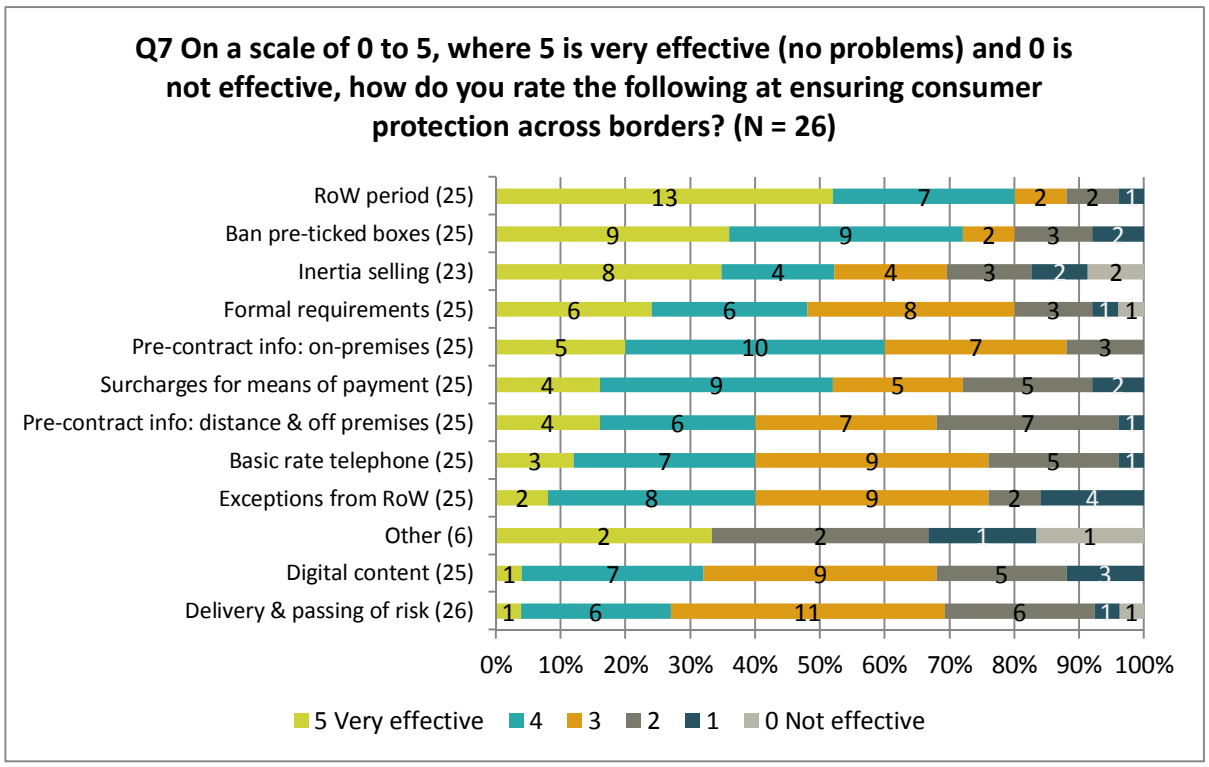
The definition under Art. 2(9) has caused some concern regarding exhibitions and trade fairs, which are clearly retail settings. However, if an exhibitor exhibits for the first time or occasionally, then they may be exempt from certain provisions of the CRD on off-premises contracts (such as the RoW and pre-contractual information requirements). Some enforcement authorities have taken a pragmatic approach. In the UK, there has been some concern from major exhibition organisers that the Directive (and UK legislation) applies the test as to whether the trader has operated at the venue on a usual basis. This means that a trader attending the exhibition for the first time may not fall within the definition whereas a regular exhibitor would. In the views of an interviewee from a trade association, these are clearly not off-premises contracts and consumers would not expect to be given cancellation rights when visiting an exhibition or trade fair.

3.5 ECCs' views on the effectiveness of the CRD

ECCs were also asked a similar question with regard to the specific provisions and their effectiveness[52].Figure **3-9** presents the responses received to question 7. Similar to the other stakeholder groups, the RoW is considered as one of the most effective provisions, but the ban on pre-ticked boxes is also considered to be either a very effective or an effective provision in ensuring consumer protection cross-border. The provision on pre-contractual information requirements is not considered to be very effective, but this is reported to be due to frequent instances of non-compliance and a lack of enforcement.

[52] As ECC's primary remit is to provide advice and information when shopping cross-border in Europe, their responses are mainly relevant to cross-border trade.

Figure 3-9: ECCs' views on problems with implementation and enforcement (Q7)



Free text from: Q7 – In a scale of 0 to 5 where 5 is very effective (namely no problems with implementation and enforcement) and 0 is not effective, how will you rate the following in terms of ensuring consumer protection across borders?

Exemptions for the RoW (customized products) in case of the purchase of furniture. It is a question of interpretation of those provisions. Is the product customized if you can select a certain colour and the fabric? There are many court rulings regarding this issue.

One of the pre-contractual information requirements for all contracts (whether the contract is concluded at distance, off-premises or other), is to disclose "the identity of the trader, such as his trading name". In our view, the current formulation in the CRD is not effective, as we have seen cases where consumers and enforcement authorities alike find difficulties in identifying the LEGAL identity of the trader; there are instances where the name and address provided may suffice to comply with the CRD, yet these details may be insufficient to take legal action against the trader concerned, if the latter's actual legal identity (whether a natural person, body corporate or other) is different and is not disclosed. In our view, more should be done to ensure that consumers are provided with the trader's LEGAL identity, so that consumers can verify the relevant details before entering into a transaction or, if required, seek effective remedies from the relevant legal person.

All of these measures are good measures in terms of consumer protection, but to be really effective they need strong enforcement when a company doesn't respect them

The confirmation button has not proved to be precise enough. Based on our experience it works well in the traditional e-commerce but poorly with subscription traps. Enforcement actions are not effective.

Effectiveness is hindered by the non-compliance of traders and a lack of effective

deterrents.

Ineffective enforcement/lack of enforcement action.

No efficient checks to determine whether traders are complying with the CRD

Not a specific mechanism to achieve a prompt remedy for consumers without the need for public enforcement involvement.

There is a need for clear set of remedies in favour of the consumer where their rights are breached.

3.6 Factors affecting effectiveness

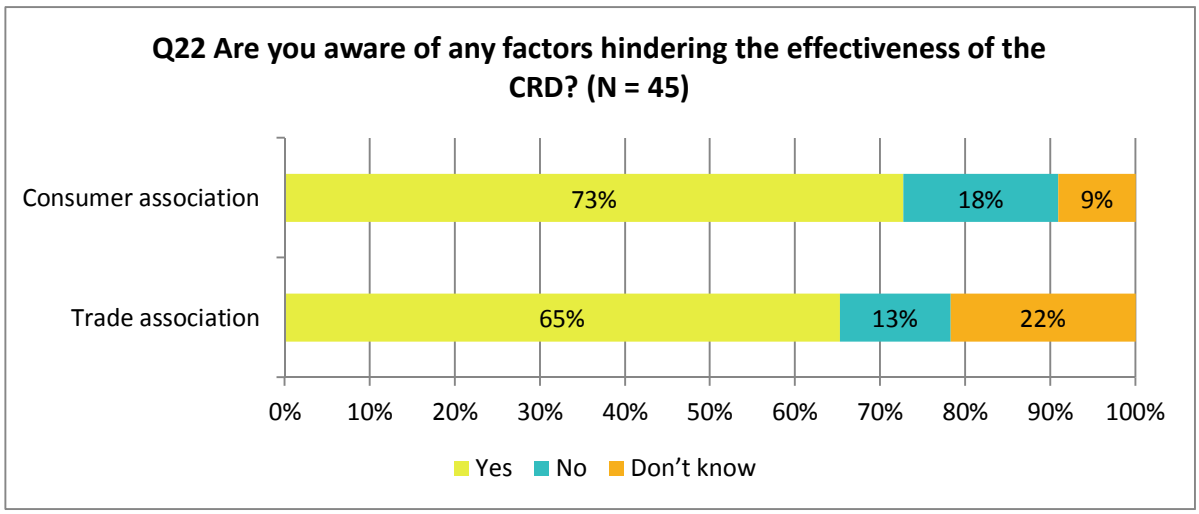
In spite of the improvements brought about by the CRD (such as giving consumers the confidence to buy cross-border and return goods under the same conditions as provided when shopping in their domestic market), there still remain barriers to cross-border e-commerce. These however vary according to the type of contract. Indeed, consumer associations responding to the 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 contact (30% thought the CRD was very or quite effective). These results agree 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* (CEC, 2016).

Stakeholders were asked about any factors hindering the effectiveness of the CRD. Over 60% of consumer and trade associations indicated that they were aware of factors hindering the effectiveness of the CRD. The most recurrent factors highlighted to be hindering the CRD's effectiveness include:

- A lack of awareness and understanding among consumers and traders of consumer rights (and obligations);
- Issues of compliance by traders, particularly with some provisions; and
- Issues relating to enforcement, particularly cross-border enforcement (although there are mechanisms in place such as the CPC Network to facilitate cooperation and successful cross-border enforcement, in reality this is time-consuming and costly).

The above factors deserve further investigation. Additional information is provided in the following sub-sections, where the findings from this evaluation are triangulated with the findings from other related studies that were listed in the introductory part of this Section (Section 1.3.3).

Figure 3-10: Consumer and trade associations - factors hindering the effectiveness of the CRD (Q22)



Free text from ECC Survey: Q8 - If you have noted that some of the above provisions have not been effective, what are, in your opinion, the main factors hindering the effectiveness?

Enforcement procedure takes too much time….Too much room for the trader and interpretation of the terms.

Lack of enough strong enforcement actions.

Lack of specific remedy for the consumer in some cases. Whilst a breach of the CRD may lead to public enforcement action, it is not always clear what the remedy for affected consumers is. In our view, a clear set of remedies in favour of consumers where their rights are not respected would facilitate consumers' access to redress, incentivise trader's voluntary compliance, and reduce the need for public enforcement.

There is no efficient check whether traders comply with the CRD. Enforcement Bodies and Consumer Protection Authorities should better review the implementation of the CRD (test cases, injunction proceedings)

National resources - national priorities maybe put emphasis on focusing on the problems encountered on the home market operators. - time-consuming tasks for enforcement authorities /the CPC and in-efficient sanctions -traders do not respect the law

Free text from Consumer and Trade Associations Survey: Q22 - Are you aware of any factors hindering the effectiveness of the CRD?

Trade Associations

At this time there isn't a clear overview of the transposition of the CRD. As such the CRD allows some individual MS approaches to the transposition which reduce the benefits of the Directive. The CRD also is very granular which lead to extensive debates over its interpretation and to the need for EU Commission guidance.

Different national laws and national obligations in member states alongside the European consumer legislation still are a hampering factor ... The CRD not being fully harmonised in all parts …. The mere complexity of the consumer framework is a hindering factor since it is a challenge for businesses to comply with all different obligations in an effective way. The amount of information businesses are obliged to give to the consumer before concluding a contract, due to different legal acts, is massive and a heavy administrative burden. The majority of consumers are not interested in all that

information before purchasing a product. …

Full harmonisation in the key areas of the trader-consumer relationship which would be a major step forward to decrease fragmented consumer protection rules across the European Union. EU consumer law needs better implementation and enforcement and its goals cannot be achieved if there are no effective remedies available to the consumer. It is very important to exploit the potential for enforcement cooperation of national authorities in Europe. The review of the CPC Regulation is the tool which could help supporting it.

The provisions are too complex and burdensome, especially for SME: Such provisions are designed for big traders but do not take the Think-Small-First- Principle of the Small Business Act into account at all.

Consumer Associations

The willing of companies and sellers in general to respect the provisions of the directive, as there is no power for the national authorities to force anyone to deal with those provisions, except from the courts, where the costs are not consumer friendly in every case.

There are a lot of exemptions of the CRD. From the consumers' point of view the CRD should for example also be applicable to contracts for social services or healthcare and for package travels or passenger transport services. Furthermore the CRD can only be effective if the consumers can enforce their rights. Court proceedings are generally very time-consuming, costly and therefore risky.

Poor spread of information, insufficient education and information of business and consumers.

On this respect, we have to say that the level of harmonization required by the Directive has brought some problems for those MS that had already established quite a good level of protection for consumers regarding, for instance, distance and off-premises contracts.

Limited national authorities' ability to cope, at a coordinated EU-level, with malpractices or infringements by multinational companies operating through subsidiaries or other forms of presence in different EU countries. Discrimination regarding to consumers' access to rights prescribed by EU law, e.g. access to warranty provisions, based on criteria linked to nationality or residence of consumers.

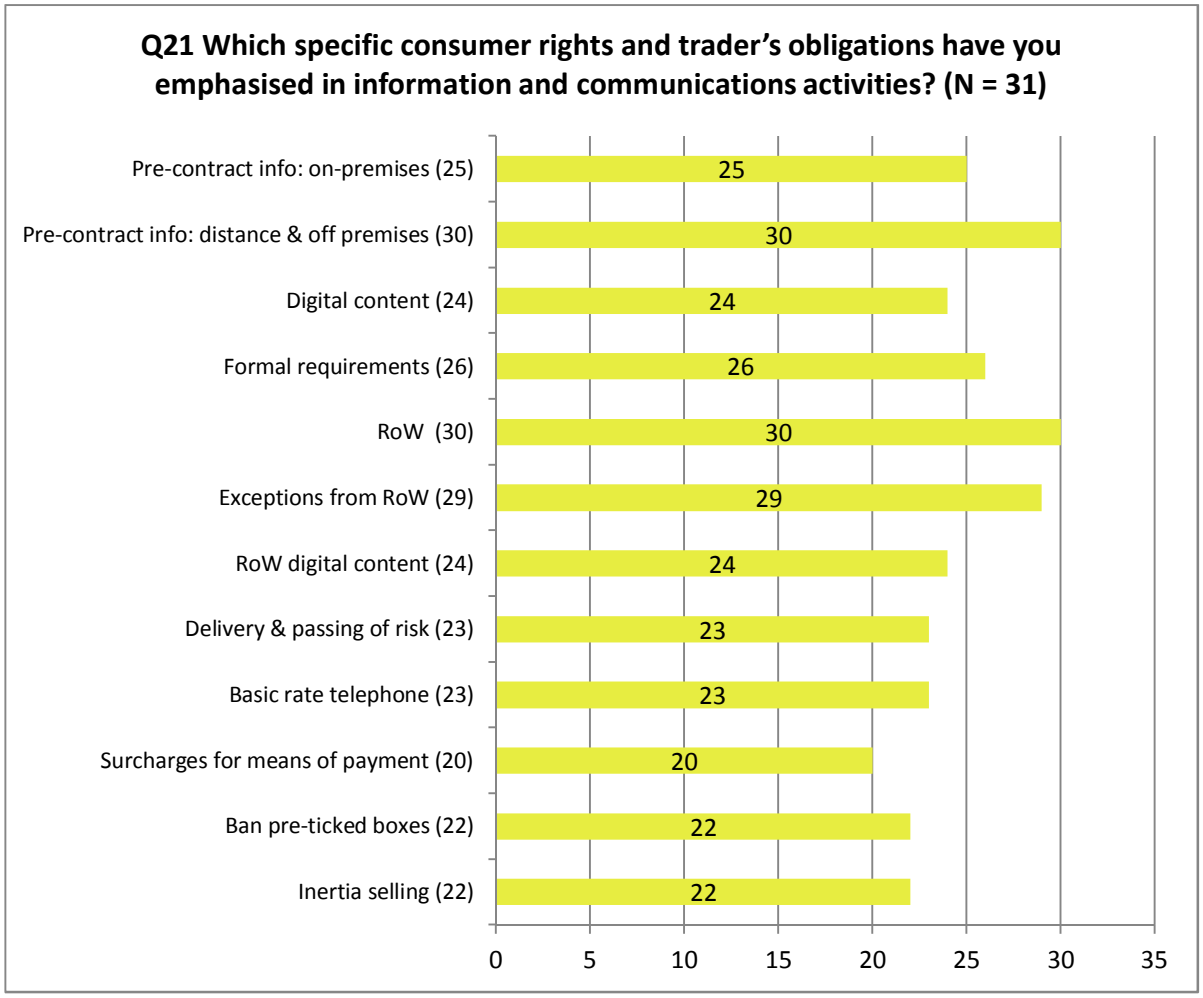
3.6.1 Level of awareness & understanding of consumer rights

The evaluation of the EC consumer rights awareness campaign found that the campaign messages for 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.

Moreover, the evaluation highlighted that, although stakeholders and other Commission services (such as the ECCs) were providing consumers and traders with information on consumer rights within Europe, there was little evidence of similar campaigns at national level. Other sources have however suggested otherwise. The online survey asked national competent authorities about whether they were undertaking awareness-raising campaigns at national levels. Almost all respondents (90%, 31 respondents) noted that awareness-raising and information campaigns were being carried out by national enforcement authorities (See Figure 3-11). Similarly, the report by the EESC on the

evaluation of the CRD concluded that interviewees in the fact finding missions[53] had been more frequently exposed to information campaigns conducted by their national authorities on consumer rights (68% of the 54 respondents) and less so to those conducted by the EC (38% of the total).

Figure 3-11: National competent authorities awareness-raising and information campaign(s) for consumers and traders (Q 21)



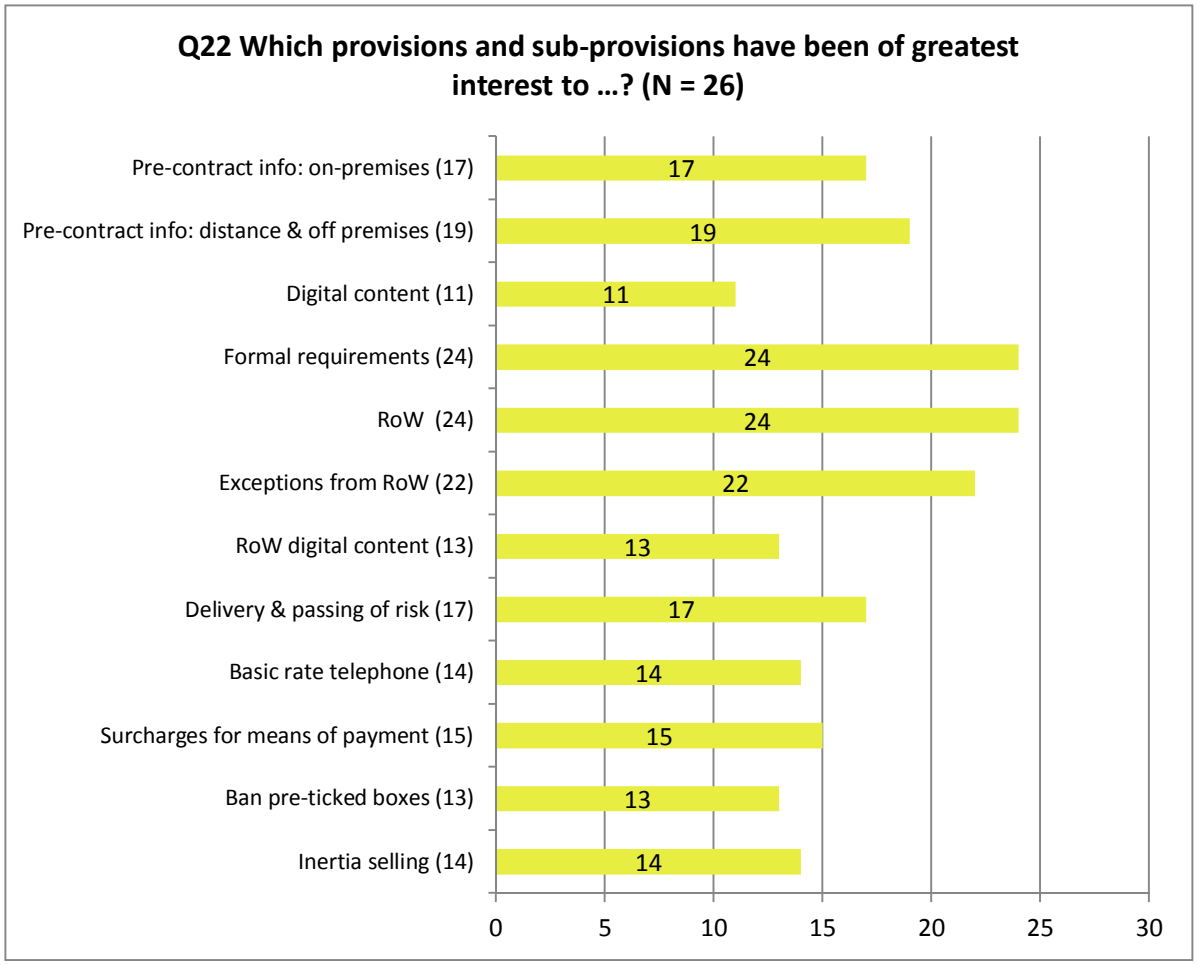
NB Figure 3-11: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

The additional information provided by national competent authorities indicated that a wide range of awareness-raising activities were undertaken; the most popular of which appeared to be the development of written guidance (including brochures, leaflets, press releases and tailored guidance documents), providing information about changes in EU legislation via websites, and lectures (including seminars and conferences). In addition to these, other activities were also undertaken to reach less active audiences (i.e. those not seeking specific information about the CRD) via social media, national TV/radio, and information desks at shopping centres and individual outlets. Meetings, training events and workshops were also undertaken to provide specific and tailored information to key stakeholders. The information campaigns tended to focus on making consumers more aware of their overall rights (i.e. the CRD generally) and key areas such as RoW and reimbursements/refunds; the information provided to traders was more focused on

[53] Fact finding missions were conducted in Belgium, Italy, Spain, Poland and Latvia.

communicating the obligations of traders under the CRD when selling (e.g. information requirements, ensuring that means of payment are clear, ensuring that pre-ticked boxes are no longer used, ensuring access for consumers to a standard rate phone number). In terms of interest in the different provisions of the CRD among consumers and traders, the RoW and developing an understanding of the formal requirements appears to be of most interest (NB: formal requirements in this context relate to off-premises and distance contracts).

Figure 3-12: National competent authorities: Which provisions and sub-provisions have been of greatest interest to consumers and traders? (Q 22)



NB Figure 3-12: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

Thus, given 90% of responding national competent authorities had undertaken awareness rising activities, as highlighted above, it would be expected that there is a moderate to high level of awareness, especially with respect of some of the key provisions of the CRD, such as the RoW (Art. 9) and pre-contractual information requirements under Art. 6 for distance and off-premises contracts.

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.

Several respondents to the OPC also commented on the value of the interpretative guidance on the CRD[54] (see box below). Generally, the guidance was felt to be very helpful in providing practical examples as to how the Directive should apply. It was also seen as being useful in clarifying grey areas in relation to the Directive's intended scope. For instance, the guidance clarifies that free digital content should be covered within the CRD's scope since, contrary to the definition of sales and service contracts, the Directive does not mention 'payment' for the supply of public utilities and online digital content. Nevertheless, this is not explicitly explained in the CRD, and might create some ambiguity.

Examples of comments on DG JUST Interpretative guidance from the open consultation

Stakeholder "supports the use of guidance/interpretation guidelines as tools to reach a more uniform interpretation of EU law"

"The adoption of guidance documents by the Commission, both for the UCP and the Consumers' Rights directives, is a useful tool to increase awareness of undertakings and consumers. Guidance by the Commission can also promote a greater convergence in the interpretation and application of the substantive rules at the national level."

The guidance should "clarify that the withdrawal period in a service contract will start from the moment it begins to be rendered, including any free trial period, and not at the time it converts into a paid service"

In relation to the right of withdrawal, "…there is no clear guidance as to how to calculate the diminished value. It is also unclear whether the traders can deduct any of the costs related to the examination and refurnishing of the goods in the cases where traders can actually resell the goods"

"Perhaps Commission could provide guidance on the calculation of diminished value."

The guidance should "clarify that customers should be able to waive their rights of withdrawal at the same time as they enter into the contract/placing order for digital content".

A further response raised concerns over the definition of off-premises contracts, and whether the term "regularly" had been adequately defined in the guidance.

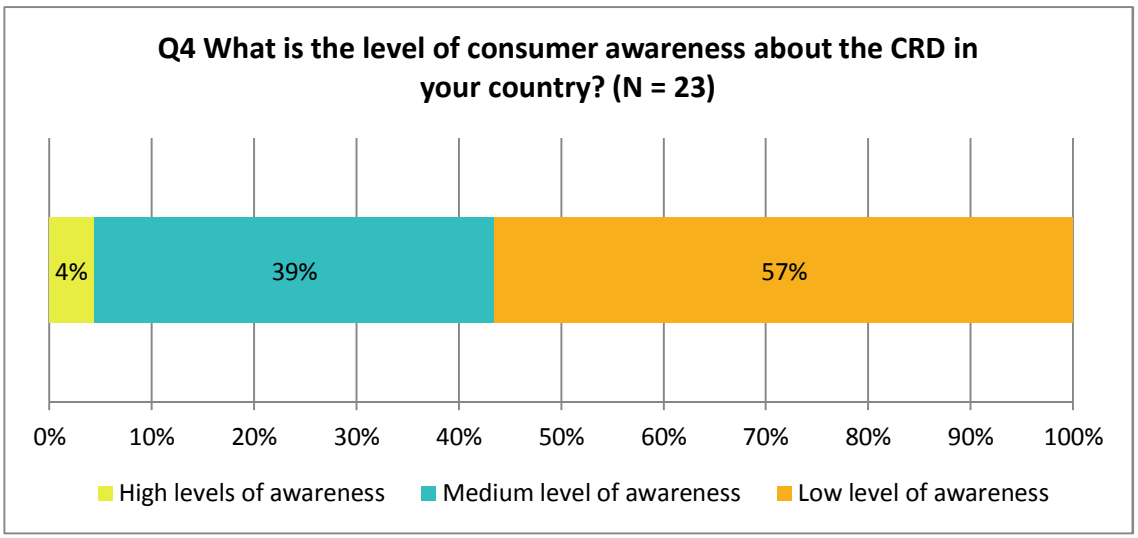
The results in relation to awareness of these and other provisions are presented separately for consumers and traders below.

3.6.1.1 Consumers' awareness and understanding of CRD and its provisions

Consumer associations were asked about the level of consumer awareness in relation to the CRD in their country; 57% of respondents noted a low level of awareness, and only 4% noted that the level of awareness was high (Figure 3-13).

[54] DG Justice Guidance Document concerning Directive 2011/83/EU […]- DG Justice (2014)

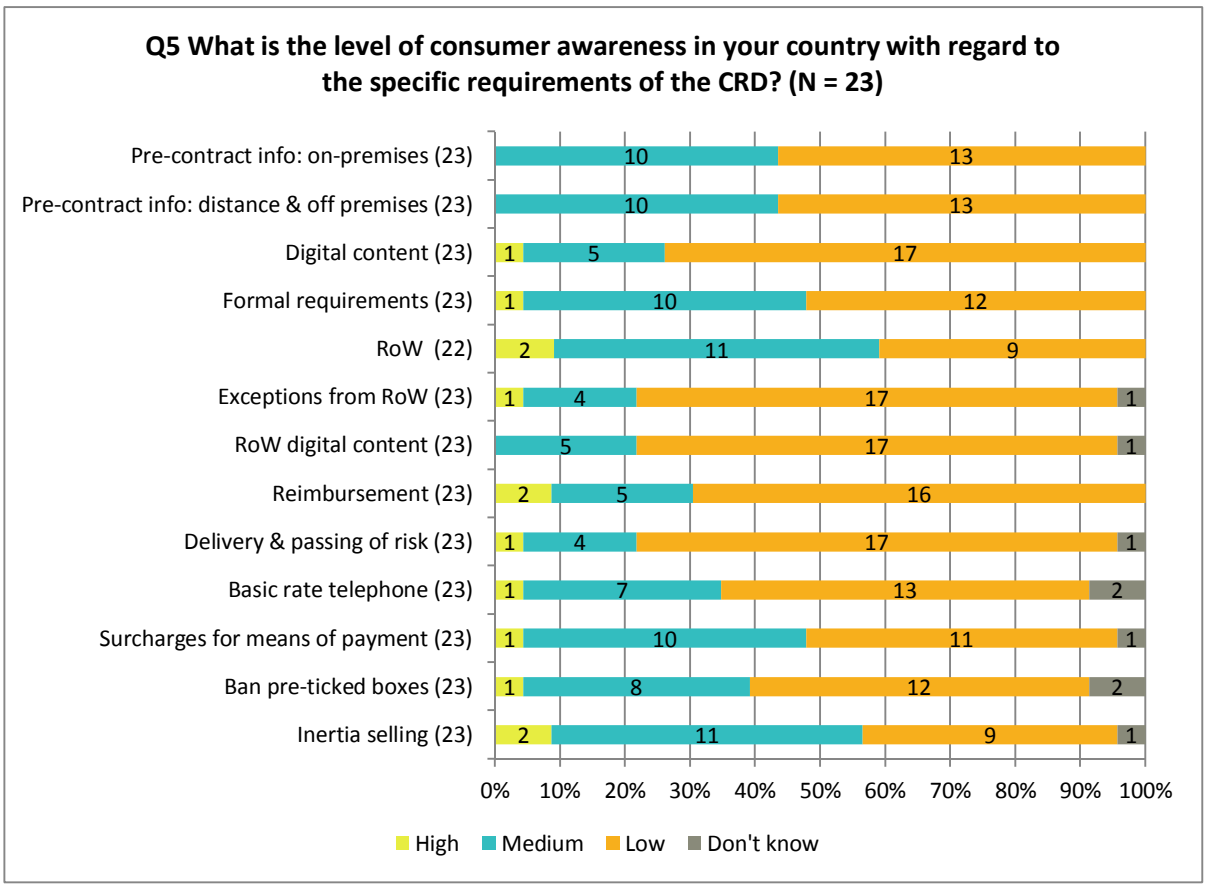
Figure 3-13: Consumer associations' views on the level of consumer awareness (Q4)



The behavioural study reported on the understanding of the information requirements by consumers. In general, respondents indicated that they understood the information and were able to use it.

When asked about the level of awareness in regard to specific provisions, Figure 3-14, the lowest level of awareness was reported to be on digital content, the exemptions from the RoW, the RoW for digital content and delivery and the passing of risk. Conversely, the level of awareness of the RoW in general was considered to be moderate by 50% of the respondents and high by 9% of the respondents. The evaluation of the consumer rights awareness campaign shared similar conclusions about the RoW, with very few people in a survey thinking that they had no rights to return an item and/or get a refund if they changed their mind.

Figure 3-14: Consumer associations' views on consumer awareness on specific requirements (Q 5)



However, there appears to be a lack of understanding with regard to specific articles. For instance, Art. 9 defines the moment from which the 14 day cooling-off period starts, depending on the type of contract involved. It has been noted by stakeholders consulted under this study that the start of the 14 day RoW period is not always clear for a consumer to use when the contract involves both sales and the provision of services. In addition, the fact that many off-premises contracts for home improvements have elements of a customised nature, e.g. a bathroom, a kitchen, means that some of these products are also bespoke and the RoW may not apply[55] but consumers are less aware of this exception. A further difficulty is most traders will deliver the goods relating to an installation gradually as the job progresses. In practice, this means that once the work has started, there are practical difficulties in consumers exercising their RoW.

[55] According to Article 16 (c) related to exemptions form the RoW

Article 16(c) Exceptions from the RoW

Art. 16(c) relates to exceptions from the RoW for goods made to the consumers' specifications and personalised for distance and off-premises contracts. *E.g. Art. 16(c) is of particular relevance to the double-glazing industry and sellers of custom-made chairs for consumers with disabilities or frailties due to their age. Both industries predominantly enter into contracts in consumers' homes and, sometimes, consumers are left with no right to cancel these products. Queries over the exact meaning of what is 'bespoke' seem to have generated a growing interest among e-retailers to claim the exemption for their goods. The CRD does not provide the level of clarity that is needed on this topic. This may cause problems with both off-premises and distance sales; an example provided was a web based bike shop (selling bespoke bikes).*

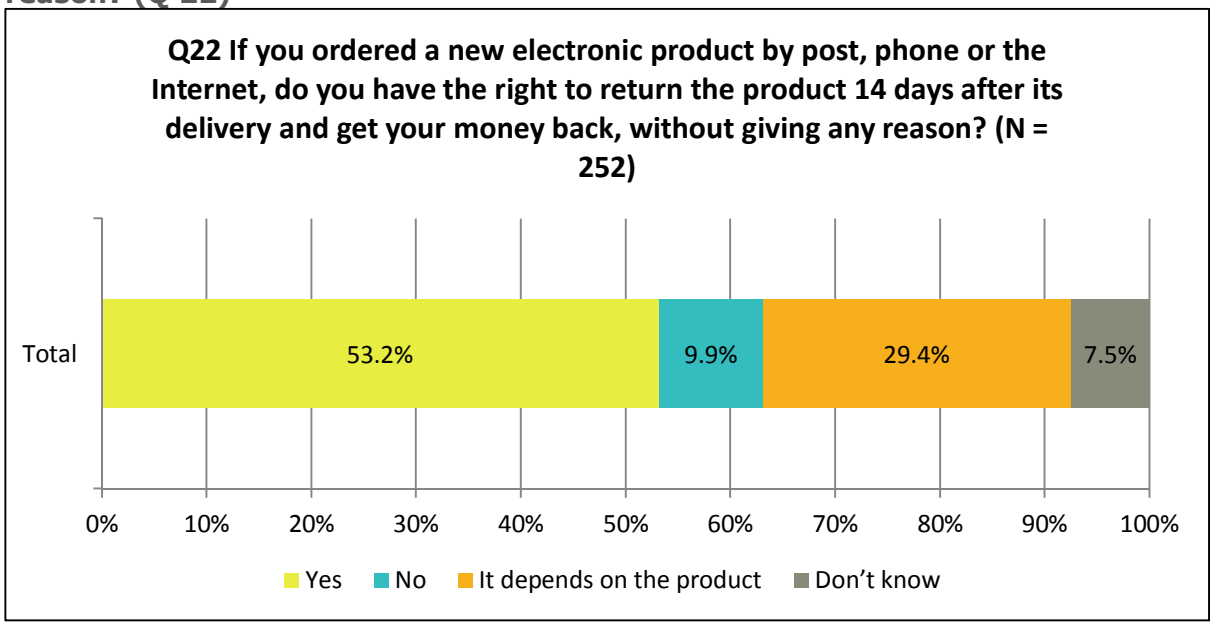
Further clarity is needed on the application of the 'leisure exemption' from cancellation in article 16(l). While the Directive is clear on concert tickets, hotel rooms etc. the wording is quite broad and open to interpretation. There is a risk that the lack of preciseness of the wording means that arguments can be made that the 'leisure exemption' applies much more widely than it was originally intended.

Some major trade associations in the UK require their members to offer a 7-day, from date of contract, withdrawal period because they are aware of the risks to consumers (and to the reputation of their industry) caused by the Article 16(c) exception.

Although some stakeholders accept that exemptions from the RoW are appropriate, some stakeholders advocated that sales contracts falling within Art. 16(c) and (f) should have a 14-day, from the date of contract, withdrawal period.

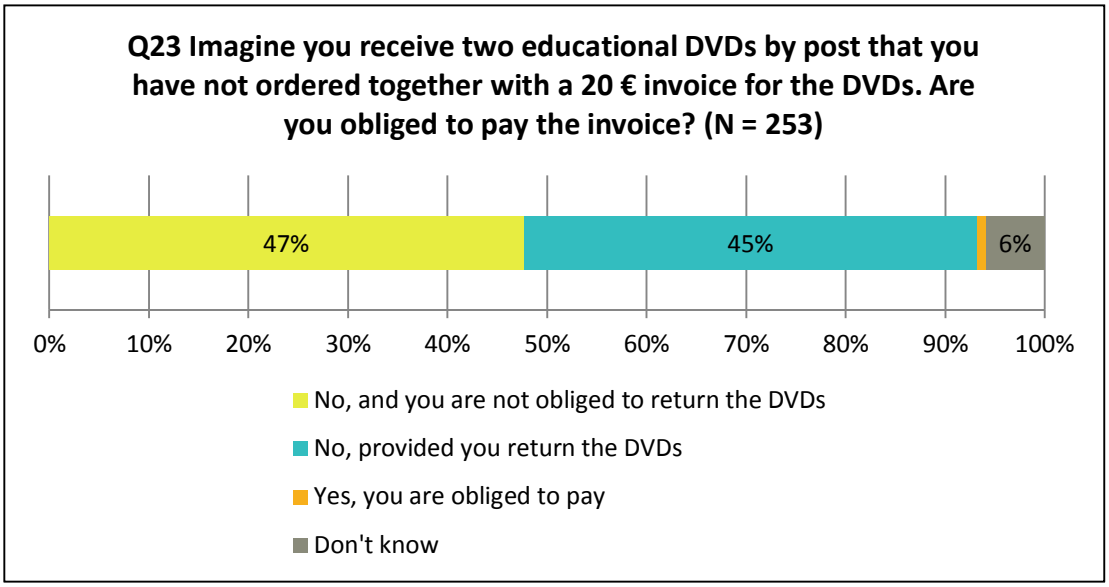
The online survey also asked consumers about specific provisions to test their awareness and understanding, including the RoW (Art.9) and inertia selling (Art.27). Their response on the RoW is shown in Figure 3-15. The figure shows a moderate to high level of awareness about the RoW, with 53% answering correctly but 29% noting that the RoW depended on the type of electronic product being bought and 10% noting that the RoW did not apply.

Figure 3-15: Consumers: Suppose you ordered a new electronic product by post, phone or the Internet, do you think you have the right to return the product 14 days after its delivery and get your money back, without giving any reason? (Q 22)



Concerning inertia selling, the awareness test showed that consumers are only partly aware of this provision. The responses were split almost equally between respondents stating consumers are not obliged to pay the invoice provided that they return the product, and those stating consumers are not obliged to pay the invoice and return the product (see Figure 3-16). Very few consumers responded that consumers are obliged to pay when receiving unordered products.

Figure 3-16: Consumers: Imagine you receive two educational DVDs by post that you have not ordered together with a 20 € invoice for the DVDs. Are you obliged to pay the invoice? Q23



The level of enquiries to consumer associations and national competent authorities can also be a good indicator as to the level of awareness and understanding among consumers. Of the national competent authorities responding to the online survey, 40% responded that they had not noticed an increase in the number of enquiries by consumers with regard to domestic purchases since the CRD was implemented. Only 30% had noticed a moderate to large increase in the number of enquiries by consumers (from a total of 30 answers). When asked about the specific aspects that consumers have enquired about when buying domestically, see Figure 3-17, the most frequently mentioned provisions are those related to the RoW. Fewer national authorities responded to the questions concerning consumers' enquires when buying cross-border (Figure 3-18), with only 13 national competent authorities replying. Their responses show a similar pattern.

Figure 3-17: National competent authorities' feedback on consumers enquiries in the last 2 years when buying domestically (Q8)

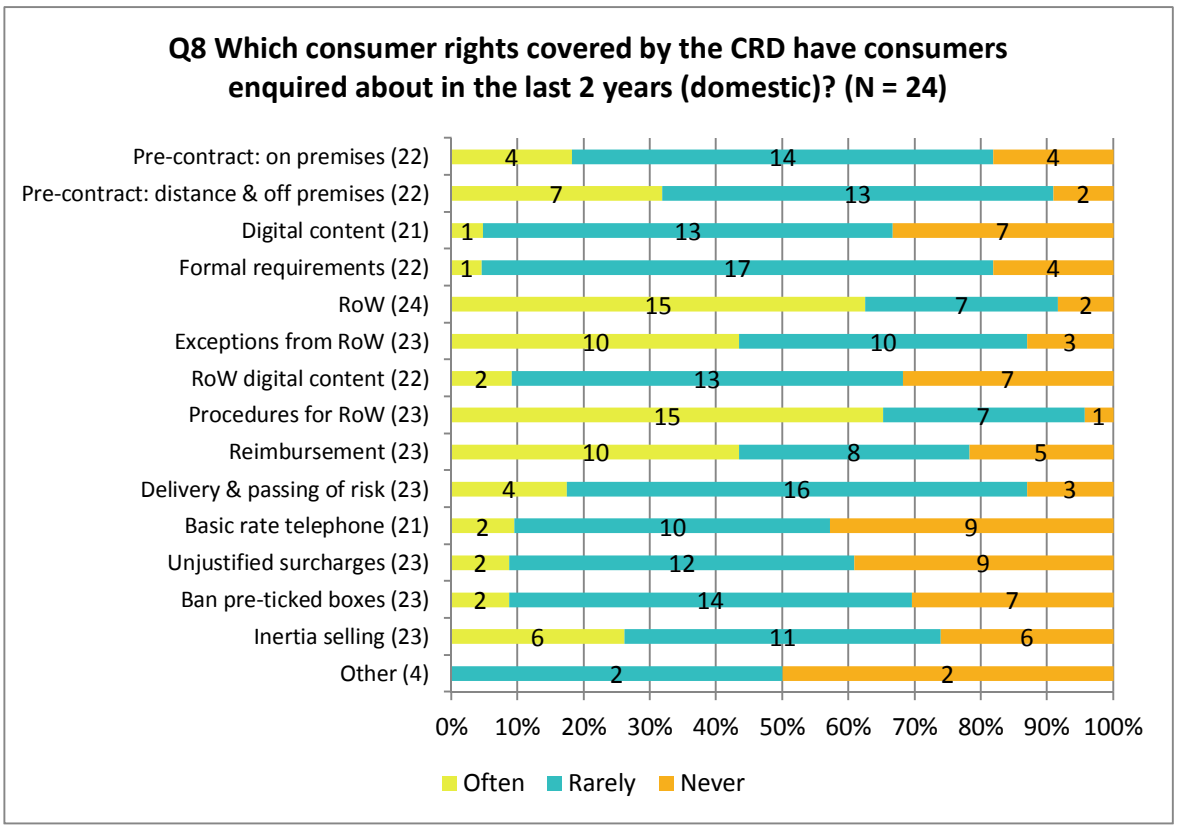
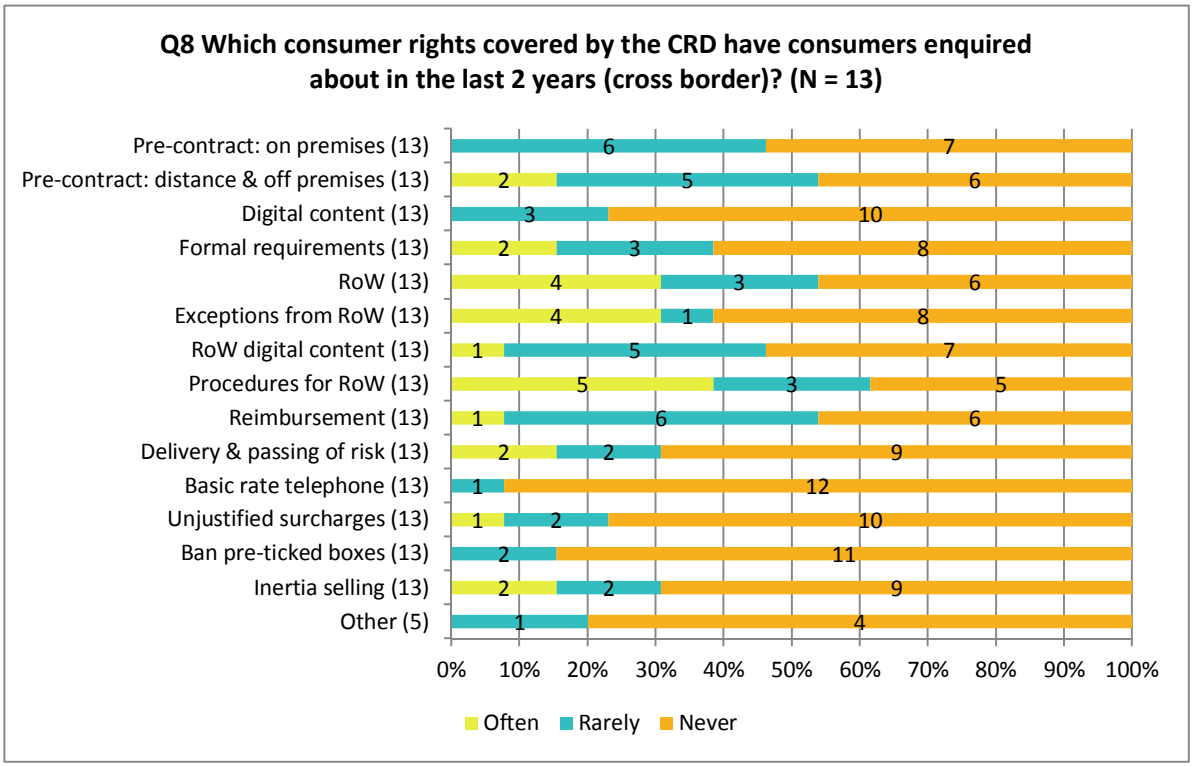


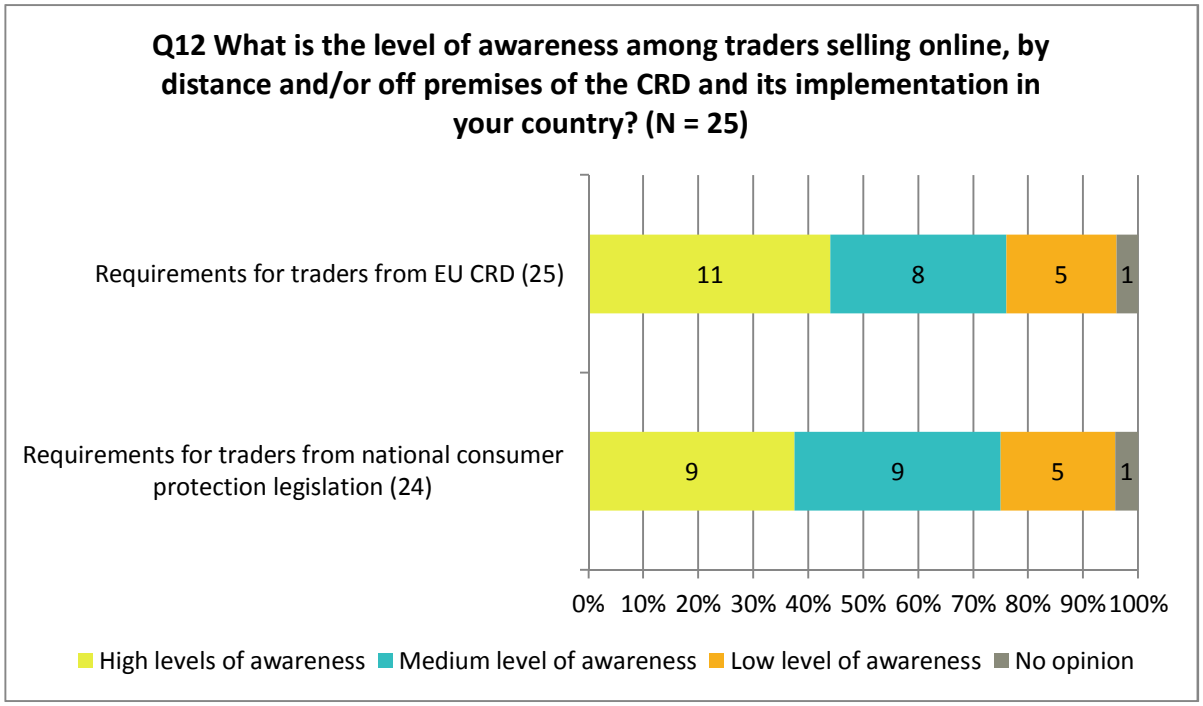
Figure 3-18: National competent authorities' feedback on consumers enquiries in the last 2 years when buying cross border (Q 8)



3.6.1.2 Traders' awareness and understanding of CRD and its provisions

Trade associations were also asked about the level of awareness of obligations by traders. Over 70% indicated either a high or moderate level of awareness; interestingly, in their opinion, traders are more aware of the CRD than national legislation.

Figure 3-19: Trade associations: What is the level of awareness among traders in your country? (Q 12)



The RoW and pre-contractual information requirements for distance and off-premises contracts were the provisions trade associations thought traders were most aware of (see Figure 3-20). Provisions they thought traders were least aware of are provisions concerning digital content. This could reflect the fact that many traders responding to the survey are not digital content providers, but equally it could also reflect the fact that digital content is a new area falling within the scope of the CRD which was not included in the previous legislation so traders are less aware of these new provisions.

Traders were then asked to highlight the main changes in legislation to check their level of awareness (Figure 3-21). Only 13% of traders recognised that changes had been made in the legislation relating to extending consumers rights to include 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. Fewer traders seemed to be aware of the inertia selling (8%) and basic rate on telephone contacts related provisions (8%).

Figure 3-20: Trade associations: What is the level of awareness among traders in your country with regard to the specific requirements of the Directive? (Q 13)

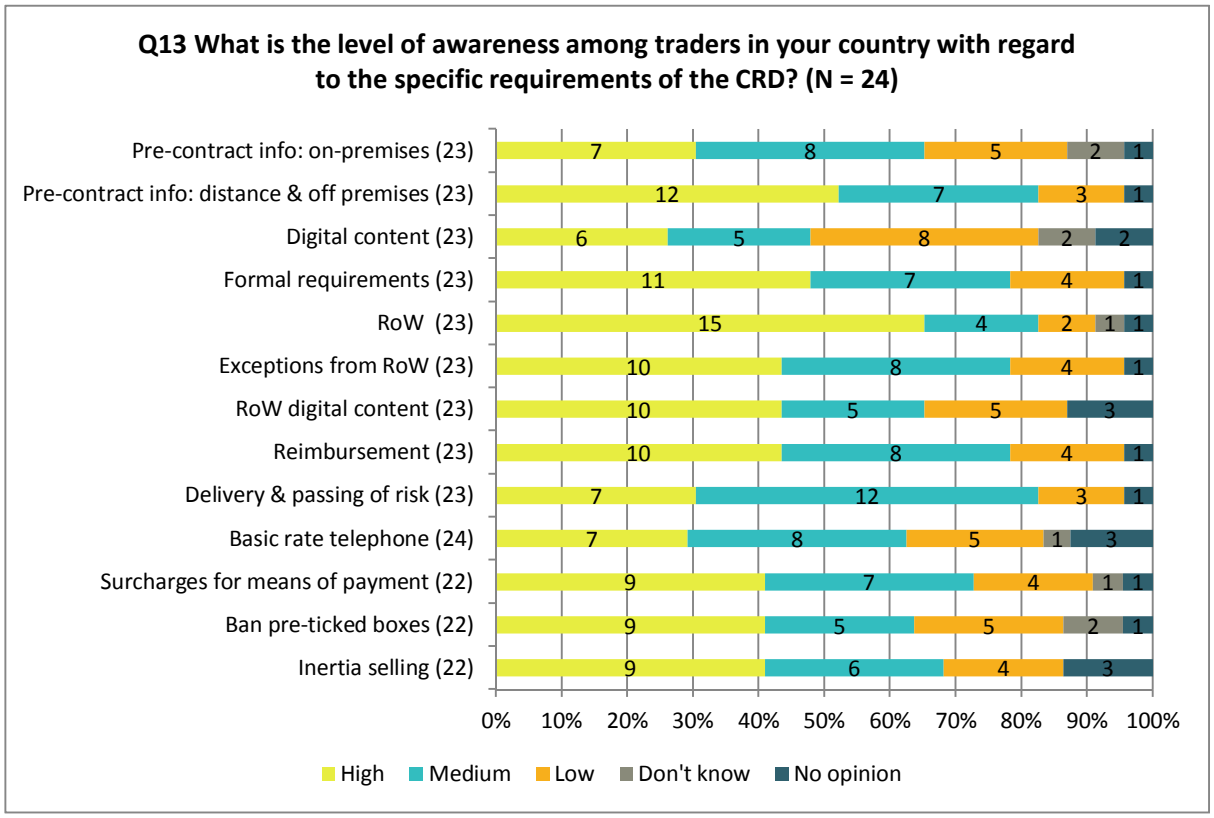
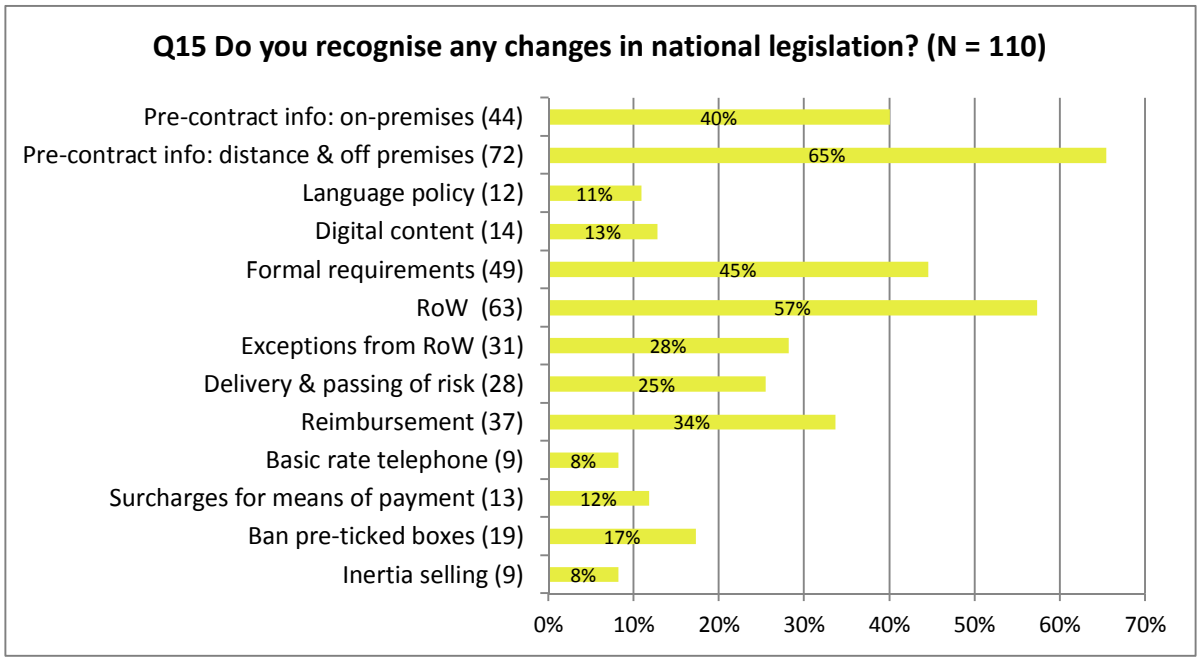


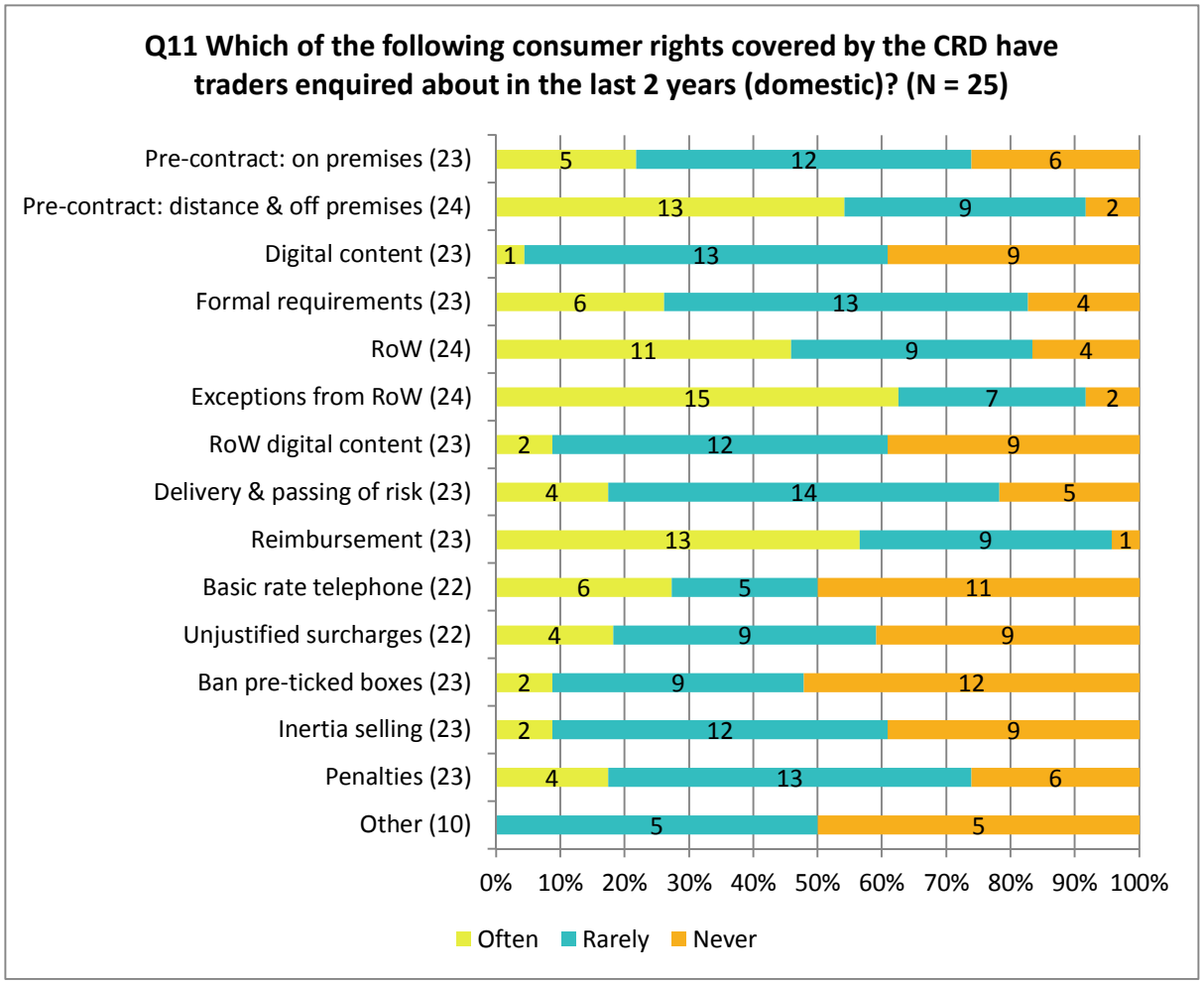
Figure 3-21: Traders: What have been the main changes in national legislation? (Q 15)



NB Figure 3-21: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

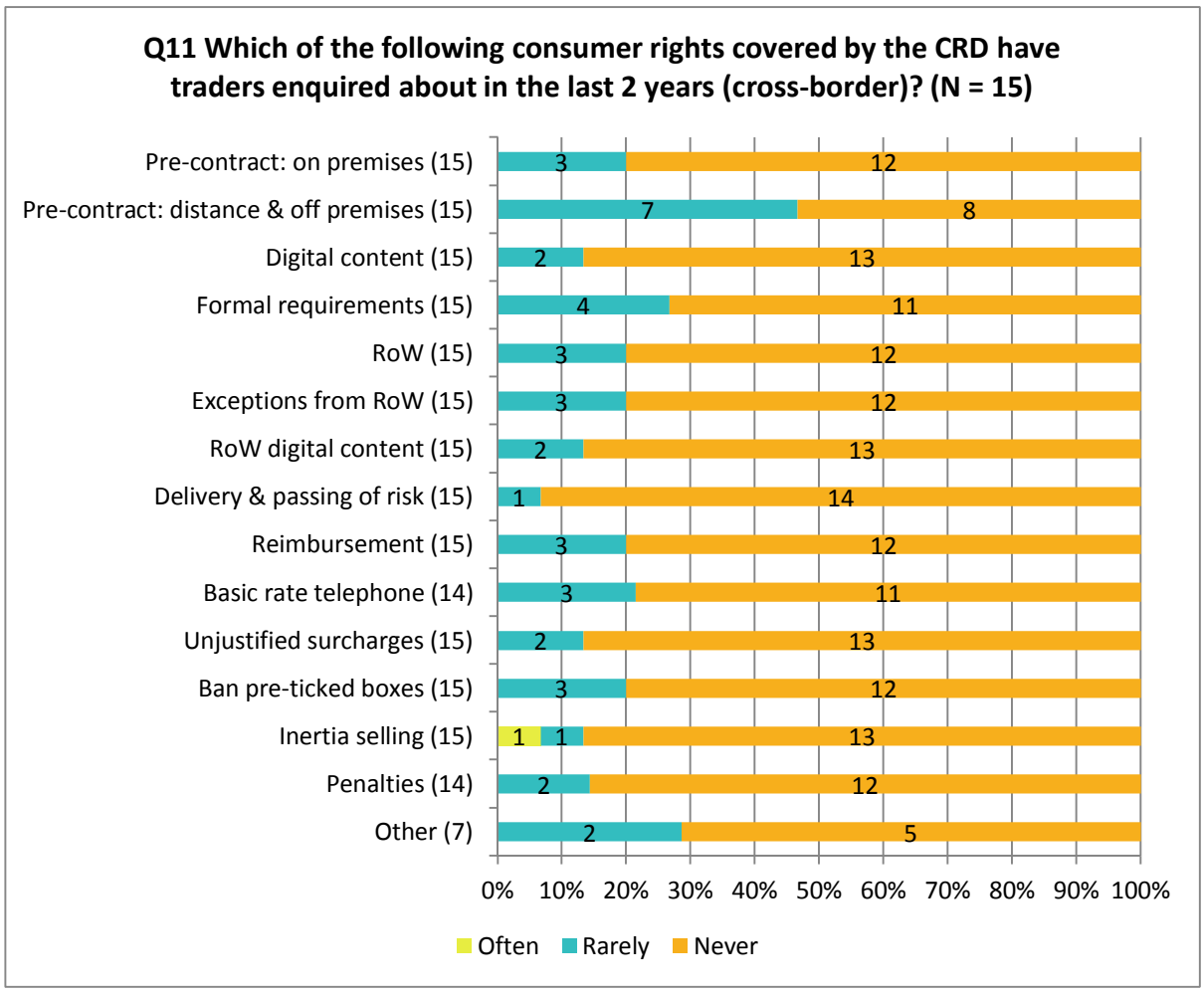
Regarding the level of enquiries by traders, of the competent authorities that responded 35% have not noticed an increase in the number of traders' enquiries. Slightly more (38%) on the other hand have noticed a moderate increase (from a total of 37 responses). When asked about specific provisions, the RoW appears to be the most frequently asked about provision, particularly the exceptions (refer to Figure 3-22). Reimbursement-related provisions were also highlighted as a provision frequently asked about.

Figure 3-22: National competent authorities enquiries about consumer rights covered by the CRD by traders (domestic) Q 11



Traders rarely ask about pre-contractual information requirements for distance and off-premises contracts(See Figure 3-23) and/or on any other CRD related aspects (one national competent authority noted that traders did ask them about inertia selling often and another one noted that they asked about inertia selling rarely). This may be due to competent authorities not being the first point of call in terms of practical guidance about legislation on consumer rights by traders. Traders are much more likely to turn to their national trade association for advice and guidance. During the interviews, many national consumer organisations and some ECCs noted that they get contacted directly by traders asking for advice either in relation to how to comply with the CRD generally, or in relation to a specific dispute with a consumer.

Figure 3-23: National competent authorities enquiries about consumer rights covered by the CRD by traders (cross-border) Q 11



Responses to the OPC from traders and their associations have also raised concerns about the understanding and some definitions and provisions in the area of pre-contractual information (CIVIC, 2016).

"According to Article 6(1a), the trader has to inform the consumer about the 'main characteristics of the goods or services'. This term is not sufficiently defined and the information cannot be provided in a legally certain way in practice. It is especially unclear how detailed the product has to be described without, however, becoming overly descriptive [to the point of] being incomprehensible."

"Some information obligations, particularly in relation to selling digital content via subscription services, give rise to confusion. For example, consumers must agree during the purchase flow that they have no right to withdraw from a sale of digital content. However, for an ongoing or subscription contract, if the renewal is automatic, consumers must be informed that they have a right to terminate the contract. In such circumstances, it is difficult for consumers to determine whether and when they have a right to cancel. Clarification in this area would be helpful."

"The requirements of Article 6 were not necessarily possible to implement in practice. For instance, the consumer must receive certain pieces of information before entering into a contract. Some of this information (e.g. delivery time) may not be available at this stage. In addition, where a consumer chooses advance payment as their preferred

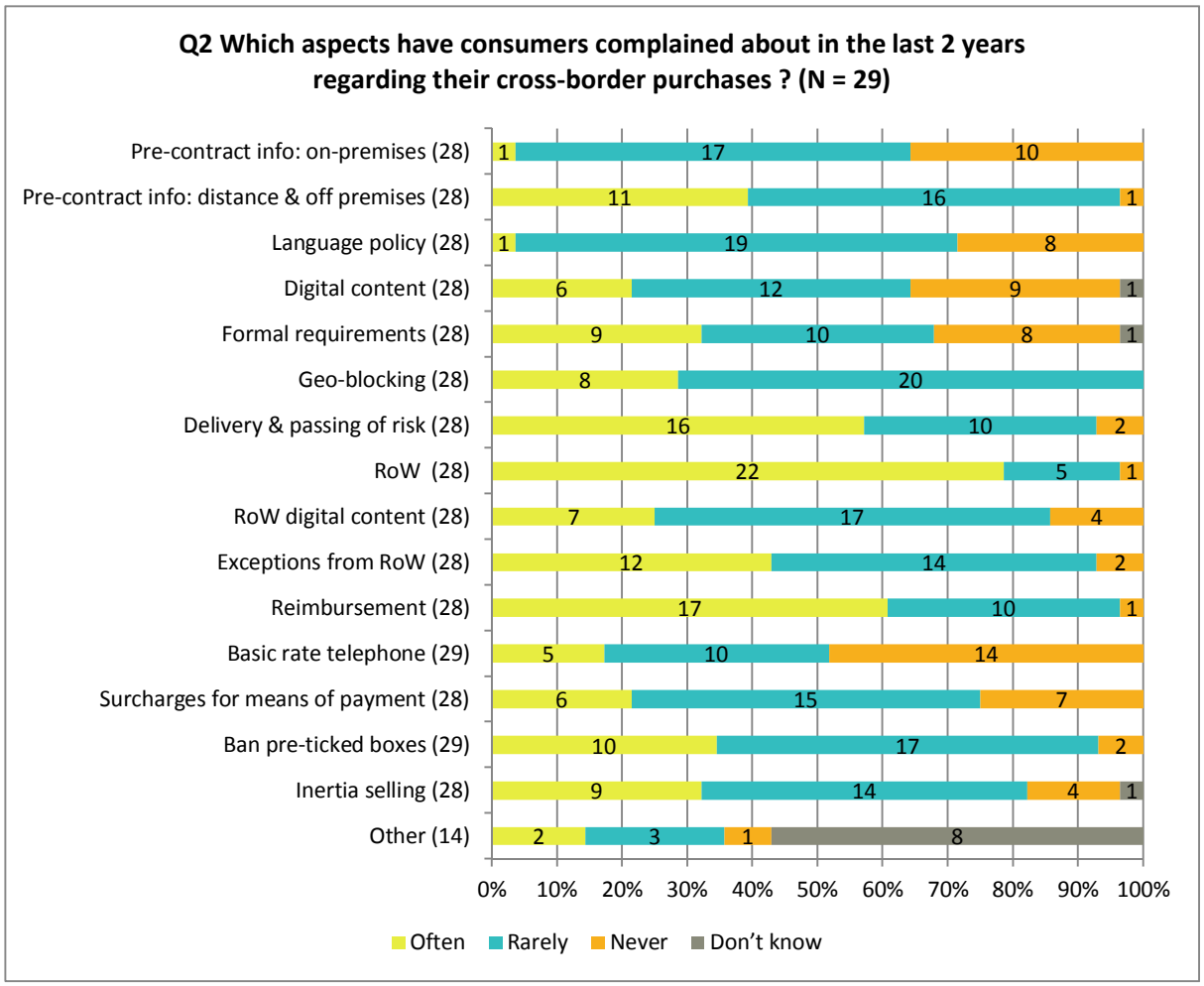
option, the trader will not send the product until they have received the money. Thus, the delivery date is dependent on when the consumer pays. The position paper consequently suggested that it would be useful to clarify that it is sufficient for traders to provide a maximum or approximate delivery time at the pre-contractual stage".

In summary, it can be said that, despite efforts by the EC and national competent authorities, there appears to be a number of provisions where awareness and understanding is still low, these include exemptions from the RoW and inertia selling. However, the Directive is considered to be a fairly new Directive (although based on two previous ones), thus the low level of awareness on new specific provisions is unsurprising.

3.6.2 Compliance by traders with specific requirements of the CRD

A useful indicator of compliance is to see whether consumers have complained to the relevant bodies about any of the particular requirements in the CRD and on which specific aspects they complained.

Figure 3-24: ECC and consumers' complaints with regard to their cross-border purchases (Q2)



According to the survey data. amongst the reasons for complaints to the ECCs by consumers on cross-border purchases, RoW was the most reported, with 79% of the ECCs stating that consumers had complained often about the RoW. The second most mentioned reason for complaints was reimbursement. Note however that these only cover cross-border purchases.

An analysis of the complaints data in the ECC-NET database was also undertaken (based on a cut-off date of end of 2015). It should be stressed that by definition, the data in the database only relates to cross-border complaints gathered by country-specific ECCs, so it captures useful data but not the totality of complaints, including those falling within the CRD's scope relating to purely domestic complaints at MS level.

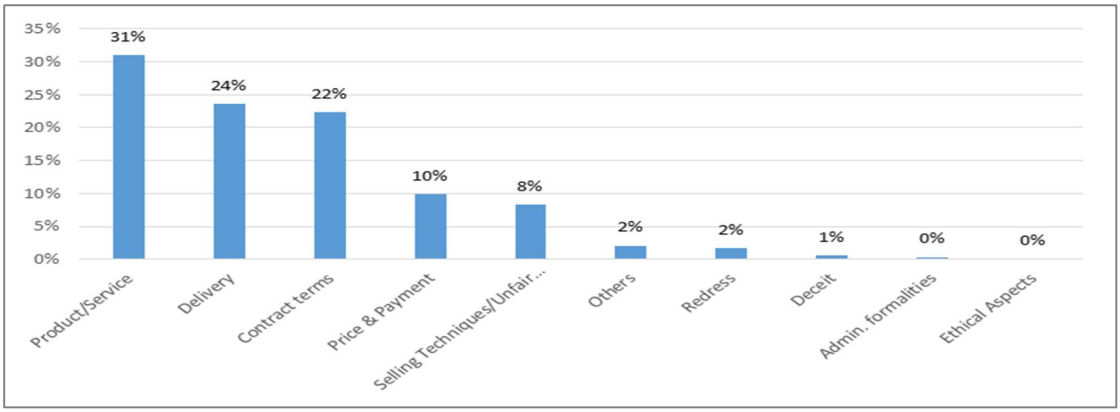
One of the challenges was in separating complaints specifically relating to the CRD from those relating to other types of EU consumer legislation (e.g. the Sales and Guarantees Directive, the Unfair Commercial Practices Directive, Misleading and Comparative Advertising Directive and the Price Indication Directive etc.). There are methodological and practical difficulties in separating out CRD-related complaints from those relating to other Directives. For example, in respect of contract terms, complaints relating to pre-contractual information are evidently CRD-related, but other types of complaints may relate to other aspects of contracts, such as the use of unfair contractual terms, which would fall under the UPCD).

Nevertheless, some types of complaints, such as those relating to the cooling off period, pre-contractual information obligations, and the transparency of the (total) payment can be identified as being directly related to the CRD. Where possible, a more detailed analysis of complaints data by type at a disaggregated level has been undertaken so as to attempt to isolate cases that were CRD-specific and to ascertain what percentage of total complaints within a particular category are CRD-related and which fall under other Directives. In addition, data from the ECC survey relating to complaints has been analysed to complement the assessment of complaints data from the database.

Data on complaints from the ECC-Net database shows similarities with the ECC responses obtained through the survey. As indicated in Figure 3-25, the ECC-Net database suggests that the greatest numbers of complaints concerning the CRD are related to the characteristics of products and service (31%), followed by complaints related to delivery (24%), contract terms (22%) and price or payments (10%).

The data is shown below.

Figure 3-25: Percentage of complaints concerning the CRD broken down by type of complaints, 2015



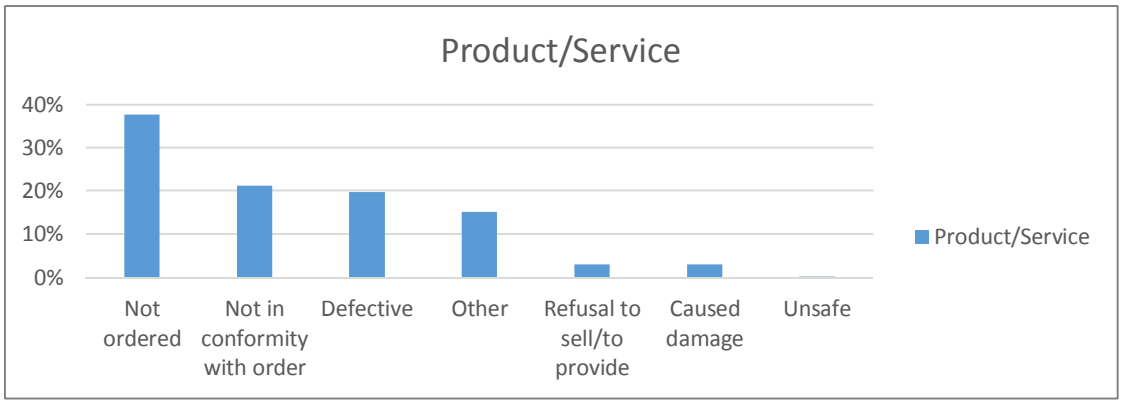
Source: ECC-Net database

It should be noted that, as explained earlier, the complaints data sometimes lacks sufficient granularity to ascertain what percentage within each of these complaints categories fall within the scope of the CRD, within the scope of the other EU consumer law Directives mentioned above or relates to more general complaints where there are no specific EU rules, and there may be national legislation only. Taking contract terms as an example, if it is related to pre-contractual information that will be part of the contract, then it is within the scope of the CRD, but if it relates to general T&C, then it is outside the scope of the CRD, although it may fall within the scope of other EU rules, such as the UPCD or the Directive on unfair terms in consumer contracts.

A more detailed analysis of the complaints data by category of complaint from the ECC-Net database is now provided, based on disaggregated data[56]. It should be stressed that sometimes, both provisions falling within the scope, as well as those falling outside the scope are included in the graph. The purpose is to show side by side which percentage of complaints overall relate to the CRD, to the extent that this can be discerned, since sometimes a particular complaints category may present ambiguities that make it difficult to disaggregate clearly.

In the following graph, disaggregated complaints data is provided relating to the responses dealing with number of complaints pertaining to the characteristics of the products/services.

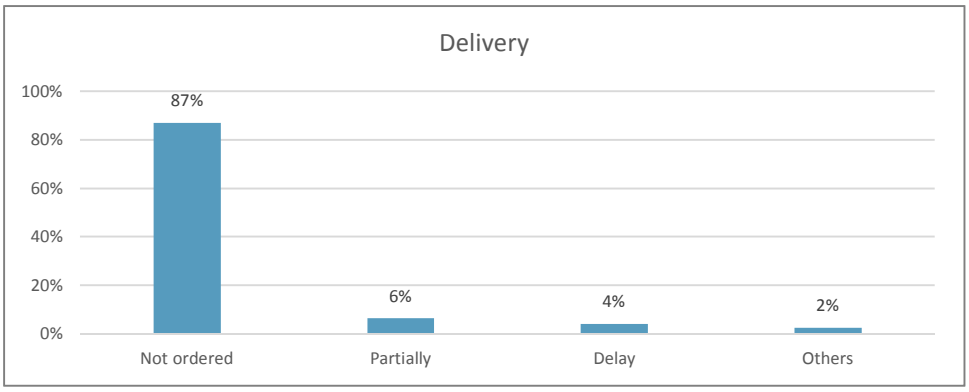
Figure 3-26: Product/Service - nature of complaint and selling method



As shown in the Figure above, among complaints falling under the category "the characteristics of products or services", the highest proportion related to goods or services that have not been ordered (38%), and the second highest number of complaints related to goods that are not in conformity with the order (21%). It should be noted that one of the data limitations is that the database also contains complaints relating to other EU consumer law Directives. For instance, the 20% of complaints relating to defective products relates to the Sales and Guarantees Directive. It is nevertheless useful to include the full range of complaints in the above Figure since this illustrates that CRD-related complaints account for a high proportion of total complaints in relation to product/ service characteristics.

[56] These findings are based on a pivot table generated from the raw ECC-Net database.

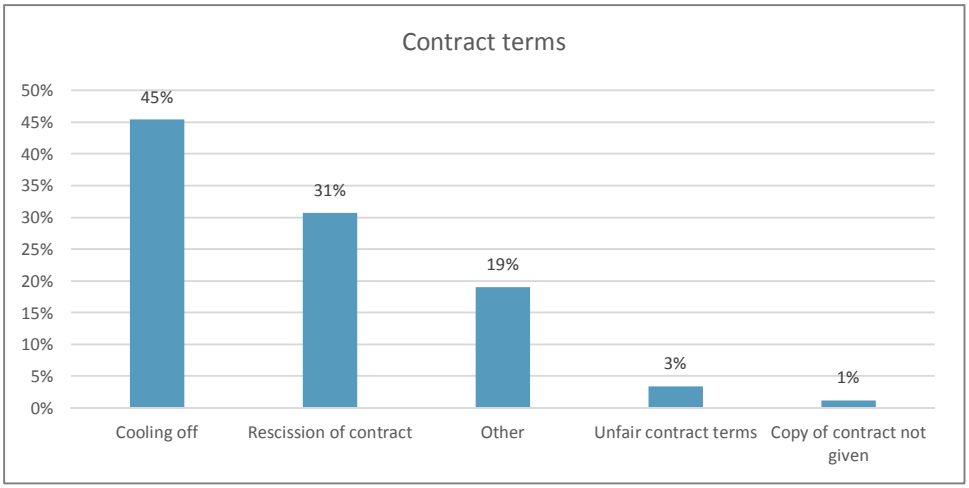
Figure 3-27: Complaints data relating to delivery



The disaggregated data in relation to delivery shows that most complaints were related to the fact that the good/service had not been received (87%). This was usually related to goods ordered through e-commerce (92%). This was usually related to goods ordered through e-commerce (92%). It can be noted that both the ECC-Net database and ECC responses to the survey indicate that delivery is an issue about which consumers frequently make complaints. For instance, through the ECC-Net survey, several examples of complaints concerning the CRD in relation to cross-border trade were reported related to complaints for the delivery of the goods/services (24% of all complaints).

It is worth noting that the issue of receiving goods or services that were not ordered (Art. 27 - inertia selling) is consistent with the ECC comment (reported earlier) that noted that there has been a progressive increase in the number of complaints associated with unsolicited goods/ services.

Figure 3-28: Complaints data relating to Contract terms



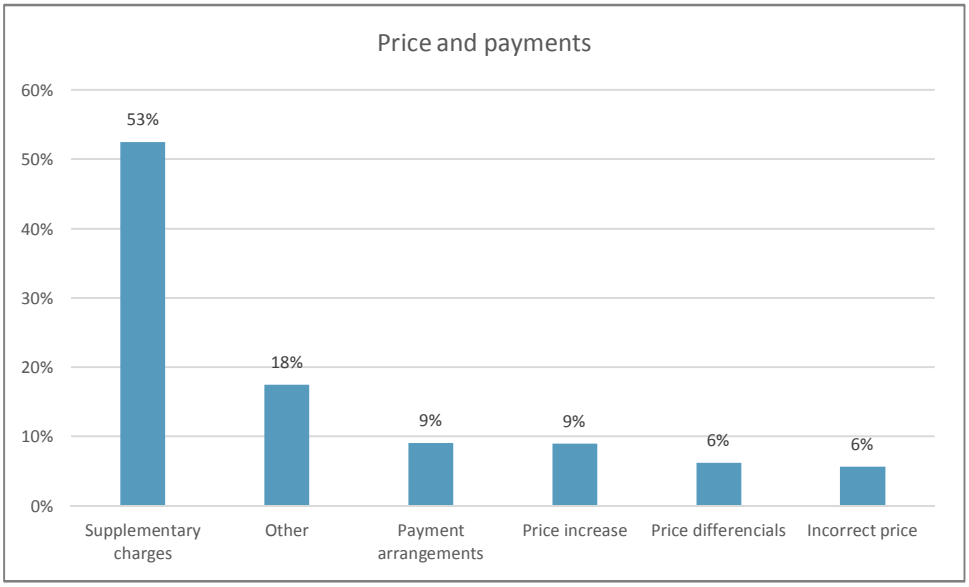
The analysis of the CRD complaints data from the ECC-Net database related to **contract terms** shows that the right of withdrawal and the 14 day cooling-off period is one of the provisions that has led to a high number of complaints. 45% of cases relating to contract terms concerned the cooling-off period whilst a further 31% related to the rescission of the contract more broadly (not necessarily falling within the scope for the CRD if outside the 14 days RoW period). However, since there was a minimum 7 day RoW under the predecessor legislation for both distance and off-premises contracts, it is unclear from the data alone how far the complaints received relate to the RoW moving to a fully harmonised common 14 day period that has led to problems, such as some traders not being aware of the change in legislation from the pre-existing situation,

which in some countries was previously only 7 days. However, other factors could equally be a cause for complaint from consumers, such as difficulties in finding out information about how to exercise the RoW, or traders simply not being aware that they are required by law to allow consumers the RoW within the first 14 days.

The findings were triangulated with the data from the ECC survey. Although there is a lack of sufficient detail as to the reasons complaints were made, the 'right of withdrawal' was also highlighted as the most commonly complained about provision in the on-line survey of ECCs in respect of complaints made by consumers to ECCs in respect of cross-border purchases, with 79% of ECCs stating that consumers had frequently complained about difficulties in exercising the RoW. The second most frequently mentioned reason for complaints was difficulties in obtaining reimbursement. These however only cover cross-border purchases.

With regard to complaints in the database related to **prices and payments**, more than half of all cases (53%) related to supplementary charges that were not made clear during the transaction or at the point of purchase (Art. 22 - Additional payments – makes clear the obligation to pay). This includes hidden charges, as shown in the following graph:

Figure 3-29: Complaints data relating to Price and payments



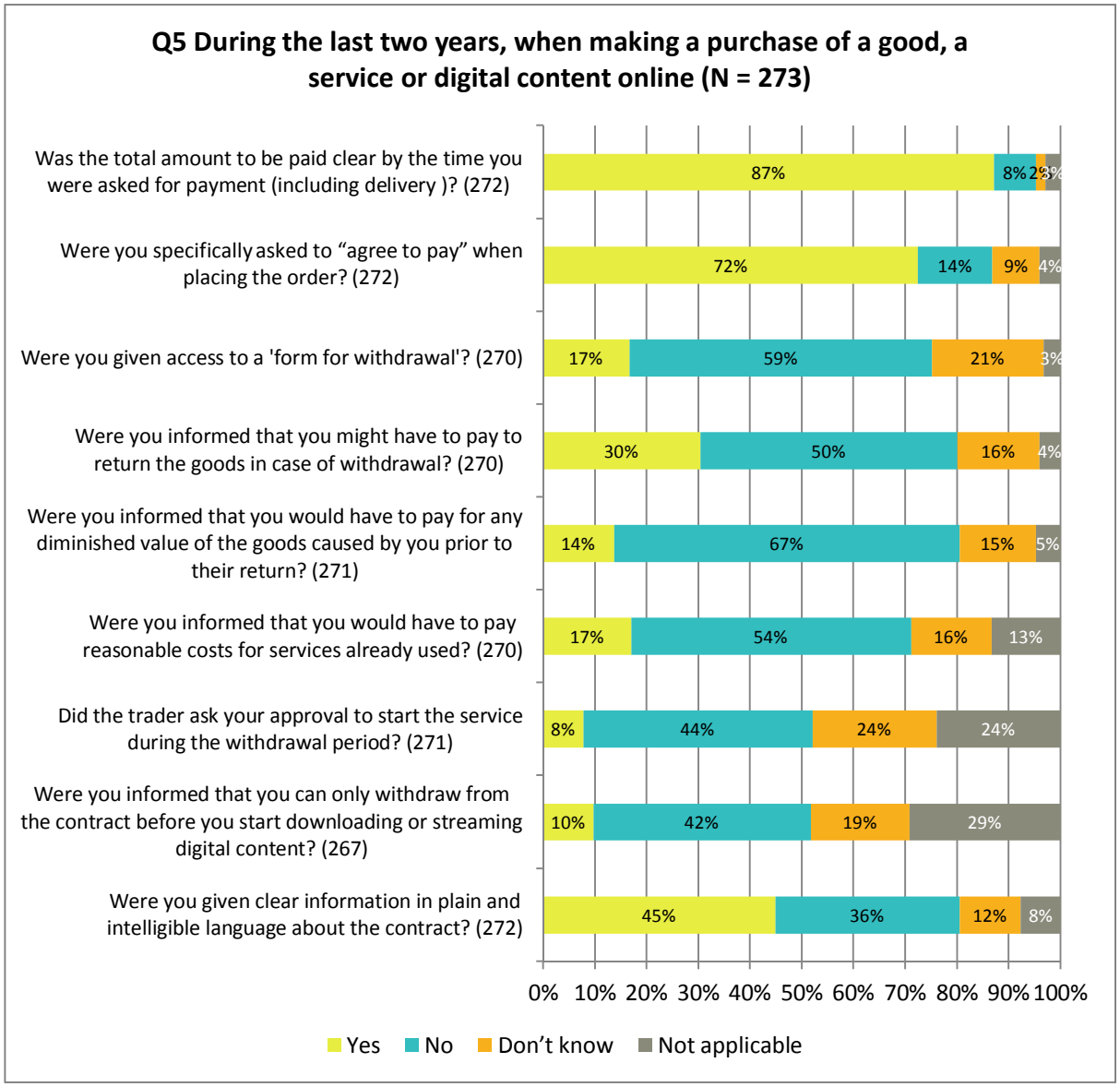
The complaints data shows that the majority of complaints related to supplementary charges paid by consumers. This was a more common problem for e-sellers in relation to distance contracts than for other types of contracts covered by the CRD. The interview programme suggested that there may be various problems relating to supplementary charges with a particular problem relating to online subscription cost traps. Other problems, such as the price not being made clear prior to completing the transaction and the incorrect price were also among those identified.

In terms of the impact of some of the new provisions within the CRD on complaints levels in the ECC-NET database, banning pre-ticket boxes on websites and on unjustified surcharges for the use of credit cards and the requirement for traders to ensure provision to a standard rate phone line have generated consumer complaints, some of which have led to national legal cases (see Section 2.5 on enforcement and Annex II, which provides a longlist of legal cases).

There were few complaints relating to difficulties in obtaining redress, potentially because work has been done by the ECCs to promote greater awareness about available ADR mechanisms, prompted by the adoption of the ADR Directive in 2013.

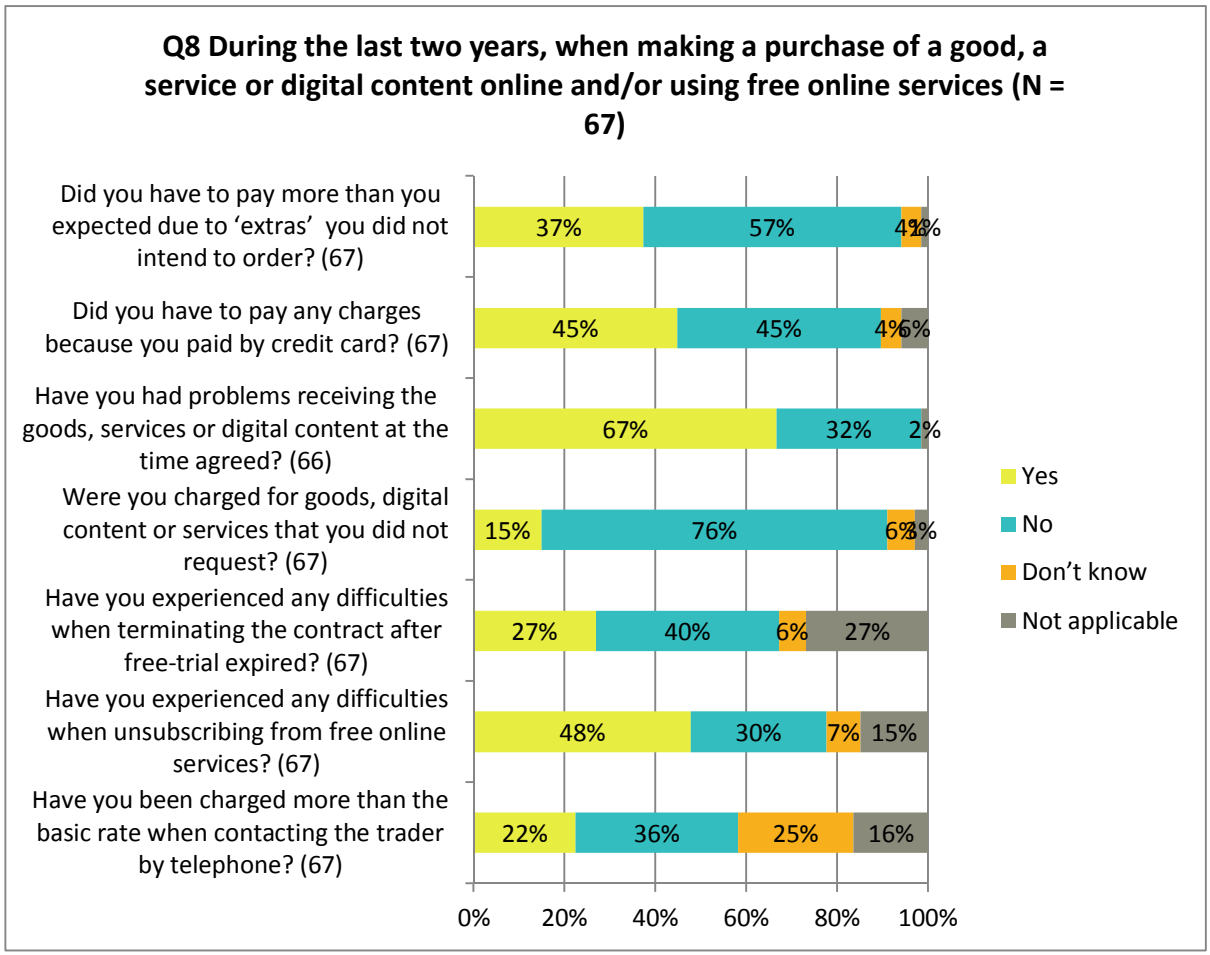
Consumers were asked in the online survey about different aspects of compliance by traders. As it can be seen in Figure 3-30, most of the responses highlighted issues with compliance with regard to the RoW; fewer consumers highlighted issues with formal requirements and fees. Compliance with the different CRD requirements is analysed further below.

Figure 3-30: Consumers view on shopping experience (Q 5)



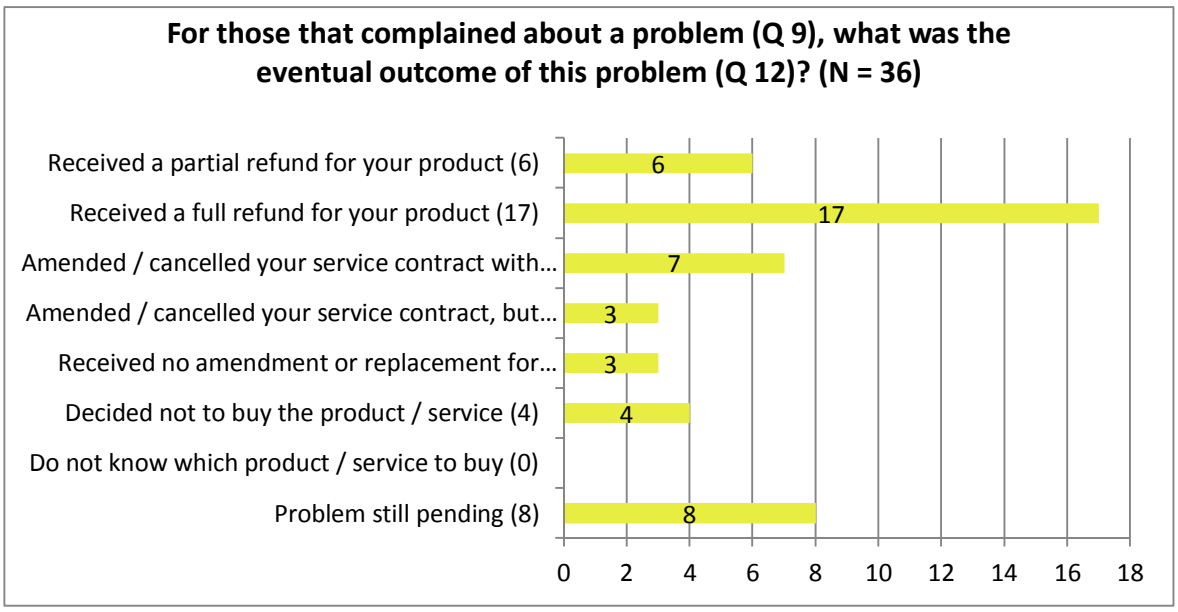
Regarding other CRD requirements, 67% of consumers experienced problems receiving their purchases on the time agreed; whilst 48% had problems unsubscribing from free online services (refer to Figure 3-31).

Figure 3-31: Consumers' view on shopping experience (Q 8)



Over half of these experiencing any such problems above complained, mostly to the seller or service provider. Approximately half received a full refund for their product and 17% received a partial refund. For 22% the problem is still pending (see Figure 3-32).

Figure 3-32: Consumers: For those that complained (Q9 = Yes), what was the eventual outcome of this problem (Q 12)

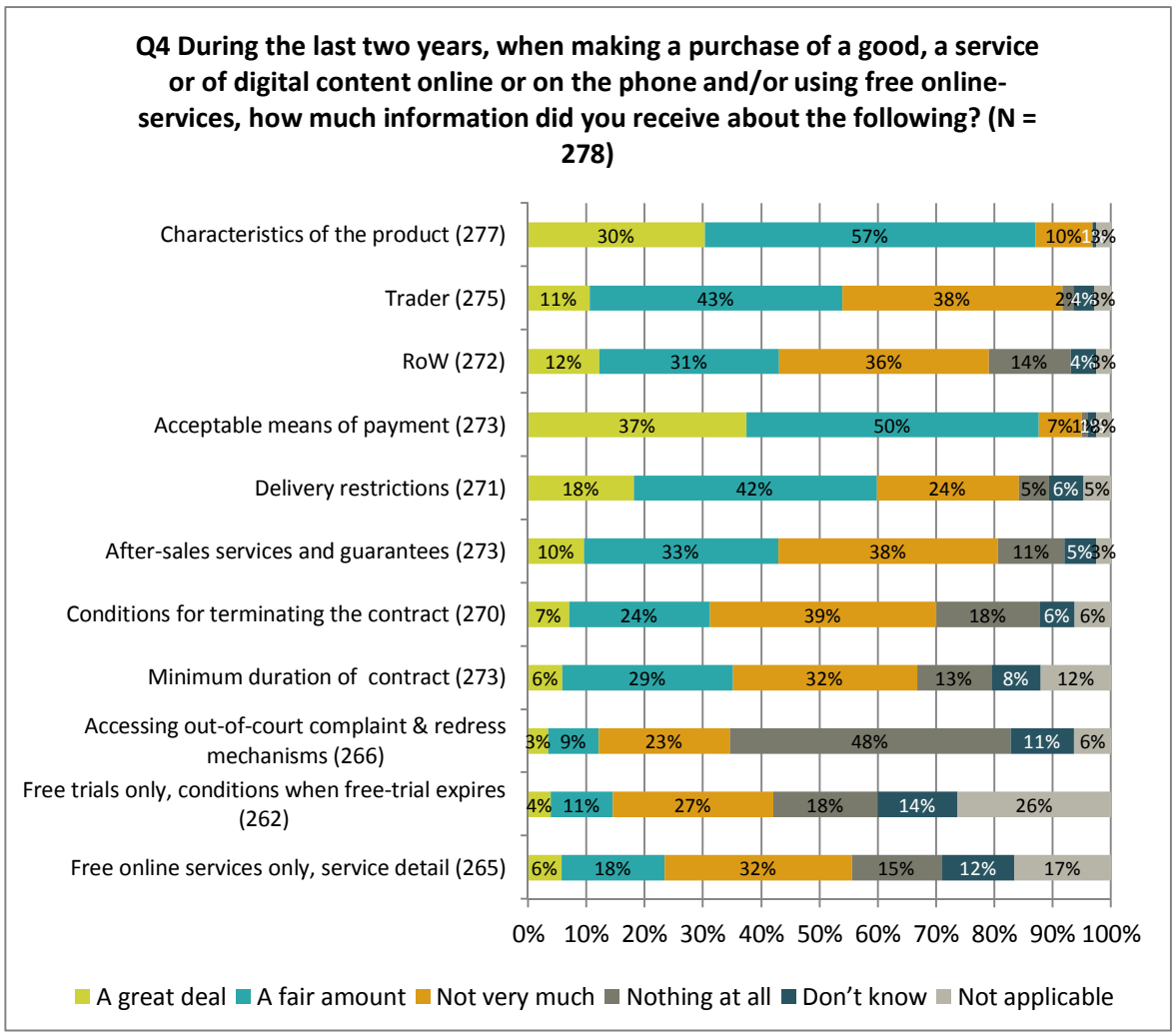


3.6.2.1 Compliance with pre-contractual information requirements

In order to assess compliance with the different information requirements, the online survey asked consumers how much information they receive about the different aspects covered in Art. 5 and 6 (See Figure 3-33). Overall, results coincided with the mystery shopping study, i.e. consumers received a fair to a great amount of information about the characteristics of the product and acceptable means of payment. 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 where information on how to contact the trader was on average less available (GfK, 2016). The sweep also found incomplete or unclear details about the trader in 34% of websites checked.

Consumers did neither receive much information about accessing out of court complaint and redress mechanisms.

Figure 3-33: Consumers: how much information did you receive about the following ? (Q 4)



3.6.2.2 Compliance with the RoW

The lack of information on the trader may pose difficulties for consumers wishing to withdraw from a contract. This consultation asked consumers whether they had experienced any difficulties when exercising their RoW. The following chart should be interpreted with caution owing to the low level of responses but it would indicate that a considerable percentage of consumers experienced problems over the RoW. When asked about the type of problem, the largest percentage noted that they had difficulties contacting the trader to notify them about withdrawal (Figure 3-35). Indeed, this was one of the problems highlighted by the consumer associations in the interviews particularly with regard to traders using social media platforms to sell products.

Figure 3-34: Consumers: If you have exercised your RoW, have you experienced any problems (Q 14)?

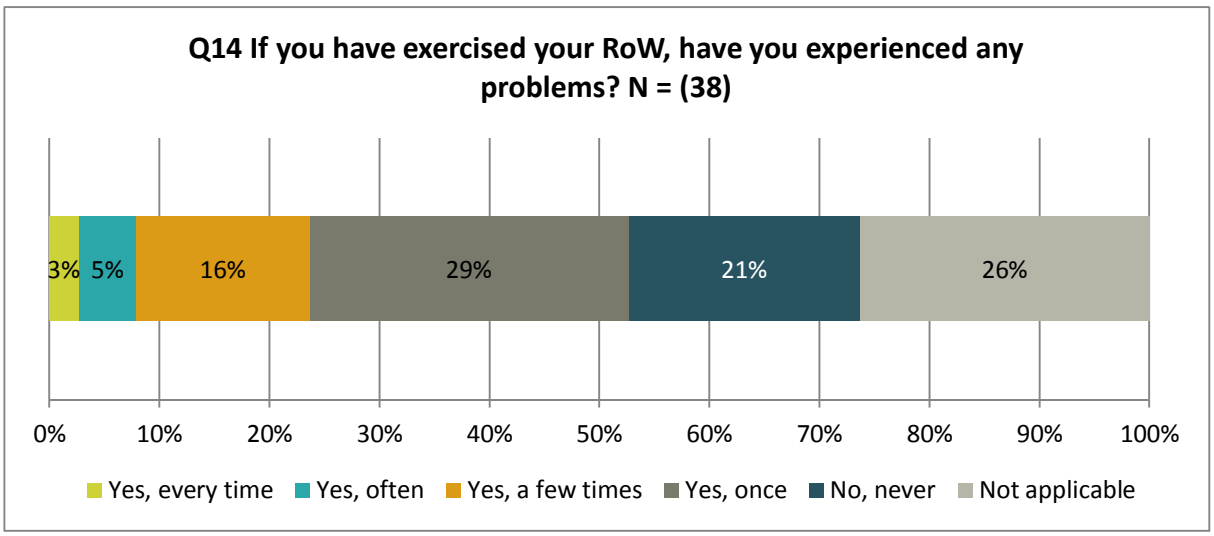
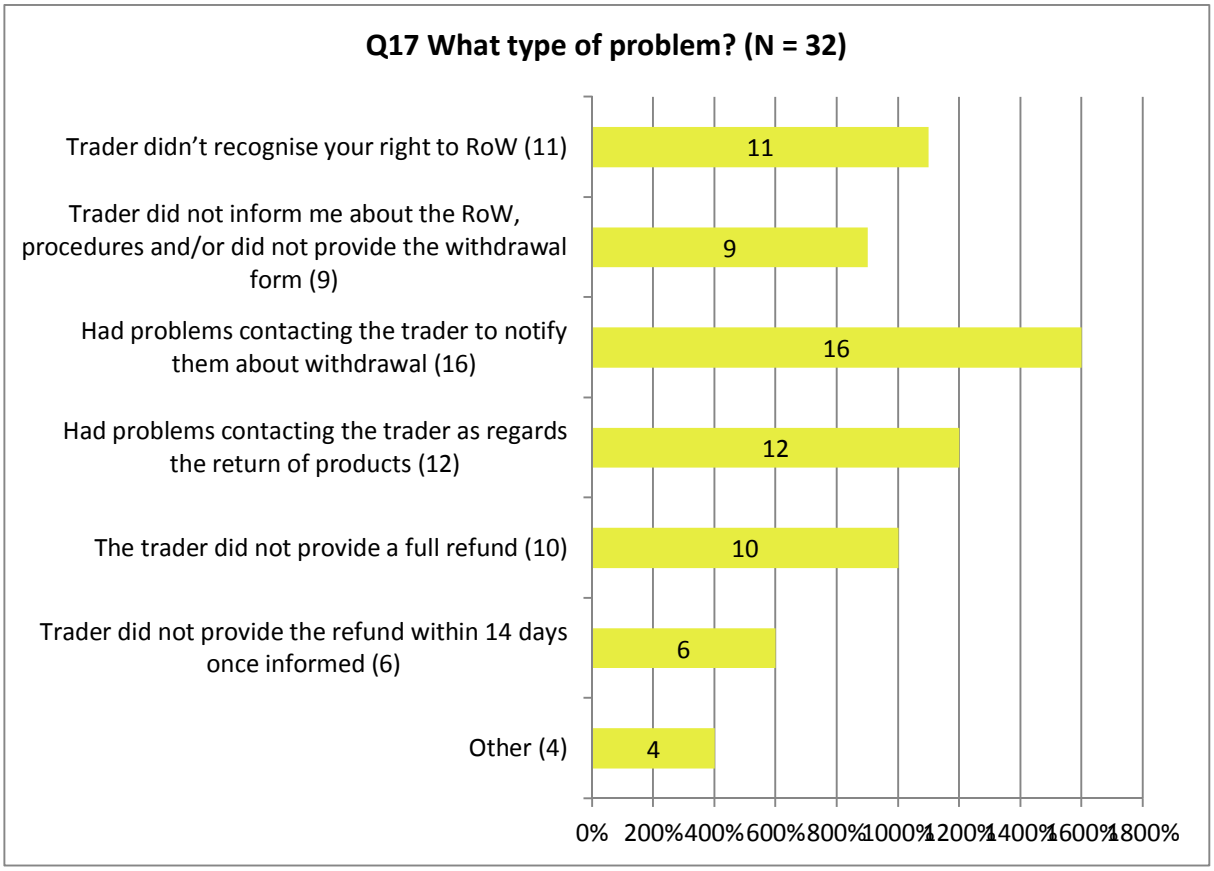


Figure 3-35: Consumers: What type of problems? (Q17)



NB Figure 3-35: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N).

According to Art.13 of the CRD, the trader shall reimburse all payments received from the consumers in the event of withdrawal including, if applicable, the costs of delivery without undue delay and in not vent not later than 14 from the day he is informed to the consumer's decision to withdraw. However, the mystery shopping study under the Refit

programme found that 50% of traders charged consumers for returning the product (a mouse and USB) at least initially. Hence, consumers had to cover the return costs themselves at first, even if they are paid back in some cases. The results were more positive for digital content however. For security software (96% for one-off purchases and 98% of subscriptions), the likelihood of obtaining a full refund was very high. This percentage was noticeably lower for music downloads (77%).

The mystery shopping study 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 (GfK, 2016). This was also reflected in the responses given by consumers to the online survey, where 59% of consumers stated they were not given access to a withdrawal form (Figure 3-26).

This also applied to digital content. According to the mystery shopping, half of all software traders (52%) did not provide withdrawal forms. Moreover, consumers were not informed by software providers that their RoW may be lost at the point of the downloading or streaming the content. Our interviews with traders have highlighted this as an issue for digital content sales too (Figure 3-26 shows that 42% of consumers were not notified that they would lose their RoW if they started downloading or streaming digital content).

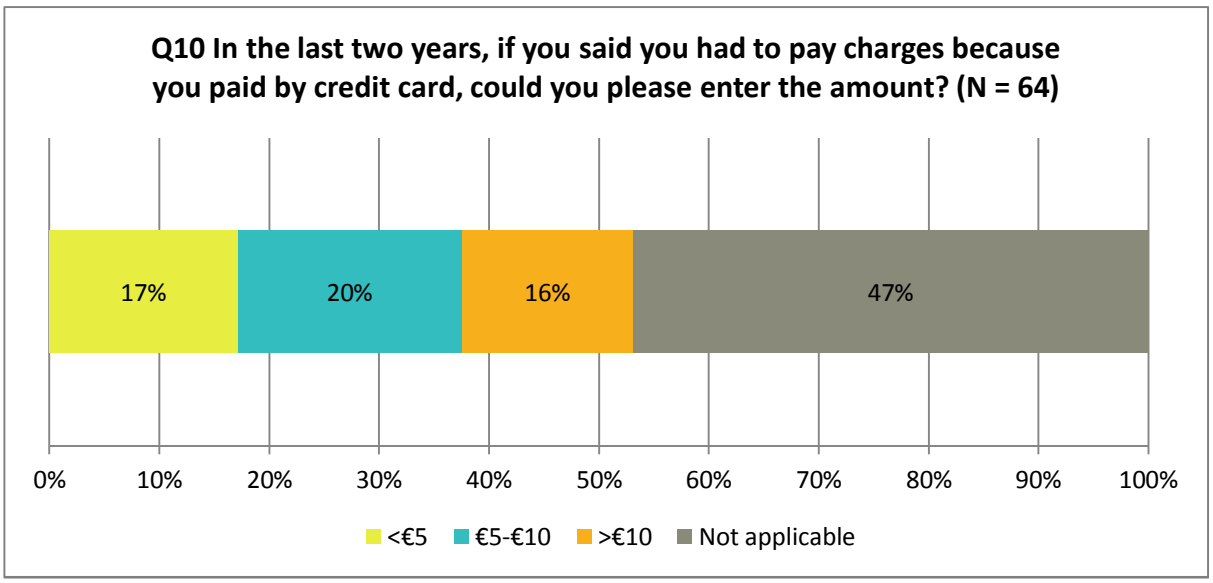
The latest EU "sweep" also found similar results across all type of contracts. Irregularities were confirmed in 436 (63% of a total 743) cases, with websites missing or providing unclear or incomprehensible information on the RoW from a transaction. For example, websites did not contain a relevant withdrawal 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 (14 days).

The OPC provided some opinions from the traders' perspective on the RoW and compliance, with one stakeholder (an association) noting that their members had experienced a significant abuse rate of the RoW for digital content where it was intended for immediate consumption. Another highlighted that the exceptions to the RoW may be difficult to apply in reality, in particular those relating to digital content. According to one trader, prompting the consumer to lose their RoW can "*worsen the shopping experience*". Although this cannot be seen as a reason for non-compliance, it may help to explain why traders are reluctant to inform consumers about this exception with some of them accepting returns even when they are aware that downloading or streaming has taken place (refer to section on efficiency for discussion on the costs from this).

3.6.2.3 Compliance with regard to payments and fees

The mystery shopping study also showed that only 10% of traders ask for extra fees based on the selected payment method. Our online survey asked consumers whether they had been charged for using credit cards; nearly half of those responding to this question did not have to pay but approximately a third of those who were charged needed to pay over €10 per transaction and a further third of these consumers paid between €5 and €10. Owing to the low level of responses at country level for this specific question, a country by country analysis could not be undertaken, but anecdotal evidence shows that the consumers from Cyprus and Romania appear to be paying the largest amount for the use of credit cards. The consumer association from Cyprus confirmed this during the interview.

Figure 3-36: Consumers: If you paid charges for using credit card, what is the amount? (Q 10)



3.6.2.4 Compliance with other requirements

According to Article 8(3) of the Directive, the trader selling through websites shall inform the consumer at the latest at the beginning of the ordering process about delivery restrictions and which means of payment that are accepted.

The findings of a mystery shopping conducted in 2016 on geo-blocking [57] concluded that the majority of websites do not let consumers buy from another EU country (geo-blocking practices were identified in 63% of all websites assessed). Moreover, it found that consumers were geo-blocked at different stages of online shopping, including the delivery (in 32% of the cases after registering with the trader) and payments stages (26% blocked transactions at payment stage) (Gfk, 2016). Although consumers responding to the online survey appear to have received a fair amount of information about delivery restrictions (see Figure 3-27) , this have not precluded 29% of the ECCs stating that consumers have complained often about the practices on geo-blocking.

In May 2016, the Commission made a legislative proposal on geo-blocking. The proposed regulation addresses the problem of customers not being able to buy goods and services from traders located in a different MS, or being discriminated in prices or sales conditions compared to nationals. In the consultation responses, some associations did not view there as being a need for new legislation but highlighted the importance of enforcing the CRD's rules (i.e. Art. 8).

3.6.2.5 Compliance by sector

By sector, the level of compliance also varies. Our interviews have revealed 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.

[57] GfK (2016b): **Mystery shopping survey on territorial restrictions and geo-blocking in the European Digital Single Market.** The study for the EC checked 10537 e-commerce websites to have a full picture of the geo-blocking practices in the EU. The mystery shopping looked into 143 country pairs and 8 sectors of goods and digital content that are most commonly purchased online in the EU, such as electronic and computer hardware.

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 (EESC, 2017). Other cases being noticed by the study team refer to the formal requirements for contracts by telecommunication companies offered by phone (in line with Article 8.6).

Example of complaints for paid-for online subscriptions, Sweden.

Consumers have fallen victim to "cost traps" on the Internet. This happens when fraudsters try to trick people into paying for 'free' services, such as advertising a very cheap mobile phone but not making it clear that the consumer is signing up for an expensive monthly mobile phone contract.

Through social media, there have been adverts for mobile phones nominally costing 1 EUR. However, the consumer subsequently discovers that the deal marketed as a special offer is actually a costly subscription of circa 70 EUR a month.

The contract is difficult to cancel and the legally-required pre-information requirements are missing. In such cases, if the consumer ticks the button for the special offer, the trader then fraudulently claims that the consumer has accepted the T&C and has accepted the terms of the contract and the monthly subscription. However, on investigation by Swedish enforcement agencies, they have discovered that information requirements were missing with no written information regarding an obligation to pay.

However, sometimes through the use of pop-ups, it is not clear that there's an obligation to pay. This amounts to a clear breach of the provisions of the CRD under Article 8 (2) formal requirements for distance contracts (obligation to pay).

Cross-border complaints have been raised for paid- subscription services to dating websites and advertised through social media. The most common countries where there have been cross-border complaints made by Swedish consumers are the CY, DK, MT, the UK and the Baltic States. It is also difficult to ascertain whether these locations are really where the trader is established, since often no contact email address or address is provided.

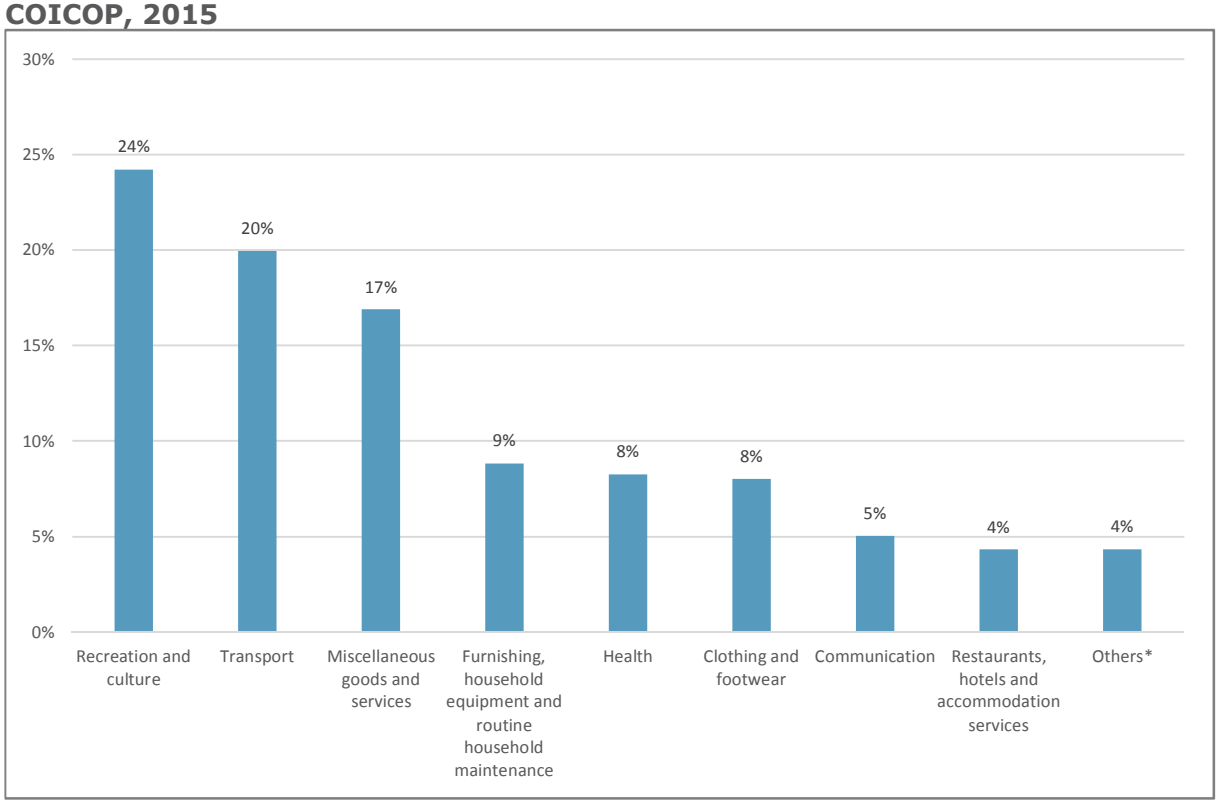
Source: interview with Swedish Consumer Agency and Swedish ECC.

According to the sweep, the pattern of irregularities occurs across different sectors, multi-purpose or specialist retailers and type of contract (good, service, digital content). The latest consumer scoreboard however has concluded that the largest differences in the assessment of market performance between EU countries are found for the markets for electricity services, water supply, railway transport, mortgages and mobile telephone services. *Compared to better assessed markets, these markets are characterised by limited cross-border competition.* Thus *there is still considerable scope for improvement through national structural reforms and a more effective enforcement of the consumer protection rules* (CEC, 2016[58]). The review of the ECC-Network and complaints has also shown that almost one in every two complaints relates to the sectors of recreation and culture (24%) or transport (20%); the rest however are spread amongst a wide range of sectors; with 17% of all cases labelled under the category miscellaneous goods and

[58] CEC (2016): 2016 EDITION Consumer Markets Scoreboard Making markets work for consumers, available at: http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/12_edition/docs/consumer_markets_scoreboard_2016_en.pdf

services. The following figure provides an overview of the number of complaints occurred in 2015 broken down by individual consumption by purpose (COICOP)[59].

Figure 3-37: Percentage of complaints related to the CRD broken down by COICOP, 2015



NB: Outside COICOP classification, food and non-alcoholic beverages, Alcoholic beverages and tobacco, Housing, water, electricity, gas and other fuels, Education

Source: ECC-Net database

3.6.3 Enforcement by competent authorities

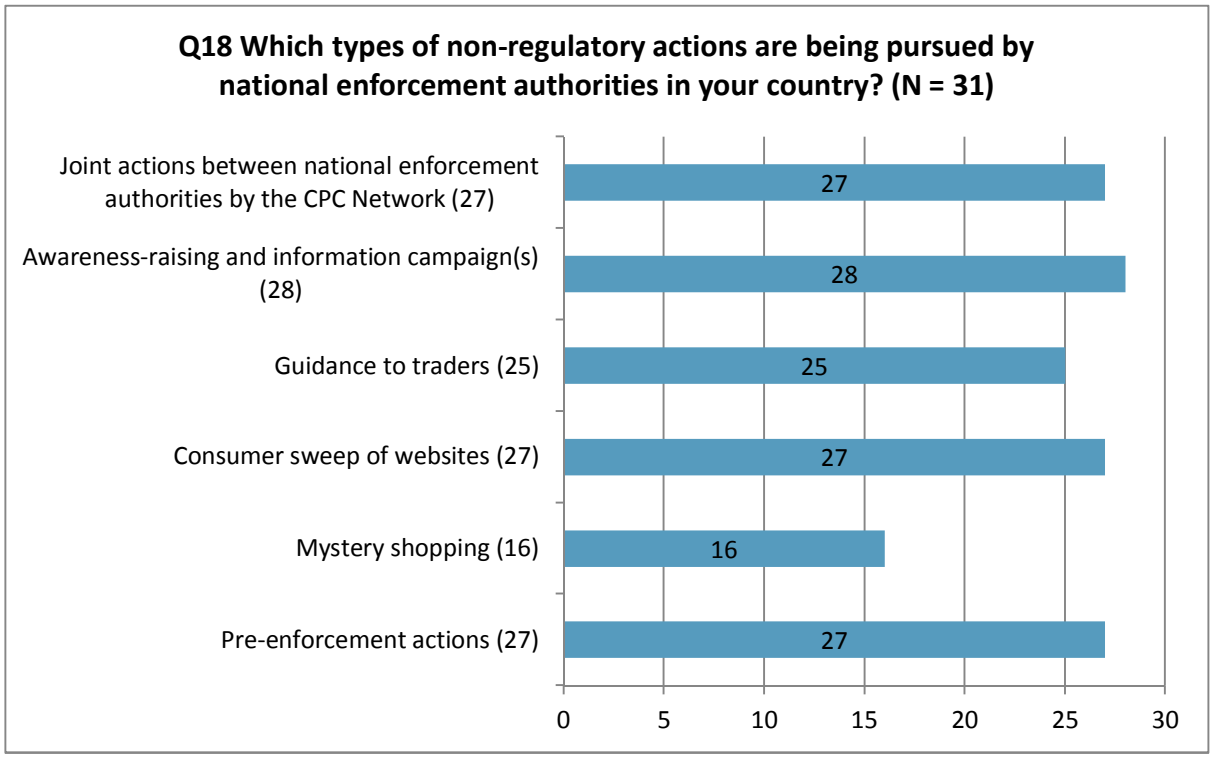
Section 2 described the different enforcement regimes of some MS in aspects of CRD implementation. In summary, it can be said that, despite the full harmonisation, the level of enforcement varies across MS both in respect of number and type of enforcement actions, the number of cases brought to court and the level of penalties.

With regard to the type of actions being conducted by the enforcement authorities, the survey asked competent authorities about the actions being pursued in their country. In addition to the information and awareness raising campaigns, reviewed above, joint actions by the CPC Network, consumer sweeps and pre-enforcement actions are being carried out by the competent authorities. Figure 3-34 shows that 87% of the national authorities responding to the survey have conducted pre-enforcement actions. The same % has participated in consumer sweeps of websites. These can lead to enforcement actions for those traders that remain non- compliant. Indeed, as a result of the sweep, 353 out of 436 websites have been corrected, but national administrative or legal proceedings continue for the 83 websites which are still not compliant. It is important to ensure that national competent authorities have the resources available to

[59] Classification of individual consumption by purpose, abbreviated as COICOP, is a nomenclature developed by the United Nations Statistics Division to classify and analyse individual consumption expenditures and actual individual consumption.

conduct enforcement activities and focus on those provisions where compliance appears to be more of an issue, such as the provision of the withdrawal form.

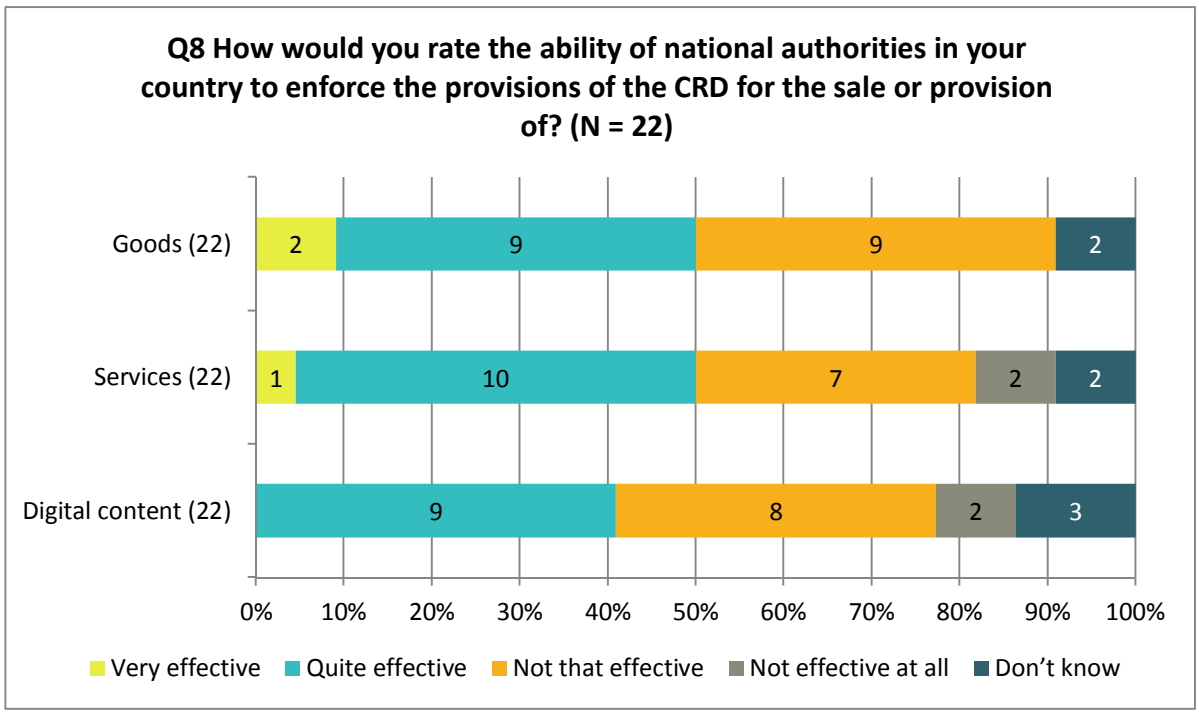
Figure 3-38: National competent authorities' non-regulatory actions (Q 18)



NB Figure 3-38: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

However, the view of the stakeholders on the enforcement ability of the national authorities is mixed. During this study, consumer associations were asked to rate the ability of national authorities to enforce CRD provisions. The opinions were quite split (see Figure 3-39), with over 40% of the respondents stating that the ability of national authorities was not that effective or not effective and a similar number stating that they were quite effective (with a few noting that they were very effective for goods and services). These results are shared by the EESC's report which notes that, although a majority of organisations agreed that the Directive was effectively implemented, *the role of national authorities in enforcing the provisions is less of an explanation to effective implementation* (EESC, 2017).

Figure 3-39: Consumer associations: Ability of national authorities to enforce the provisions of the Consumer Rights Directive (Q 8)



The OPC asked about the effectiveness of various consumer redress/enforcement mechanisms in protecting consumer rights, although these included all EU consumer and marketing rules and not just the CRD. Most public authorities (61%) and business respondents (57%) agreed that administrative authorities issuing injunctions that stop infringements of consumer rights represents a very effective or rather effective means of protecting consumer rights in the event of a breach of EU consumer and marketing rules. In contrast, 42% of consumers and only 20% of consumer associations agree that such a mechanism is effective. Several opinions were also expressed by those responding to the OPC in their open text and position papers. A few respondents to the OPC felt that there were differences in the way in which the rules were enforced in different MS. They thought that this could lead to inequalities and potentially mean that traders might be unwilling to sell their goods and services cross-border.

Responses to the OPC on enforcement

There should be a shift in the tools available for public enforcement to ensure that non-compliance was dealt with in a proportionate and cost-efficient manner.

Ineffective enforcement was a problem, with some MS imposing severe sanctions on major retailers for apparently minor violations, whilst rogue traders continued to operate.

..not clear which body is responsible for enforcement.

The lack of uniformity in enforcement across MS is an issue.

National authorities that are responsible for enforcing consumer rights are not sufficiently active. Consumer associations have too few resources to be able to operate. This means that serious violations of consumer law cannot be dealt with.

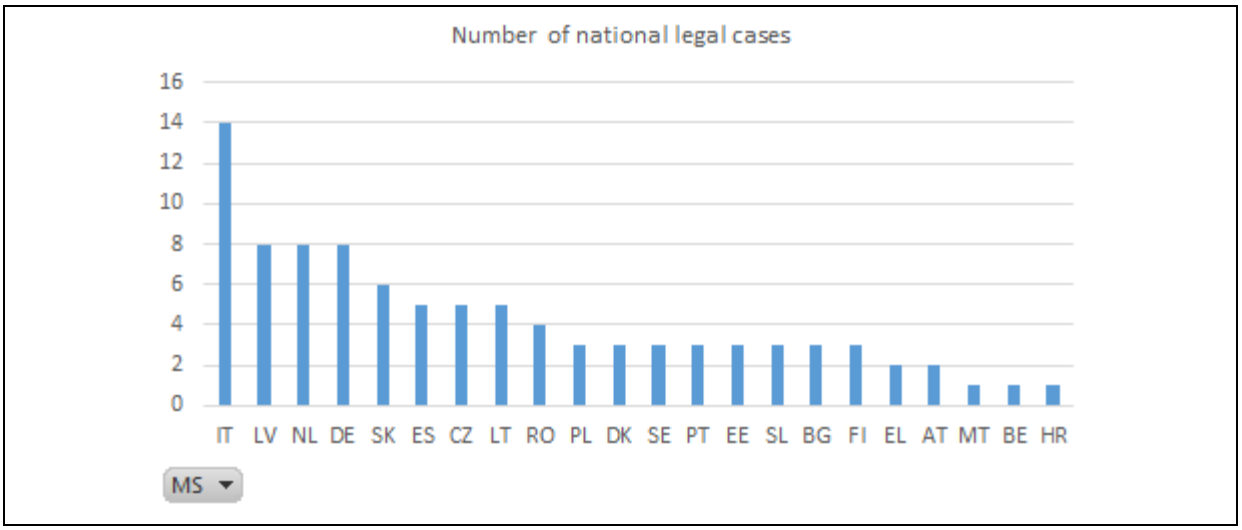
The level of cooperation between enforcement authorities is often insufficient and allows scammers to switch from one MS to another and carry on. The situation is even more complex with third country fraudsters.

3.6.4 Analysis of CRD legal cases to date

Since the CRD only came into force in June 2014, there have not been many legal cases to date compared with other longer-established consumer legislation. 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. Nevertheless, through the research carried out by our study team and complemented by input from the Consumer Law Database[60], **94 cases have been identified** in total, including a combination of 12 cases identified during the evaluation by the study team and an additional 82 cases from the Consumer Law Database. The cases identified are non-exhaustive because it is difficult to quantify the total number of cases since many cases go unreported (especially at lower levels of court and administrative courts) and are not always included in national legal statistical databases. The cut-off date for the analysis is September 2016.

A review of the Consumer Law Database and additional cases mentioned above has revealed information on the number of court cases by MS, shown in Figure 3-40. Since the CRD only came into force in June 2014 however, there has not been many legal cases[61]. The review has revealed that a small number of countries account for a significant percentage of the legal cases. As can be seen in Figure 3-40, there have already been 14 different cases in IT, and eight each in DE, LV and the NL respectively. Some of the cases are outstanding since following an initial judgment, they may have been referred to a higher court. In a number of EU MS, there have been very few cases to date such as EL (2), AT(2), and MT, BE and HR (1 each). It can also be noted that in other MS, such as FR and the UK, there have not yet been any cases at all. This was confirmed through the interviews. A selected number of the more significant national cases are presented in Annex 3.

Figure 3-40: Number of national legal cases



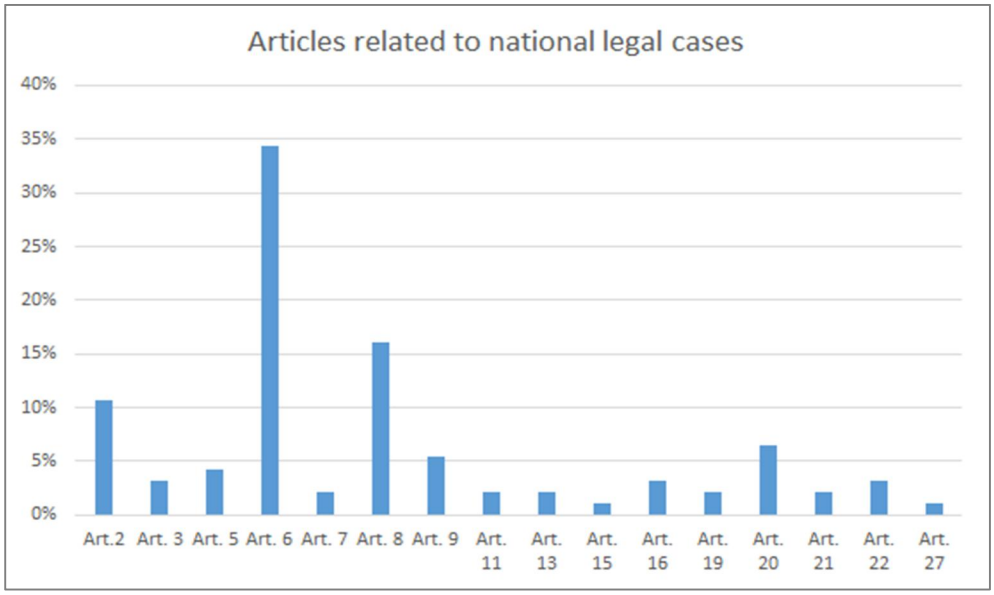
The review of the Consumer Law Database and the additional cases shows which articles of the CRD these court cases relate to. These are shown in the following Figure.

[60] Consumer Law Database, European e-Justice Portal.

[61] 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.

Information requirements relating to distance and off-premises contracts (Art. 6(1)) account for a significant percentage of the total cases[62].

Figure 3-41: Articles related to national legal cases



The analysis of court cases by Article shows some interesting trends. Information requirements relating to distance and off-premises contracts (Art. 6(1)) account for a significant percentage of the total, but there have also been quite a few cases in respect of other Articles, such as Art. 8 (formal requirements for distance contracts) (16%), and clarifications sought in respect of Art. 2 (definitions) (11%). In relation to definitions, some cases have arisen pertaining to issues such as the definition of business premises. There have also been a few cases relating to Art. 19 (fees for the use of means of payment), and Art. 22 (additional payments) which bans default options on websites. To date, there have only been a handful of cases in respect of Art. 27 (Inertia selling) and these mainly relate to energy companies in Italy. Art. 9 (the right of withdrawal) and Art. 20 (Passing of risk) accounted for 5% and 6% of cases respectively.

A small number of cases have been dealt with by administrative courts. Such cases are not a separate category, since these depend on the type of enforcement system – and the role of different courts within the system which is the responsibility of the Member States to determine.

Administrative courts played a role for instance in **Lithuania, Estonia** and **Latvia**, especially cases relating to Art. 21 (communication by telephone) and access to a standard rate charge phone line upon concluding a contract. The cases that have arisen under this Article appear to be mainly concentrated in the telecommunications and passenger transport sectors. For instance, in **Italy,** decisions issued by the enforcement authority can only be appealed before an administrative judge.

At **EU level**, there has only been one request to date for a preliminary ruling referred to the CJEU. The case was referred by the Court of Justice in Germany and an Opinion was issued by the CJEU in November 2016.

[62] In summary, 94 cases have been identified in total, of which only a small number are likely to be significant from a case law perspective. The total number of cases may exceed this figure, but this is difficult to capture due to gaps in data availability.

Zentrale zur Bekämpfung unlauteren Wettbewerbs Frankfurt am Main. Request for a preliminary ruling. (OJ 2011 L 304, p. 64). *(10 November: Court of Justice –* Seventh *Chamber).* A referral for an opinion by the CJEU was issued. In summary, the Court was called upon to provide clarification in connection with the transposition of consumer protection law, in particular as regards telephone communications and, more specifically, the provision by a trader of an after-sales-service telephone line for its customers. The questions referred concern the interpretation of the concept of 'basic rate' within the meaning of Article 21 of Directive 2011/83/EU since the Directive does not contain any definition of the concept of what a basic rate means. Three questions in particular were referred:

1. Is the first paragraph of Article 21 of Directive 2011/83 to be interpreted as meaning that, where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer contacting the trader by telephone must not incur higher charges than those that the consumer would incur for calling a standard (geographic) fixed or mobile number?

2. Does the first paragraph of Article 21 of the CRD preclude national legislation according to which, where a trader operates a shared-cost service on an 0180 number for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer must pay [the costs] which the telecommunications service provider charges the consumer for the use of that telecommunications service, even where those charges exceed those which the consumer would incur for calling a standard (geographic) fixed or mobile number?

3. Does the first paragraph of Article 21 of Directive 2011/83 not preclude such national legislation where the telecommunications service provider does not pass on to the trader part of the charges that he receives from the consumer for contacting the trader on the 0180 number?'

The specific facts of this case related to a German telecommunications company that markets electrical and electronic equipment. On its website, it displays the telephone number of a support service for customers who have already concluded a contract to purchase equipment and wish to obtain clarifications or explanations in relation to their contract. The telephone number provided contains the prefix 0180, which is used in Germany for support services at a single national rate. The cost of a call to the dedicated (non-geographic) number exceeds the amount that the consumer would incur at normal connection rates for calling a standard (geographic) fixed or mobile number.

The referring court had doubts concerning the interpretation and raised the issue as to whether or not this was legal within the meaning of Article 21 of Directive 2011/83. The court wondered whether a more restrictive interpretation of the concept of 'basic rate' than that in German legislation should be adopted to ensure a higher level of consumer protection. It considered that the purpose of the wording of Article 21 of the CRD suggests a more restrictive interpretation. Although the provision in German national law prohibits profits from being made through the use of a non-geographic telephone line, it does not prevent calls made to that line from being charged at a higher rate than calls made to standard lines.

An Opinion of the Advocate General was issued on 10 November, Opinion C-568/15[63]. The overall finding was that: *"The concept of 'basic rate' contained in Article 21 of Directive 2011/83/EU [….] must be interpreted as meaning that where a trader operates a telephone line for the purpose of consumers contacting the trader by telephone in*

[63] http://curia.europa.eu/juris/liste.jsf?language=en&td=ALL&num=C-568/15 Opinion ECLI:EU:C:2016:863

relation to contracts concluded with the trader, a consumer calling the after-sales service of the trader must not incur charges higher than the normal costs which the consumer would incur for calling a standard (geographic) fixed or mobile number".

The Judgement issued on 2 March 2017 confirmed the Advocate General's Opinion.

Having analysed the cited case law (the list of cases pertaining to the CRD is provided in Annex 3), it was concluded that most legal cases do not contribute towards establishing legal precedent through case law, since they simply confirm or establish how to correctly apply the law rather than provide an interpretation in respect of Articles/sub-Articles that may have contained some degree of ambiguity in interpretation. However, a number of cases which raise interpretation issues have been identified, including one that has been referred to the ECJ.

Table 3-1: Examples of relevant national court decisions in selected EU countries

MS	Level of Court	National court judgements	Significance of case
DE	Bundesgerichtshof (Federal Supreme Court)	BGH, 25. February 2016 - I ZR 238/14 http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=23c33c231a3ee75f04bc37a75a0162ea&nr=75175&pos=0&anz=7	Important decision on the relationship between the information duties in Art. 6 (1) (c) and (f) and Art. 21 of the CRD to those in Art. 5 (1) (c) E-Commerce Directive 2000/31/EC. As a general rule, these information obligations apply in parallel. The provider of an online service who only offers an e-mail address and a chargeable phone number on his website as a possibility for a contact does not enable the consumer to contact them quickly and to communicate efficiently in the sense of Art. 6 (1) (c) CRD. The Court did not refer the case to the CJEU, because it thinks that this is an acte clair (because of a similar case where a CJEU opinion was issued, that relates to predecessor legislation - 16 Oct 2008 - C-298/07- Verbraucherzentrale Bundesverband /DIV)
DE	Bundesgerichtshof (Federal Supreme Court)	BGH, 10 December 2014 - VIII ZR 90/14 See press release here: http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=23c33c231a3ee75f04bc37a75a0162ea&nr=69653&linked=pm&Blank=1 Judgment: http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=23c33c231a3ee75f04bc37a75	Judgment on ending an eBay auction early. Important case where the German Supreme Court holds (in an obiter dictum) that the CRD is only applicable where the trader delivers goods or provides services and the consumer pays money as a counter-performance, but not in in the reverse situation where, e.g. the consumer sells a good to the trader (cf. Nr. 22, 23). This case may have to be referred to the CJEU, if it were part of the ratio decidendi. In German legal literature, it is considered to be controversial whether at least some articles of the CRD also apply to contracts where the consumer delivers goods or services (cf. Art. 3 CRD ".to any contract concluded between a trader and a consumer"). The more

MS	Level of Court	National court judgements	Significance of case
		a0162ea&nr=70014&pos=6&anz=7	restrictive definitions in Art. 2 Nr. 5 and Nr. 6 CRD do not limit the scope of the CRD as a whole (since they only apply to individual articles of the CRD; cf., e.g. Art. 14 (4) or Art. 17 CRD). For the applicability of the CRD also in cases where the consumer delivers goods or supplies services cf. Busch, in Beck-online-GROSSKOMMENTAR, § 312 Nr. 13; Wendehorst, in Münchener Kommentar § 312 BGB Nr. 21; Schulte-Nölke, in Handkommentar BGB, § 312 Rn. 4; Maume, Neue Jusistische Wochenschrift 2016, p. 1041.
DE	Amtsgericht (District Court)	AG Dieburg, 4 November2015 - 20 C 218/15 (21)	This decision contains two important clarifications: 1. In a case where the consumer refuses to take delivery of the ordered goods, the refusal is, according to the court, not to be considered as the exercising of the consumer's right of withdrawal. Insofar as this decision applies to Art. 11 (1)(b) CRD (as transposed into German law in § 355 para 1 sentences 2 and 3 BGB). This provision requires that the consumers makes "an unequivocal statement setting out his decision to withdraw from the contract". The courts held that the simple refusal to accept delivery of the goods when the postman arrives is not such an unequivocal statement. Compared with the pre-CRD situation in German law, however, the consumer is worse off in such a case. Before the transposition of the CRD, § 355 para 1 sentence 2 BGB (in force until 12 June 2014) provided that the simple return or reshipping of the goods (without any further statement) qualifies as the exercise of the right of withdrawal. On other words, before the transposition of the CRD the consumer would have won the case; now he loses just because of the CRD. 2. The other important point relates to the commencement of the 14 day time period for the right of withdrawal. The court held that this period already began when the consumer refused to take delivery of the goods. This ruling may be in conflict with Art. 9(2)(b) CRD which requires that the consumer actually had the physical possession of the goods (which was not the case since the consumer never had the actual physical possession of the goods in

MS	Level of Court	National court judgements	Significance of case
			question since he told the postman that he would refuse to accept delivery and the postman therefore did not unload the goods.
DE	Bundesgerichtshofs (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	Pre CRD case: This ruling concerns the predecessor of Art 16 b CRD (Art 6 (3) Distance Selling Directive 97/7/EC) which has nevertheless the same formulation. The court held that heating oil is not to be considered as "goods for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which may occur within the withdrawal period" in the sense of Art 16(b) CRD. The court interpreted this provision narrowly and required the distance sales contract to be "speculative at the core". As a result, the consumer who ordered heating oil had a right of withdrawal. This judgement is widely contested as too favourable to the consumer (cf.Henning-Bodewig, Distance Sales of Heating Oil and the Consumer's Right of Withdrawal, Journal of European Consumer and Market Law (EuCML) 2016, p. 87). If the same case is to be decided under the CRD, the Federal Supreme Court will be obliged to refer the case to the ECJ, since its reductionist interpretation of Art 16 b CRD may infringe the full harmonisation principle of the CRD. Consequently, consumers in Germany may be worse off due to the CRD, since the Federal Supreme Court must not upheld its consumer-friendly jurisdiction and there is a risk that the ECJ gives Art. 16 (b) CRD a less consumer-friendly interpretation (which would be binding for the German courts)
DE	Landesgericht (regional Court)	LG Münster, 4 November 2015 - 02 O 127/15	Rent of construction drying heaters (concluded on the building site) does not fall within the exceptions pursuant to Art 16 h CRD. In this case, the consumer is better off than before the transposition of the CRD. Before the transposition of the CRD, there was no withdrawal right for off-premises contracts where the consumer had specifically requested a visit from the trader (cf. § 312 para 2 Nr. 1 BGB [pre CRD]). After the transposition of Art. 16 (h) CRD into German law (in §§ 312b and § 312 g para 1 Nr. 11 BGB), consumers are granted, as a rule, the

MS	Level of Court	National court judgements	Significance of case
			right to withdraw from an off-premises contract even in a case where the consumer had specifically requested a visit from the trader. The court narrowly interpreted the exception from this withdrawal right in Art. 16 (h) CRD: Hiring construction drying heaters is not to be considered a contract "for the purpose of carrying out urgent repairs or maintenance". The consumer therefore has – other than before the CRD - a withdrawal right, even if the contract was concluded at the building site after the consumer had specifically requested a visit from the trader.
DE	Oberlandesgericht (higher regional court)	Oberlandesgericht Düsseldorf, 18 February 2016 - I-15 U 54/15	Paper brochure is not a means of distance communication which allows limited space. Judgement concerns Art. 8 para 4 CRD
DE	Oberlandesgericht (higher regional court)	Oberlandesgericht Karlsruhe, 10 June 2016 - 4 U 217/15	A permanent stand at a trade fair is not considered to be off-premises but counts as a 'business premise'. Therefore, there is no right of withdrawal the consumer has to be informed about. As per recital 22 and page 14 of the Guidance, the classification of a stand at a trade fair is linked to whether a trader participates in a trade fair held a regular or occasional basis. If on a regular basis, then the CRD is applicable if on a one-off or an occasional basis, then the consumer does not have to be informed about their RoW. Recital 22 states that "business premises should include premises in whatever form (such as shops, stalls or lorries) which serve as a permanent or usual place of business for the trader. Market stalls and fair stands should be treated as business premises if they fulfil this condition". The JUST interpretative guidance states that space "which the trader uses on an exceptional basis for his business activities as well as private homes or workplaces should not be regarded as business premises. Art. 7 CRD (Formal requirements for off-premises contracts)
DE	Oberlandesgericht (higher regional court)	Oberlandesgericht Köln, 8 July 2016 - 6 U 180/15	No phone number required for Art. 6 para 1 c CRD if sufficient opportunities via other means are available (e.g. chat or mail). Court refers to the EC's DG JUST interpretative guidance document.
LT	Administrative	Vilnius, 17 September 2015 - No. 12V-1,.	Judgement on the enforcement action taken by Lithuanian enforcement authority, the

MS	Level of Court	National court judgements	Significance of case
	court		State Consumer Rights Protection Authority (SCRPA) against telecommunications company CGATES (http://www.cgates.lt/lt/tv-ir-internetas) a provider of TV and internet services). A customer with a "Mini" payment plan for telecommunications services was told in the contractual information upfront that they would pay a basic rate to access a customer service helpline number but the 19900 number charged a premium rate instead. Upheld the applicability of Article 21 (Communication by telephone).
NL	Rechtbank (tribunal)	Rechtbank Overijssel, 23-08-2016, ECLI:NL:RBOVE:2016:3230	Not returning unsolicited school photos does not result in an agreement with the school photographer or an obligation to pay or to return the photos, since this a case of an unsolicited delivery of goods as referred to in Article 7: 7 paragraph 2 BW (=transposition of Art. 27 CRD). This statutory provision also excludes a claim based on unjust enrichment (see Nr. 3.6 ss)
NL	Rechtbank (tribunal)	Rechtbank Oost-Brabant, 13-05-2016, ECLI:NL:RBOBR:2016:2425	Booth stall of a gas supplier in a MediaMarkt shop is not 'off-premises' in the sense of Art. 2 (8) and (9) CRD (see Nr. 4.11 ss)
NL	Rechtbank (tribunal)	Rechtbank Rotterdam, 26-11-2015, ECLI:NL:RBROT:2015:8642	Dutch Market Authority fined travel agents because of using pre-ticked boxes against Art. 6:193b (2) BW (= transposition of Art. 22 CRD) when selling airline tickets and other travel products like sun holidays, car or motorhomes hire (pre-ticked boxes concerned travel and / or cancellation insurance or automatically added hotel bookings in some cases). Court held that fines are justified (see Nr. 5.6.4)
SE	Marknadsdomstolen (Swedish Patent and Market Court)	Marknadsdomstolen, 15 August 2016 – 2016:13 http://www.marknadsdomstolen.se/Filer/Avg%C3%B6randen/Dom2016-13.pdf	Case concerning right to withdrawal from contract (according to lagen om distansavtal 2005:59 and avtal utanför affärslokaler (distansavtalslagen)) brought by the Swedish Consumer Ombudsman on Malmö Dansakademi for failing to comply and not publishing adequate information on the right to withdraw from contracts for dance courses paid for upfront. The Market Court held that dancing lessons do not fall under "services related to leisure activities if the contract provides for a specific date or period of performance" in the sense of Art. 16 (l) CRD (cf. Nr. 29, 30 of the judgement).

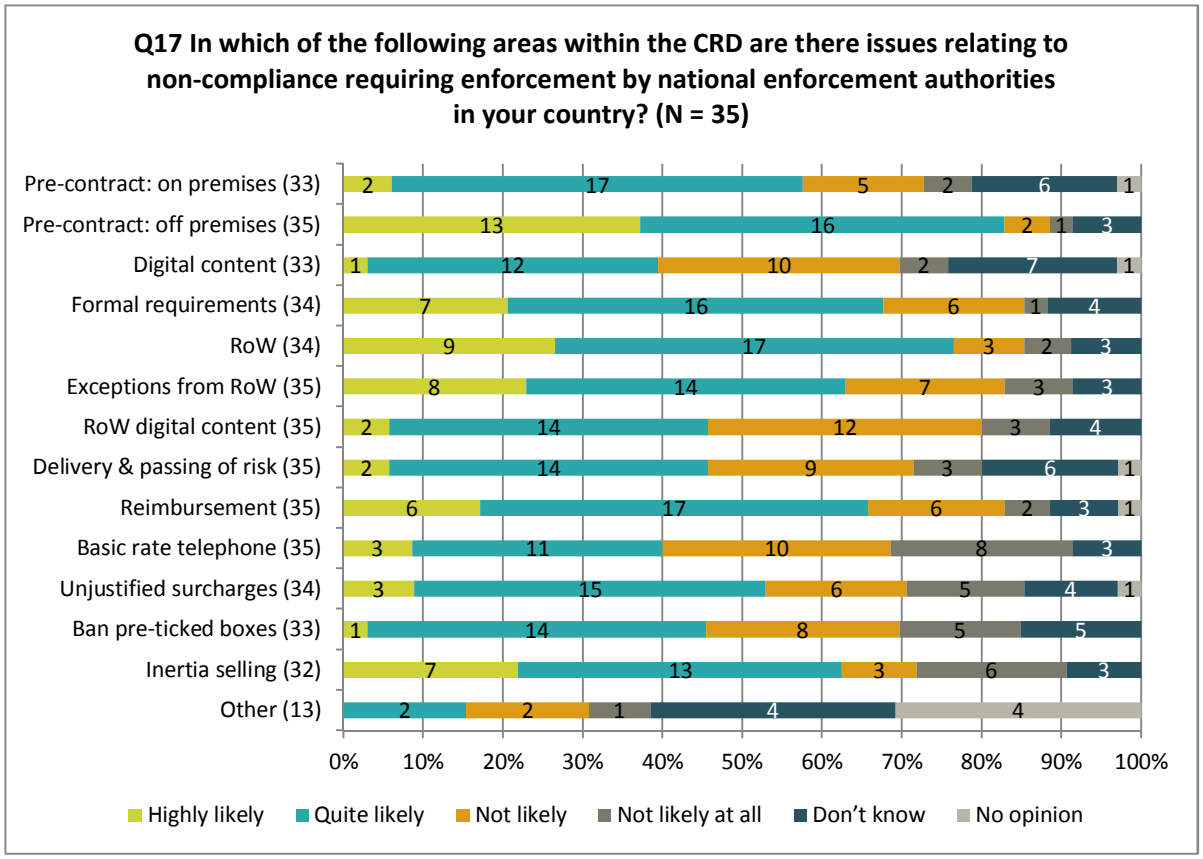
- In summary, 94 cases mostly relating to the CRD (and in a small number of cases to similar provisions in predecessor legislation (i.e. Council Directive 85/577/EEC and

Directive 97/7/EC) have been identified in total, of which only a small number are likely to be significant from a case law perspective. The total number of cases may exceed this figure, but this is difficult to capture due to gaps in data availability.

- Since the Directive is relatively new, only one case has been referred to the CJEU for a preliminary ruling that was issued on 2 March 2017.
- In most instances, cases have merely checked that the law has been correctly applied., Arguably, this in itself has been useful in raising awareness about the core provisions of the CRD that traders must comply with an about the correct interpretation of the requirements.
- In addition, the cases that have been brought by national and regional enforcement authorities against traders have had a deterrent effect on traders that went against the spirit of the legislation or were repeatedly non-compliant. This should help to promote higher levels of compliance among traders in future.

Examples - press releases were issued following CRD-related cases by some national enforcement authorities (e.g. seven cases in the Italian energy sector of repeated breaches of different CRD provisions). These were designed to have a deterrent effect through the high level of the financial penalties imposed. National authorities responding to the online questionnaire shared the view that, with regard to non-compliance, pre-contractual information requirements for distance and off-premises contracts, i.e. Art. 6, may require enforcement (with 83% thinking that this would be quite to highly likely), as shown in Figure 3-42.

Figure 3-42: National competent authorities: areas within the CRD requiring enforcement (Q 17)



3.7 Summary of findings on effectiveness

The main reason behind the CRD was to enhance the EU market by means of increasing consumer confidence and removing traders' barriers to trade, due to the lack of harmonised consumer legislation.

During the interviews, the CRD was viewed as having made a positive difference in consumer protection. Pre-contractual information requirements for distance and off-premises contracts, and the RoW were the provisions regarded to be the most positive.

The online survey has however highlighted some differences depending on the type of contract. Both consumers and consumer associations shared the views that the level of protection for digital content purchases is not as effective as for goods and services. This is due to a number of reasons, such as the lack of awareness and understanding by both consumers and traders but also the lack of compliance with specific requirements (such as the provision of a withdrawal form, the exceptions from the RoW for digital content and provision of pre-contractual information about the trader). Indeed, 39% of the national competent authorities replying to the questionnaire agreed that digital content related provisions would require enforcement and some thought that these would be of concern when dealing with the RoW. The views of the stakeholders about the ability of national authorities to enforce the provisions of the CRD were quite split, however.

In addition, the most frequent problems on compliance appear to be in relation to websites, as demonstrated through the Consumer Sweep and confirmed through the interviews. However, some of the discussions with trade associations in relation to off-premises contracts have confirmed that there are also very low levels of CRD compliance primarily due to low levels of awareness. Accordingly, some trade associations have recognised that they need to do more to raise awareness among their members.

Generally, the CRD is seen to have delivered in increasing consumers' and traders' confidence in cross-border purchases and sales. However a number of factors are reported to still be hindering the effectiveness of the Directive. These are the following:

- A lack of consumer and trader awareness and understanding of the CRD provisions. Despite efforts by the EC and national competent authorities, there appears to be a number of provisions where awareness is still low, these include exemptions from the RoW and inertia selling. However, the Directive is considered to be a fairly new Directive (although based on two previous ones), thus the low level of awareness on new specific provisions is unsurprising.

- Compliance by traders, with particular regard to specific provisions. Although the overall level of compliance with the CRD is considered to be good, there are specific provisions that traders appear to have more difficulties complying with. These include providing all types of information, including all relevant information about themselves, and the RoW, and in particular the provision of a withdrawal form. National competent authorities agreed that these aspects will require enforcement in the future. In addition, based on the analysis of the literature and consultation, compliance appears to be more of an issue for specific sectors, such as telecommunications and energy supply, and specific contracts, such as telephone and catalogue distance selling; and

- Enforcement: there are mixed views as to the ability of competent authorities to enforce the CRD; although most competent authorities are engaged in joint actions and pre-enforcement actions, they are not being seen as particularly effective. Moreover, the number of legal cases and level of fines vary significantly by MS. The

different level of enforcement across MS may reduce the effectiveness of the CRD in ensuring compliance when trading cross-border.

Thus, for both traders and consumers, this evaluation has shown that the level of awareness and understanding is low on specific provisions (e.g. inertia selling, specific aspects of pre-contractual information and digital content) but on others the level of awareness is considered to be higher, such as the RoW. The above may suggest that although no further awareness raising may be needed on the RoW, future campaigns may need to focus on other rights and aspects such as digital content, with particular regard to the exemptions applicable to it (Art. 16 (i & m)).

In the impact assessment that accompanied the CRD proposal (CEC, 2008) it was mentioned that fragmentation of the national legislation was one of the main reasons traders do not to sell cross-border. According to the survey, the regulatory choices appear not to have had a significant detrimental impact on the achievement of the objectives. Differences in national legislation are not mentioned as a reason for not conducting cross-border trade suggesting that the Directive, through its full harmonisation approach, has been effective in removing legislative barriers in consumer protection.

The following table summarises the findings of the evaluation for the effectiveness criterion vis-à-vis the evaluation questions.

Table 3-2: Summary of findings on CRD and its effectiveness

Key to rating: 0: no noticeable impact +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	 -: small negative impacts --: moderate negative impacts ---: significant negative impacts
How effective has the Directive been in eliminating the obstacles for businesses carrying out economic activities in several EU Member States?	++/+++: Traders do not see differences in implementation as a main barrier in cross-border trade. The regulatory choices appear not to have had a significant detrimental effect on traders. However, for those traders that do sell cross-border and see some problems in so doing, differences in consumer protection rules remain an issue. Although these issues affect a small proportion of traders, such problems need acknowledgement.
What have been the impacts on consumer confidence and welfare?	++/+++: Most consumers and their associations answering the survey felt that the level of protection was moderate or high when buying goods and services domestically and from other EU countries, but less so for digital content. Amongst the provisions that were most highly rated are the RoW and pre-contractual information requirements for distance and off-premises contracts. The exceptions from the RoW are considered to be negative or very negative by 30% of the consumer associations responding.
What factors influenced the achievements observed?	++/+++: The provisions regarded to be the most positive for consumer protection by consumers and their associations are the pre-contractual information requirements for distance and off-premises contracts and the RoW. For cross-border purchases, the ban on pre-ticked boxes is seen as particularly positive by the ECCs. However, there are some factors still believed to be affecting the effectiveness of the CRD. These are a lack of awareness & understanding, enforcement and compliance with specific

Table 3-2: Summary of findings on CRD and its effectiveness

Key to rating: 0: no noticeable impact +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	-: small negative impacts --: moderate negative impacts ---: significant negative impacts
	aspects of the CRD.
What is the level of business compliance and how does this affect effectiveness?	+/+++: there are specific provisions that traders appear to have more difficulties complying with. These include providing all types of information, including all information about themselves, and the RoW, and in particular the provision of a withdrawal form. National competent authorities agreed that these aspects will require enforcement in the future. The level of compliance also varies by sector (e.g. telecommunications and energy appear to be more problematic).
How effective has the enforcement of the Directive being?	+/+++: Impacts have been greater on some provisions than others. Concerning enforcement, national authorities agreed that work should focus on pre-contractual information, the RoW and those provisions concerning digital content (in this order). The views of stakeholders on the ability of national authorities to enforce the CRD is quite mixed however; despite the survey findings suggesting that they are carrying through the imposition of penalties.
Have there been any unintended effects?	++: Some positive effects are reported from exceptions from the RoW from the hotel sector, where traders have been able to pass on price reductions based on the exclusion from the RoW.

4 Efficiency of the CRD and its implementation

4.1 Overview of section

Efficiency considers the relationship between the resources used by an intervention and the changes generated by the intervention (including unintended effects), which may be either positive or negative. Efficiency in the context of the CRD refers to the ratio of inputs to outputs, in particular (and in line with recital 4 of the CRD):

> *Striking the right balance between a high level of consumer protection and the competitiveness of enterprises*

Stakeholders were asked specific questions about the costs and benefits of the different CRD provisions in order to help answer the evaluation questions, set out below.

- What are the costs and benefits (monetary and non-monetary) associated with the application of Directive 2011/83/EU in the Member States?
- What are the increased/reduced costs for businesses, such as administrative and compliance costs or costs for handling complaints and returns, legal advice, etc.;
- What are the compliance/administrative costs of public authorities?
- What are the effects on SMEs and additional costs for companies that operate in only one Member State?
- What are the burdens and benefits for businesses arising from obligations on traders under the Directive at different stages of the transaction (i.e. pre-contractual stage, stage of conclusion of the contract and post-contractual stage), in particular, regarding their administrative costs and removal of barriers to cross-border trade?
- 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 are characterised 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 good practices in terms of their cost-effective application can be identified?
- What, if any, specific provisions in the Directive can be identified that make cost-effective implementation more difficult and hamper the maximisation of the benefits? In particular, what is the (unnecessary/cumulative) regulatory burden identified?
- Were the outputs and effects achieved at a reasonable cost? Could the same results have been achieved with lower costs or in a simpler way? Could the use of other policy instruments or mechanisms have provided better cost-effectiveness? What possibilities are there for simplification?

Through the different data collection tools, notably the interview programme and the online survey, the study team has sought to identify the administrative costs and the anticipated benefits of the CRD. A sample of questions is given below.

- *Have the requirements have an impact upon the costs for your business?*
- *To what extent are the full harmonised rules beneficial for your business?*
- *Do the benefits exceed the costs?*
- *How do you rate the provisions of the CRD for the competitiveness of traders?*
- *What are the costs to your organisation of the transposition and enforcement of the CRD?*

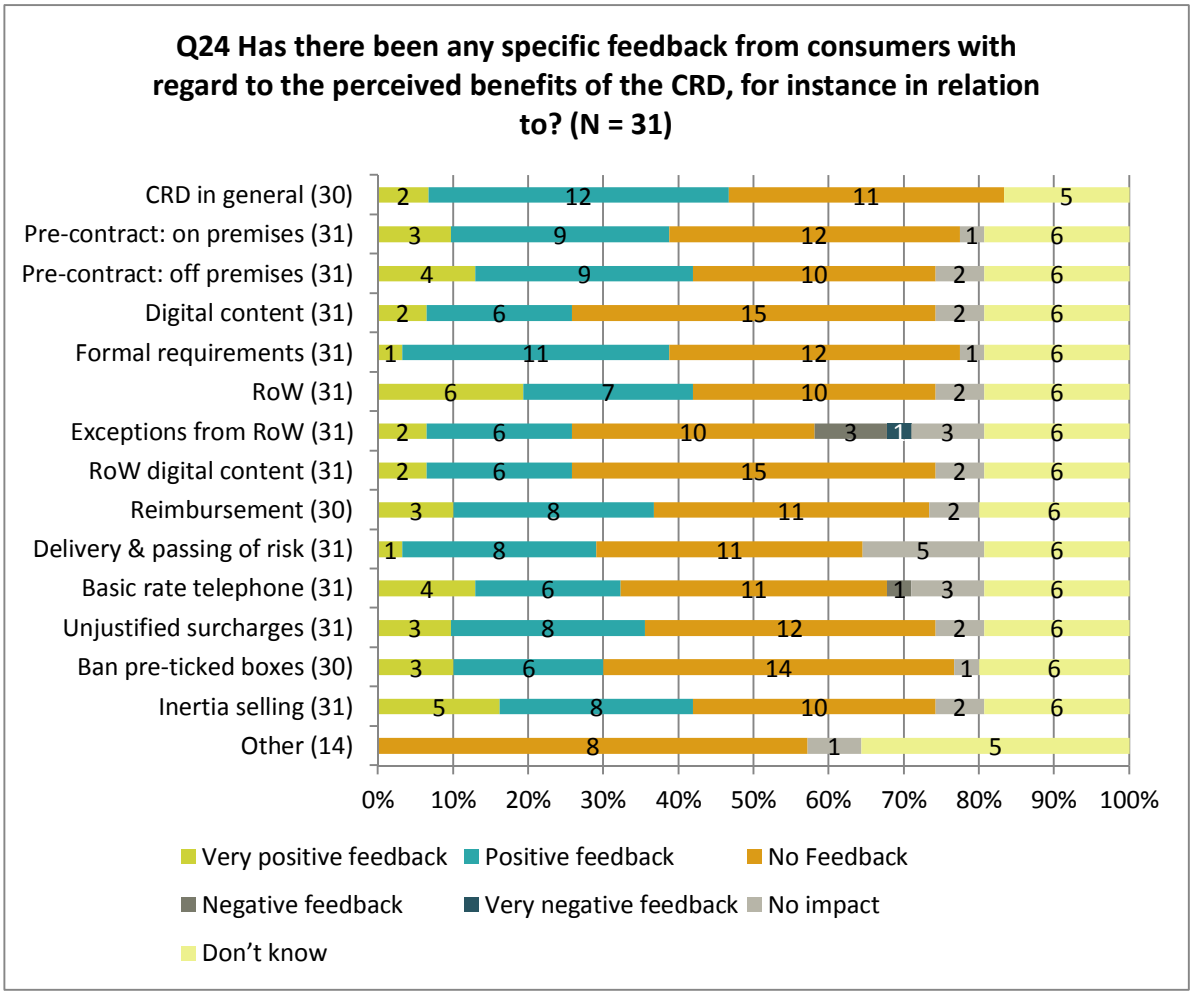
Most stakeholders have not been able to provide quantitative estimates of costs and benefits, although there are a few examples. Some useful qualitative information has been obtained and this is presented below.

4.2 Impacts on consumers

As noted in Section 3, most consumers and their associations answering the survey felt 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. Similar numbers believed that this had stayed the same (35% and 33% respectively) (EESC, 2017).

National competent authorities were asked whether they had received any feedback on the benefits from the consumers' side on the CRD. As can be seen from Figure 4-1, 47% of national competent authorities responding have received positive feedback on the benefits from the CRD in general. Among the provisions most highly rated are the harmonised RoW across the EU-28 and the putting in place of a common set of pre-contractual information requirements for distance and off-premises contracts. Conversely, 3% of competent authorities received very negative feedback on the exceptions from the RoW whilst a further 10% received negative feedback on this same point.

Figure 4-1: National competent authorities' feedback from consumers on the perceived benefits (Q 24)



Interestingly, for some Articles, a small percentage of competent authorities stated that there has not been any impact compared with the predecessor legal regime, which confirms the findings from the legal mapping which is that, for some Articles, several MS already had quite similar rules in place prior to the CRD. Among the Articles where there was a relatively high response rate in respect of "no impact" were Article 18 (Delivery) and Article 20 (Passing of risk) (with both at 16%).

Some competent authorities did however provide examples of how consumers had benefited from the increased level of protection (although this may not just be due to the CRD). A national competent authority stated that of the consumers enquiring at their helpdesk in relation to consumer rights, 64% indicated they intended to take further action. Another national competent authority revealed that 31% of consumers consulted in a recent research had made use of the 14 day cooling off period. Comments provided by national competent authorities are presented in the next box.

Free text from National Competent Authority survey Q 25: Have you got any data on the uptake by consumers of the exercise of their rights under the CRD?

We do know that 64% of consumers that enquire about their rights at our helpdesk indicate that they intend to take action.

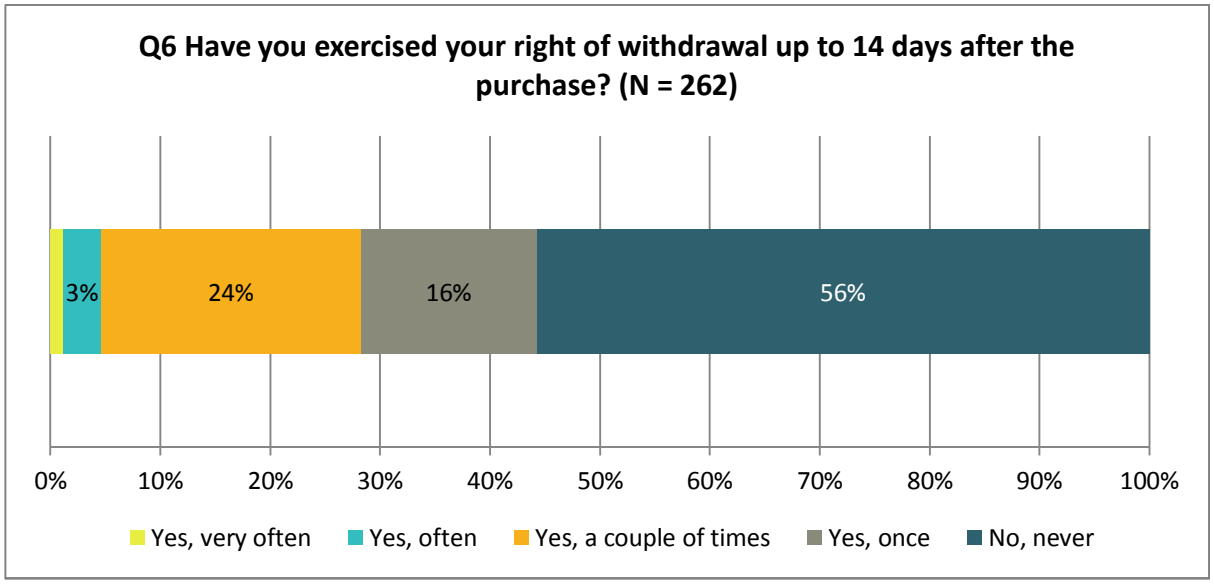
As a result of media coverage of rights conferred by law, consumers have become more aware when shopping on line.

In a recent consumer research service of 935 consumers, 31% had availed of the cooling off period.

Only positive assessments of consumer associations and users of Valencia.

Unfortunately, most national competent authorities replying to the questionnaire could not provide data on the uptake by consumers of the exercise of their rights under the CRD. The survey however asked consumers about whether they had ever exercised the RoW after purchasing items and responses show that over 40% of consumers have. As noted in section 3.6.2.2, only 21% of these have not experienced any problems however; with the rest noticing problems when exercising their RoW, particularly on contacting the trader. Nearly half of this latter group however had received a full refund for their product.

Figure 4-2: Consumers: Have you exercised your RoW? (Q 6)



4.3 Impacts on traders

4.3.1 Costs to traders of the CRD

Type of costs on traders from CRD

Examples of the types of costs for traders in complying with the Directive are: human resource costs, such as familiarisation costs with the legislation, management time to check the requirements and to ensure compliance, updating website text and taking corresponding actions to update internal processes and procedures relating to the transaction process e.g. delivery, returns and RoW duration.

The direct monetary costs include: getting external legal advice on compliance, engaging a web designer to redesign parts of websites to comply with CRD requirements such as putting the means of payment on a home page or early in the transaction process, adding a box in relation to the obligation to pay, etc.

The 2008 Impact Assessment on the CRD[64] by DG SANCO noted that the fragmentation of the legal framework in respect of distance and off-premises contracts prior to the CRD generated compliance costs for businesses wishing to trade cross-border. The costs for trading cross-border were found to be significantly higher than for those trading only domestically, due to the additional costs associated with a lack of a common, harmonised regulatory framework, with common rules in respect of the duration of the RoW, delivery and returns. Some of the additional costs were attributed to the need for traders to undertake legal research or to use a professional advisor (e.g. a lawyer, accountant) to find out what were the applicable requirements in other countries where they wished to trade. It concluded that the benefits were expected to outweigh the costs overall (CEC, 2008).

In 2008, almost half of the 75% of the traders who did not sell cross border indicated that they would start doing it if regulations were harmonised. The cost of fragmentation was regarded as a heavy burden on business.

The estimated administrative costs imposed by EU consumer rights law to businesses selling only domestically were 5,526 Euro for distance sellers and 6,625 Euro for direct sellers. These costs would increase to 9,276 Euro for distance sellers and 10,375 Euro for direct sellers wishing to sell to consumers located in one or two other EU countries. Under the previous regulatory regime, prior to the CRD, the estimated administrative costs for a business wanting to sell in all 27 MS are 70,526 Euro for distance sellers and 71,625 Euro for direct sellers.

According to the online survey, 51.6% (N=142) or of all traders reported selling cross-border, with the remainder selling in domestic markets only. This could suggest saving from harmonised information requirements. The vast majority of traders responding are engaged in distance selling by e-commerce both domestically and cross-border but the numbers of traders responding is low, thus the reliability of the findings may be limited. Of these (n=80), and by number of countries they trade in, the findings were:

- 15% of all 284 traders sell in 1 or 2 MS (other than their home country) (n=43)
- 4% of the total 284 respondents trade in 3 to 5 MS (n=12); and
- 9% of the total 284 respondents (N=25) trade in more than 5 to rest of the EU.

So, for those companies replying to the survey this would equate to a saving of around €2.2m. The survey revealed however that only 3% respondent thought the costs from

[64] COMMISSION STAFF WORKING DOCUMENT accompanying the proposal for a directive on consumer rights Impact Assessment Report

the provision of pre-contractual information had reduced (refer to discussion below).

Whilst the above figures are useful in providing a baseline quantification estimate, the methodology through which these costs estimates were derived is not clear from the impact assessment document. It is also important to provide an explanation as to why quantifying the costs and benefits of the CRD in monetary terms was not possible. In the following table, some of the main problems encountered are highlighted:

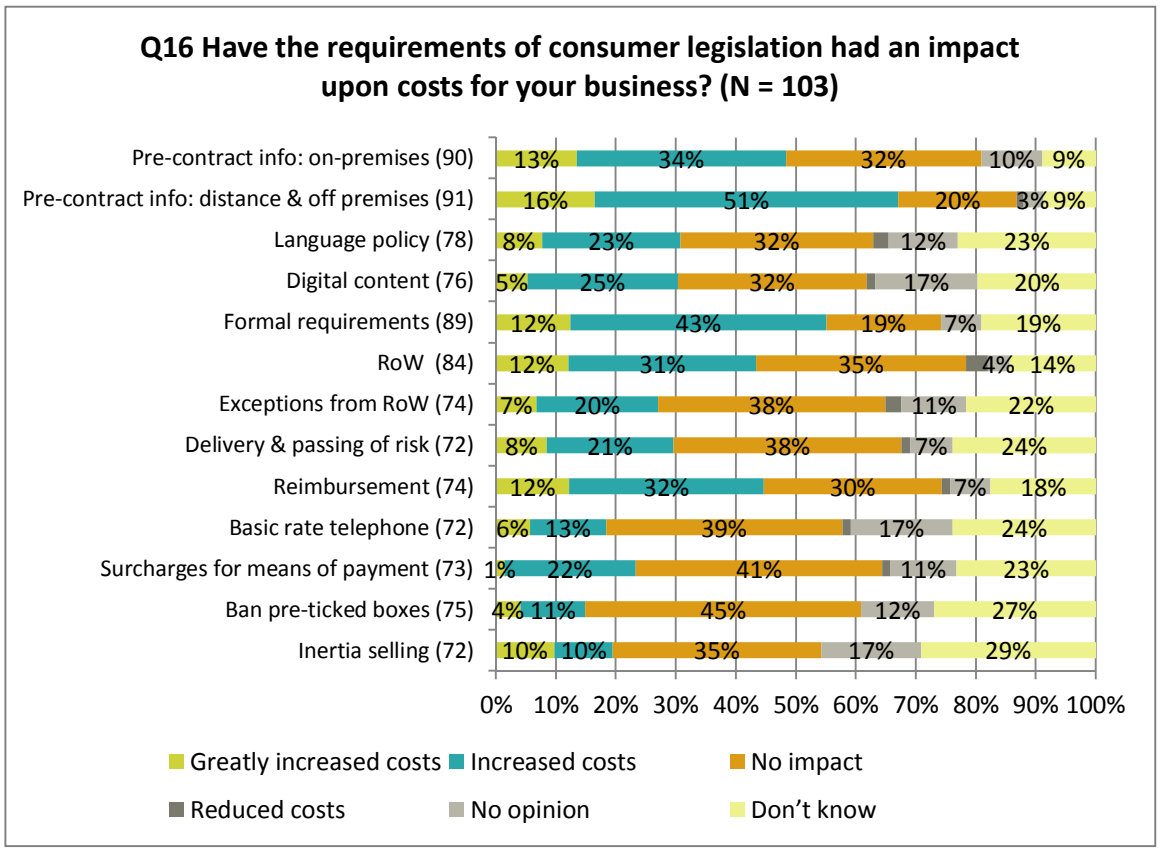
Issue	Description
Lack of quantitative data on benefits – especially from reduced regulatory fragmentation	There were difficulties in obtaining any data on the actual costs incurred by traders, and therefore in assessing whether the anticipated level of cost reduction in compliance costs was achieved. Some traders interviewed provided limited feedback on costs (analysed later in this sub-section) but they were not able to quantify how much they had spent complying with the CRD, either in terms of human or financial resources.
The absence of longitudinal proxy data to assess the evolution in levels of confidence in shopping cross-border among consumers.	In the absence of data on benefits, it would have been useful to obtain data on proxy indicators, such as the level of confidence in shopping cross-border among consumers, and its evolution over time (i.e. pre-CRD and post-CRD). Although periodic Eurobarometer surveys have been undertaken (most recently in 2014 but before the CRD came into effect), the EC would need to commission regular Eurobarometer surveys (e.g. annually or bi-annually). Robust longitudinal data on changes in levels of consumer confidence would allow benefits to be quantified indirectly (since attribution would have to be assessed taking into account stakeholder feedback). In theory, reduced national regulatory fragmentation across EU-28 should have increased consumer confidence.
Lack of data on the % of returns	Data on the % of returns was regarded as commercially sensitive by traders and their representative organisations, and will also vary significantly between sectors. However, since a small number of traders pointed to the increased costs under the CRD associated with them having to pay the costs of returns (shipping and refunding the whole amount including unrecoverable credit card charges), such data would be very useful in being able to estimate the total costs of returns due to changes in the obligations on traders under the CRD.
Compliance costs are over-simplified in the IA	In the 2008 IA, compliance costs are estimated for distance and direct sellers selling i) in the domestic market and ii) cross-border. However, the actual costs will vary significantly depending on: • The sector • The type of good in question e.g. in relation to distance selling, whether the trader is selling (1) high value, low volume products or 2) high volume, low value products. This will influence the cost

Issue	Description
	drivers for returns such as return postage costs, the non-recoverable credit card fee, etc.
The legal regime post-CRD was perceived to be quite similar to the pre-existing legislation that applied under the two predecessor Directives in many MS	Although there are a number of new provisions and requirements in the CRD that did not feature in previous legislation relating to distance and off-premises contracts, in many countries, it was perceived that the CRD had not involved substantive changes in their country since the legislation had some similarities previously (e.g. especially in MS where there was already a 14-day RoW pre-CRD). It was therefore especially difficult for traders and their associations to quantify what level of administrative costs and burdens arose specifically from the CRD.

In spite of the above difficulties, some online survey and interview feedback was obtained on perceptions of costs. Selected examples are provided below.

Traders responding to the online survey were asked about the costs of specific CRD requirements. Their answers are depicted in Figure 4-3. The largest percentage (67%) agreed that pre-contractual information requirements had either greatly increased or just increased their costs, followed by formal requirements (55%) and reimbursement policies stemming from the RoW (44%). Stakeholders were eager to point out that ultimately any additional costs borne by traders due to the costs of the CRD would be passed on to consumers in the form of higher prices. In the short term, however, traders would have to absorb the costs.

Figure 4-3: Costs on traders from complying with the CRD rules (Q 16)



The EESC report on the evaluation of the CRD concluded that, according to roughly a third of respondents (37% of 54 civil society organisations replying to the questionnaire), the compliance costs for business have increased since June 2014. Out of the twenty organisations who considered that compliance costs have increased, fifteen were employers' representatives. For 20% of respondents, the costs have stayed the same. More than a third (39%) do not know (EESC, 2017).

Traders commented on what they perceived as the costs of the CRD. Although there have been minimal comments on the administrative costs of meeting other MS, consultation undertaken for this study has highlighted costs to traders from particular provisions of the Directive (as depicted in figure 4-3); in particular from the following:

- Pre-contractual information requirements (Articles 5 & 6);
- Formal requirements (Art. 8);
- The RoW(Art 9); and
- Reimbursement (Art. 13 & 14)

A limited number of Respondents interviewees have been eager to provided different examples of the types of costs that they faced in comparison with the predecessor legal regime (see box below).

When a purchase is made, the business pays card processing fees and delivery with insurance cover, whereas if a consumer returns goods they tend to do so using the cheapest delivery option (often without insurance). The business then has to spend time checking that the product is in a re-saleable condition, as well as bear the cost of

delivery and card processing for an item that was ultimately returned.

Once a consumer has exercised their RoW and returned the good, the trader could not subsequently sell the good as new. In addition, the stakeholder felt that claiming compensation from the consumer on the basis of diminished value of the good was not feasible in practice, thus there were costs for the trader resulting from the consumer deciding to withdraw.

4.3.1.1 Costs from pre-contractual information requirements

Some interviewees expressed the view that the pre-contractual information requirements were imposing an unnecessary burden on traders. It was suggested by traders and by industry associations that there could be merits in simplifying the list of information requirements. There are some examples of best -practice with regard to pre-contractual information requirements.

Best practice – information requirements for the finance sector in Italy

In Italy, in some sectors (e.g. finance, insurance and bank sectors) information requirements are included in very long documents which, even if provided to consumers, are not read by the majority. This may lead to a reduced level of consumer awareness about their rights, reduced transparency and affect consumer confidence. In order to reduce this type of risk, the Italian public authority responsible for regulating financial markets developed an information leaflet to help reduce the complexity of information obligations.

Similar problems have been reported by business associations and the national authority in Germany.

Best practice for pre-contractual information requirements for direct selling

A trade association provides CRD-compliant print versions of retail order forms for its members, which includes different sectors in off-premises selling. These forms are shipped to direct sellers.

There were initial one-off costs for direct sellers in ensuring CRD compliance, such as: legal costs to check that forms are compliant, translation costs for those countries that have chosen under regulatory choices to put in place language requirements. However, once these compliant forms were developed, an advantage under a maximum harmonisation approach was that traders could use the same order forms across the EU (with some exceptions in MS where language requirements were applied).

Moreover, there was a concern among some stakeholders that the amount of information is sometimes disproportionate to the product being bought. This was highlighted for instance by distance selling associations and their member companies, particularly in respect of low-value consumer goods. This issue is illustrated by the following example, which was provided during the interview programme.

Proportionality of information requirements of low-value consumables

Lots of items sold through direct selling are small items, which sell at low cost e.g. lipstick, candles. There is an issue as to whether the information requirements under the UPCD and the CRD respectively are proportionate. For instance, in order to sell a lip stick, the direct seller may have to provide the consumer with a written document with 4 sides of information requirements on 2 sheets of paper in small text. There is no differentiation in the information requirements set out in Art. 6(1) depending whether a consumer is purchasing a washing machine for 500 EU or a lipstick for 15 EUR (unless the particular MS concerned has opted out under the regulatory choices available under

Art. 6(8) under the minimum 50 EUR threshold.

A disproportionate amount of information is required.

There is also a risk of duplication in the provision of information requirements under Art. 6(1) and Art. 7(4) of the UPCD, as illustrated in the following practical example.

Direct selling – one route through which direct sellers work is by organising a party at which products are sold. Example – a presentation about a new product, a set of candles, The party planner will first have to explain to the prospective consumers about the product, then move from the marketing information stage (when the UPCD is applicable) on to the selling stage when pre-contractual information will have to be provided either orally, in writing or both. Then the same (or at least broadly similar) information has to be included in the same order form. Effectively, information is provided to the consumer 3 times. Whilst the information might be needed in written form so that the consumer can keep the information and trace it back, providing it three separate times is "overkill".

4.3.1.2 Costs from information and formal requirements for distance contracts

Further costs for traders were highlighted such as the need for technical adjustments on websites to meet the requirements for providing information when concluding a contract and carrying out updates to ensure that the new information requirements for distance selling were met. This was also confirmed through the interview programme. For example, an interviewee from a trade association highlighted the costs that the provision of pre-contractual information requirements had had upon its members as a result of having to change their websites to comply. However, when asked about costs estimates, these could not be provided.

Art. 8(1) puts a requirement on traders to make information available to consumers in a way appropriate to the means of distance communication used in plain and intelligible language. However, some stakeholders believed that the amount of information can be overwhelming for consumers and noted that the information provided in terms and conditions, as required in the information requirements of the CRD, are not read by the majority of consumers (IT, DE, NL). One possibility discussed to make consumers aware of their rights and probably make information easier to digest is the use of icons. Yet, the benefits of presenting pre-contractual information by means of icons are not yet clear (refer to Section 6 for more detailed discussion).

Concerns were raised among some stakeholders as to whether it is realistic to display such information upfront on the mobile versions of e-retailers' websites without using lots of hyperlinks. Some trade associations were concerned about the costs of website redesign to ensure that websites were CRD-compliant, for instance, with providing information on the means of payment either on the home page, or at the least at the beginning of the ordering process (i.e. Art. 8(3)) and confirming that there is an obligation to pay (Art. 8(2)). Although the redesign tweaks required are not always technically that demanding, some traders stated that they needed to work with an external web designer in order to ensure that the website follows the transactional process logic in the Directive, with this adding to their costs.

4.3.1.3 The RoW, reimbursements and impacts on traders

A few stakeholders were keen to highlight the costs related to consumers exercising the RoW (Article 13) and the consequences of Article 14, with respect to the responsibility of consumers and traders to reach an agreed estimate of the diminished value of goods (in the case of the RoW where goods have been used more than necessary to establish their nature, characteristics and functioning). Specific suggestions for improvement in the

EESC's evaluation report included "easing the no-costs" rule for services after withdrawal (Art. 14(4(a)). Traders noted that there is scope to abuse the CRD, with consumers purchasing items with the intent to return these after use. Moreover, a few stakeholders were keen to mention the financial risks associated with having to refund the money before they receive the product back from consumers.

Feedback was also received from some stakeholders through the interview programme about the practical difficulties of calculating the diminished value for the return of used goods, on potential financial losses from reimbursing before receiving the goods back and the diminished value of returned used goods (when allegedly the consumer is due for a full refund). Particular regard was paid to sectors such as textiles and electronic and electric products. In January 2017, the Danish Chamber of Commerce conducted a survey on the implementation of Art 14(2). Only 1 out of the 18 respondents said that they, as a matter of principle, always will assess and estimate the depreciation. Nearly all respondents lacked the resources to assess and report the impairment of each returned, used product. As a result, they tend to refund the full amount and also to avoid bad consumer reviews. This can jeopardise the general objective quoted in recital 4 to strike the right balance between consumer protection and the competitiveness of enterprises.

Obligations of the trader in the event of withdrawal and the issue of consumers returning used goods having a diminished value

Under Article 13, traders need to reimburse without undue delay and in any case not later than 14 days once the consumer has supplied evidence of having sent back the goods. If such evidence is received earlier than when the trader receives the goods, the trader will have to reimburse within 14 days missing out on the opportunity to account for diminished value in their refund. One stakeholder commented that it should be clarified that the trader only has to provide a refund once they have received and inspected the returned goods.

Several stakeholders raised concerns about the method used to calculate diminished value and also the losses associated with the diminished value from the return of used goods. Art 14(2) states that the consumer "shall only be liable for any diminished value of the goods resulting from the handling of the goods other than what is necessary to establish the nature, characteristics and functioning of the goods". Recital 47 then provides further clarity and states that *"some consumers exercise their right of withdrawal after having used the goods to an extent more than necessary to establish the nature, characteristics and the functioning of the goods. In this case the consumer should not lose the right to withdraw but should be liable for any diminished value of the goods".* A number of specific issues were raised. Firstly, there may be disagreement between the consumer and trader as to how extensively the good is used and therefore a discrepancy in estimating its value. Whilst ADR mechanisms may be able to resolve such disagreements, traders perceived that there were difficulties in estimating diminished value. This may also depend on the type of good and sector in question. For instance, although not common, some traders in the retail sector had experience of consumers returning goods that had visibly been worn. Given consumer preference for brand new goods, the trader viewed the products as having negligible value. Another online retailer pointed to the box being opened as having a disproportionately adverse impact in terms of diminished value.

Another retailer consulted during the interviews pointed out that there may be additional losses for traders selling high-end electrical or technology-oriented products from having goods "out of action" when these are returned several weeks after they were originally dispatched, especially when the product is the very latest product line and its value is intrinsically linked to how new the item is. For instance, it may take up to 7-14 days to dispatch and deliver a product (especially when delivering to other countries). The consumer then has 14 days to examine the product and may try it out. If they then take

the full 14 day and then return the product, there are associated opportunity costs for the trader and implications for diminished value if it is the latest model.

Stakeholders were asked to estimate the percentage level of returns from the RoW (in order to be able to quantify costs). In most cases the online retailers and marketplaces asked either regarded this information as commercially sensitive or did not have estimates available. One trader estimated that between 2% and 4% of goods were returned but they emphasised that the level of returns would be greatly dependent on the sector and the type of products being sold online. There is evidence available through desk research, that returns are much higher for some sectors, such as textiles and fashion retailers. For instance, "retailers in the US report a return rate of between 20% and 40% for online sales"[65]. In Europe, this rate was viewed as being lower (due to cultural differences), according to one trade association, but is still higher for clothes sales than in other sectors. The online survey has revealed that 40% of the consumers responding have availed their RoW. The consumer survey also showed that for those that experience a problem with the RoW, half received a full refund for their product (refer to Section 3.6.6.2).

The RoW and educational services

An issue raised in relation to services was that educational service providers are particularly affected by the extension of the RoW. There is a particular issue as to how consumers may exercise their RoW if the provision of services has already started without negatively impacting the trader. Whilst provision is made for this eventuality in the CRD, practical implementation difficulties were identified relating to consumers cancelling services they had already received and the need to estimate the amount in proportion to what has been provided until the withdrawal.

There are however goods and services exempted from the RoW. Article 16 refers to the exemptions from the RoW. The literature review and consultation undertaken for this study has highlighted a number of issues with regard to the application of this Article in practice for a small number of sectors, i.e. the heating oil and the online bidding platforms.

With regard to the heating oil sector, the German Federal Supreme Court determined that a consumer's RoW from a distance sales contract for heating oil was not exempted by the relevant German Civil Code. The German association representing the heating oil retailers, who are mainly small companies, has claimed that this interpretation is excessively narrow, and had resulted in a significant increase of cancellations of the contracts in the two months following the judgement, due to the attention it received in the German newspapers.

[65] See "How fashion ecommerce retailers can reduce online returns", accessed at: https://econsultancy.com/blog/65026-how-fashion-ecommerce-retailers-can-reduce-online-returns/

RoW and Heating oil distribution

On 17 June 2015, the German Federal Supreme Court ruled that the consumer's RoW as transposed into national law under Directive 97/7/EC applies in distance contracts for heating oil deliveries (case reference VIII ZR 249/14)[66]. In particular, the German Federal Supreme Court stated that the objective from the exception from the RoW regarding purchases of goods for which price is dependent on fluctuations in the financial markets (as for Art. 16(b) of the CRD) is to limit speculation; thus this exception requires a speculative element of the contract that cannot be found in heating oil contracts (Henning-Bodewig, F. 201667).

In this specific case in respect of heating oil prices, it tends to happen that there is a period of several weeks between the order date and the delivery date of heating oil. Because the price which heating oil customers in Germany are contractually required to pay is the price at the time of ordering, many customers tend to cancel their orders if, between the order date and delivery date, the price keeps falling. They then place a new order at a cheaper price.

This is particularly problematic for Small and Medium-sized companies (SMEs), because they buy in 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 RoW vis à vis the refinery in case the consumer cancels his/her contract. In the heating oil market there is a high price transparency that can lead consumers to easily withdraw from the contracts just to benefit from a lower price.

Work undertaken by the Institut der deutschen Wirtschaft Köln (Institute for Economic Research Cologne) has suggested that heating oil is subject to fluctuations in price dependent on international crude oil markets and that these fluctuations are independent of the heating oil distributor (the trader in CRD terms)[68]. However, according to the ruling by the German Supreme court, the consumer may decide to invoke their RoW and re-order at the lower price. Oil distributors are, in turn, unable to cancel their orders with the refineries. Using 10 years of data (2006 to 2015) and applying assumptions about delivery periods (e.g. volume delivered within 4-8 days of ordering, or 9-12 days of ordering), it has been estimated that a small distributor with one tanker could lose around €130 000 per year[68].

[66] Although the contract in this case pre-dated the implementation of the CRD, thus the decision was made in relation to the Distance Sales Directive, the wording in the German Civil Code that implements the CRD is basically the same as that which implemented the Distance Sales Directive, suggesting that the exemption from RoW still holds under the CRD

[67] Henning-Bodewig, F. (2016): Distance sales of heating oil and the consumer's right of withdrawal – a fair balance? Journal of European Consumer and Market Law, Volume 5 pp73-116.

[68] Institut der deutschen Wirtschaft Köln (2016): Economic Consequences of the New Right of Withdrawal in Distant Heating Oil Sales, Fundamental Decision of the German Federal Court of Justice (BGH) on 6/17/2015, VIII ZR 249/14, EconoimExpert Opinion of the Cologne Institute for Economic Research and IW Consult GmbH, Uniti Federal Association of Medium-sized Mineral Oil Companies

With regard to online platforms for auction purposes, consultation undertaken for this study has also highlighted the costs from the RoW. Under Art 16 (k), distance and off-premises contracts concluded at public auctions are excluded from the RoW. Recital 24 defines public auction as follows:

> *A public auction implies the traders and consumers attend or are given the possibility to attend… the use of online platforms for auction purposes should not be considered as a public auction within the meaning of this Directive.*

This means that RoW will generally apply to goods sold to consumers using online auction sites (when these are exclusively online but only if the seller is officially a trader and not a private individual as the CRD does not apply to C2C transactions[69]). In the opinion of the consultees, this has created an '*unfair situation'* where online-only auction platforms have to provide a RoW but public auctions do not. An estimate of the costs from the RoW was provided by an online auction platform (see box below).

Online platform for auction purposes - the costs of application of the RoW and non-exception

The total volume of sales cancelled based on the RoW for 2017 has been estimated at 7 million euros (based on the volume in previous years and the expected growth of the company over 2017). The total company turnover in 2015 is reported to be between 10 to 50 million euros. This means a loss of profits (repaid commissions) of 1.1 million euros. Out-of-pocket costs for handling the RoW requests roughly amount to 1.5 to 2 million euros (based on a percentage of the total cost base).

For the sellers at the auctions the 7 million euro volume translates to a loss of profit of 5.9 million euros.

Stakeholders have also mentioned losses associated with the RoW 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 decline on their RoW is sometimes not feasible during the shopping process, as mentioned in Section 3.6.2.2. As a result, some traders still apply a 14 days "no questions ask" refund policy rather than applying the eligible exceptions, allowed under Art. 16, in order to avoid losing customers.

Although some exceptions from the RoW have been mentioned to have a negative impact for traders, not all exceptions from the RoW were regarded to be negative by respondents. Interviews highlighted that the provision of accommodation (other than for residential purpose) is an exception available to MS which has benefited the hotel sector significantly. Consumers also benefit through lower prices (as savings are passed on) and a wider choice available when making their purchase.

Benefits to traders from RoW exemptions

The best provision for the hotel sector is that related to the exemptions from the right of withdrawal. However, this exemption also applied prior to the CRD implementation. The exemption from the right of withdrawal is good because it allows to pass costs savings to the consumers. In addition, it is frequent practice that different prices are offered on the basis of the possibility to amend and cancel the booking. The consumer can benefit from a lower price if they resign from the right to cancel the booking.

[69] Online platforms for auction purposes tend to combine both B2C and C2C transactions.

A respondent to the OPC also highlighted the benefits of the exception for accommodation. They felt that the exception resulted in greater flexibility for hoteliers and consumers, since it enabled hotels to have generous cancellation policies for bookings that were made far in advance, and price promotions for late but non-refundable bookings.

4.3.1.4 Costs from other provisions

Other provisions where costs have been reported include inertia selling. In particular, a main issue with this article has been raised by the commodities sector, such as water supply companies. It has been argued that this article should not apply to water companies or be rephrased. It needs to be noted that, under Article 27, it is not the supply of water that is prohibited but the request for payment when this has not been solicited. However, this is not the case when the trader is under a legal or contractual obligation to supply the service. Thus, there may be a problem with the interpretation of the Art. No detailed information has been provided on the costs from the application of this article however. Currently, this case is being addressed in court.

Inertia selling and water companies

Generally, water supply is a default provision at a residence prior to the signing of the contract (say when a person moves residence). For contracts on water supply, district heating and electricity therefore, the article on inertia selling appears to raise legal uncertainty to traders (moreover, when the consumer has little choice to choose between service providers as is the case with water supply).

A recent court judgement in the NL has interpreted that Art.27 applies verbatim to water supply; in other words, the consumer does not need to pay in absence of contract (because of lack of consent and the lack of reaction of the consumer to letters from the water company should not be interpreted as consent). Appeal is currently pending.

The water company has argued that the Directive or the guidance accompanying the Directive should clarify that consciously turning on the tap and using water should be interpreted as a consumer expressing agreement to the supply and thus payment can be requested as this is no longer an unsolicited delivery.

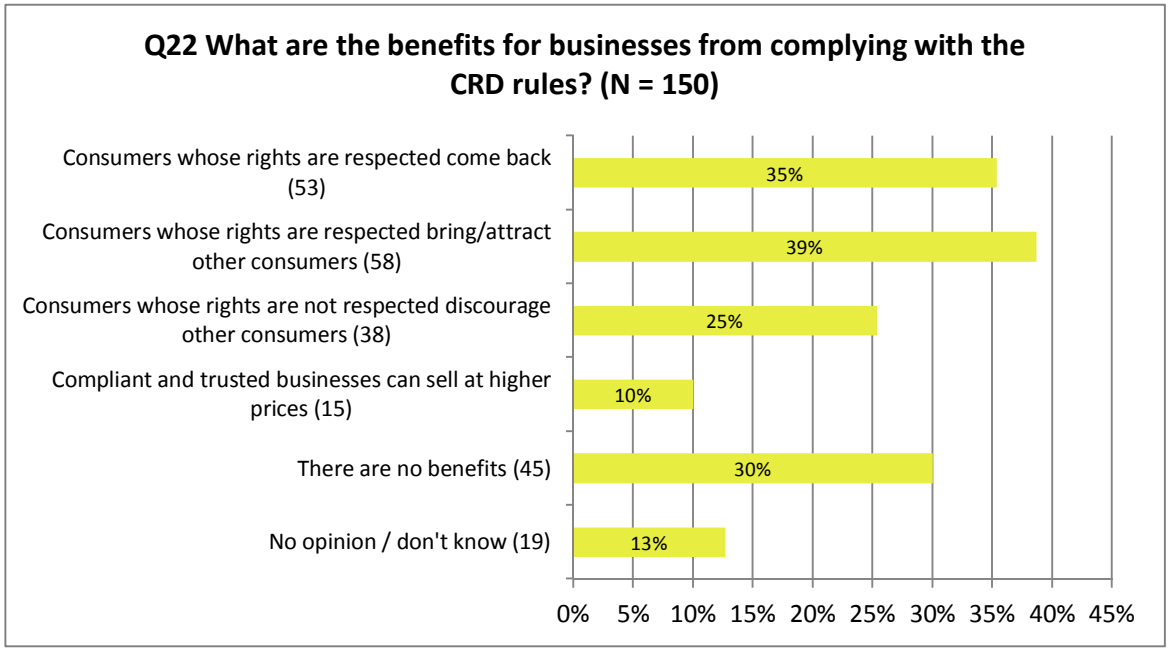
Although this example may be considered to be anecdotal, it is likely that it re-occurs in other MS as the supply of commodities tends to be a highly-concentrated market which is also regulated to a significant degree. This example may thus merit further attention.

In addition, examples were provided of some types of additional costs stemming from the CRD. For example, a number of stakeholders pointed to the website redesign costs associate with ensuring CRD compliance. This involves, checking that the website is CRD-compliant, which will include, inter alia, ensuring that the website includes a button indicating that there is a clear obligation to pay, checking that the means of payment is explicitly clear at the start of the online transaction process, updating terms and conditions to ensure that these are fully compatible with the information requirements, etc. It was noted by some trade associations that some firms will try to achieve compliance by themselves, so the costs will mainly consist of management time, but many firms will face external costs in working with external website developers. Larger firms may also pay an external lawyer or advisor to check their website's compliance.

4.3.2 Benefits to traders

Traders were asked about the different types of benefits that may have arisen from complying with the rules laid down in the CRD. As depicted in Figure 4-4, 30% of traders did not identify there being any benefits but a greater percentage thought that consumers whose rights are respected come back and shop again with the same trader (35%) and bring/ attract other consumers (39%).

Figure 4-4: Traders' views on benefits from complying with the CRD rules (Q 22)



NB Figure 4-4: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

In detailed responses to question 22 of the survey, traders highlighted that the CRD 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 RoW.

Although traders answering the survey did not notice an increase in sales as a result of the CRD, a third of respondents consulted under the EESC's evaluation agreed that intra EU cross-border online sales had increased since 2014 (EESC, 2017). According to the most recent annual surveys on ICT usage, online purchases by internet users in 2016 increased by 16 percentage points compared to 2007 and 3% since 2014, when the Directive was implemented. The proportion of e-shoppers varied considerably across MS however, ranging from 18 % of internet users in RO to 87 % in the UK[70]. From an evaluation perspective, it is quite difficult to disentangle how far this increase is due to the CRD alone, as opposed to other factors, but many stakeholders confirmed that there is growing interest in cross-border online shopping in order to benefit from lower prices

[70] http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals

and stated that the CRD is one of the factors that helps to give consumers increased confidence.

Free text from Traders survey Q 22: In your view, what are the benefits for businesses from complying with the rules laid down in the CRD?

In such a competitive environment it can only be to the advantage of traders to provide good customer care and after-sales services. We have taken the approach to go beyond what is legally required in some cases to provide a satisfactory customer experience.

The present legislation only succeeds in pushing up costs for the online retailer. Consumers that are fairly treated if there is a problem after purchase will of course bring in more business by word of mouth. However - the 2014 amendment does not cover ordinary decent people - it simply facilitates the "tyre kickers" who have no real interest in paying for something, but want to try it out for a few weeks at the retailers' expense.

Good information creates trust, give a good feeling when shopping, customer feels valued.

The provisions of the CRD are unsuitable for real estate brokers and the brokerage service should be exempted. There are sufficient RoW for the acquisition or rental of real estate. But this is strictly separate from the service.

Retailers are exempted with consumer rights. The overregulation is madness, less is more. Consumer rights have been widened too much in the last few years, while the small business remains on the stretch. Consumers can allow themselves almost everything and are almost always on the safe side.

The benefits we identified in completing the survey should not be overestimated - they are not significant.

A further benefit from a trader perspective, identified through the interview programme relates to avoiding difficulties with the enforcement authorities. Enforcement authorities pointed out that if traders take steps to ensure compliance, there are also benefits for traders from avoiding fines and, potentially, a court action.

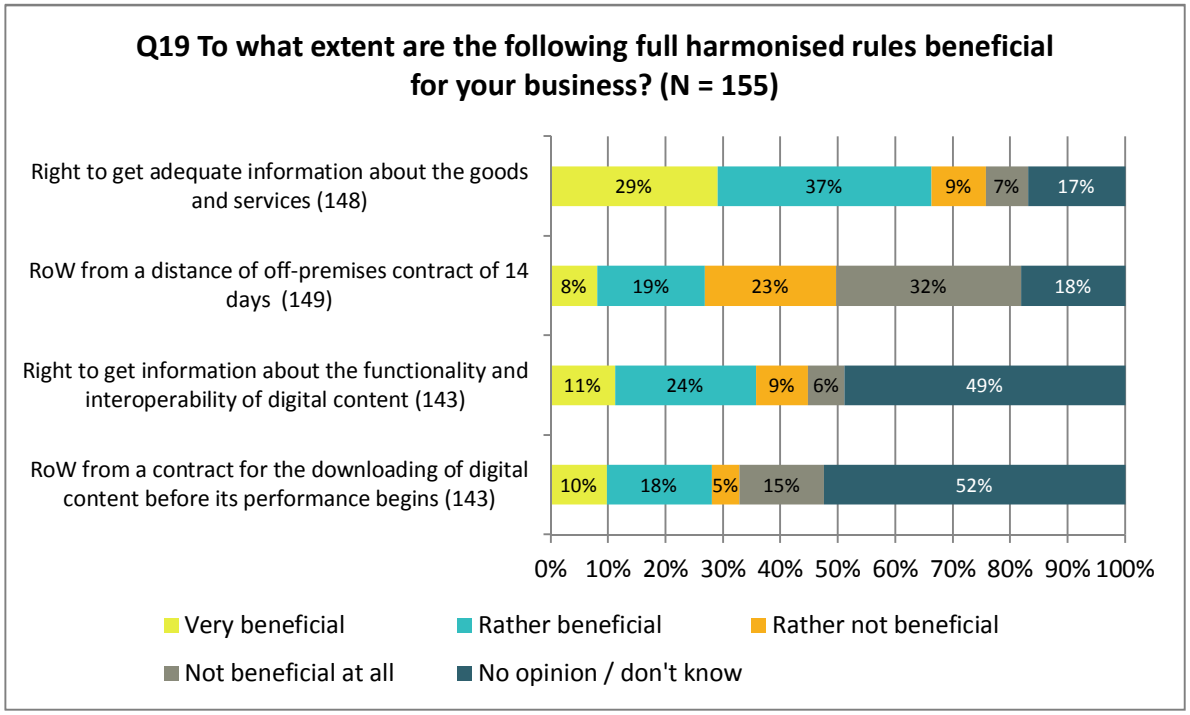
Whilst it was possible to identify benefits, it was not possible to quantify these against the baseline. This was mainly because traders were able to provide qualitative feedback about the type of benefits, or the apparent lack of benefits in some instances, but not to assess their magnitude. For example, it was anticipated in the 2008 impact assessment that there would be significant cost savings from eradicating the fragmented regulatory framework in respect of national consumer protection laws that characterised the baseline situation. However, several traders interviewed stated that whilst it was theoretically beneficial, they were not able to identify any specific cost savings, or an increase in sales, specifically attributable to the transition through the CRD to common provisions through a maximum harmonisation approach.

4.3.2.1 Benefits from specific provisions

When asked about the specific provisions of the CRD, refer to Figure 4-5, over 60% of traders thought that the right to get adequate information about the goods and services was beneficial to their business. Fewer respondents thought the harmonised RoW for distance and off-premises was beneficial (27% of traders responding) and 23% thought it was not beneficial to their business, presumably because in their MS, the duration of the RoW prior to the CRD was shorter. A high number of respondents were unable to say whether the requirement 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.

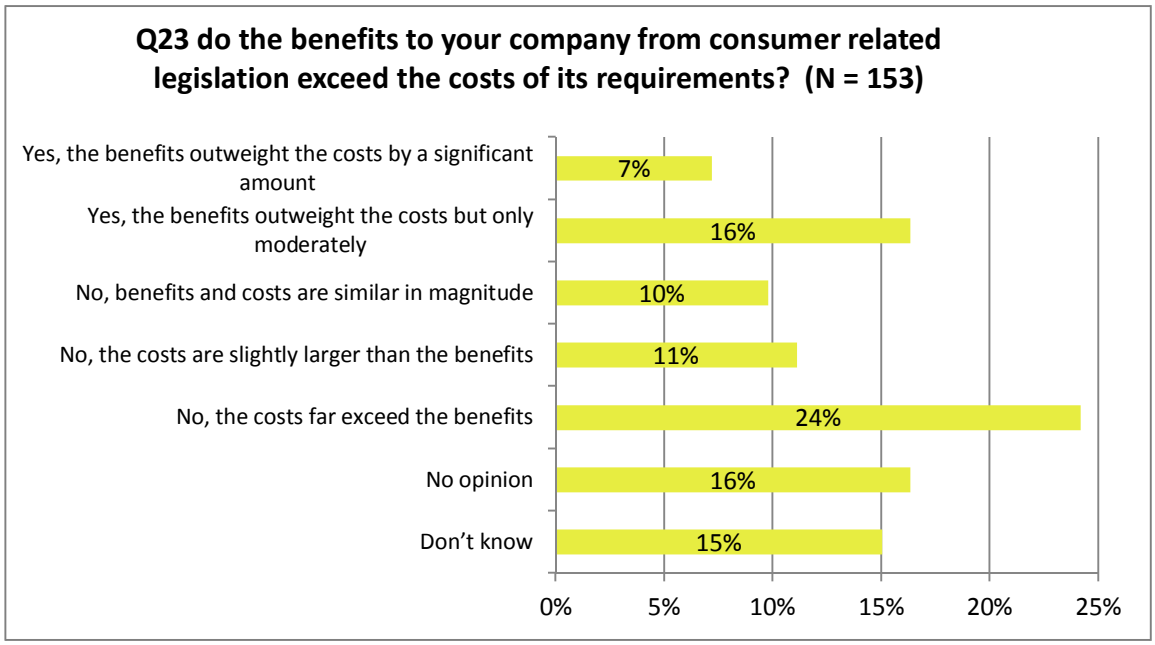
Figure 4-5: Traders' views on harmonised EU consumer and marketing rules and benefits (Q 19)



4.3.3 Efficiency and competitiveness impacts on traders

When traders were asked to compare the costs and the benefits of the CRD, their opinions were quite divided, but a higher number of respondents thought that the costs exceeded the benefits, see Figure 4-6.

Figure 4-6: Traders' views on benefits and costs (Q23)



Considering the detailed responses provided, one trader respondent noted that they had no way of analysing the relationship between costs and benefits in terms of causality. Other examples of responses to Q23 are given below.

Free text from Traders survey Q 23: In your view, do the benefits to your company from consumer related legislation exceed the costs of its requirements?

We have no way of analysing the causality between the costs and benefits other than with regards to the right of withdrawal.

As per comments above! Put it in simple terms with an example - Say we sell an item for a total retail price of £1,700 within the UK. Shipping (by Royal Mail, with insurance cover) will cost us £29.60. Card processing will cost £62.02. The customer was not sincere, and just curious to have a look at the product, and then they can send it back by cheapest means after two weeks (so they could return it uninsured by second class mail at a cost of £9.00 only, knowing that if it gets lost, they will get their card company to issue a chargeback against us - no lose situation for them!) And so, we are down £91.62 and then have to check that the product is fit for resale (and will usually have to sell the product at a huge discount because it has been previously handled).

The provisions of the consumer rights directive lead to considerable distrust of the customers, who thereby very often do without the brokerage service completely. Significant decreases were recorded.

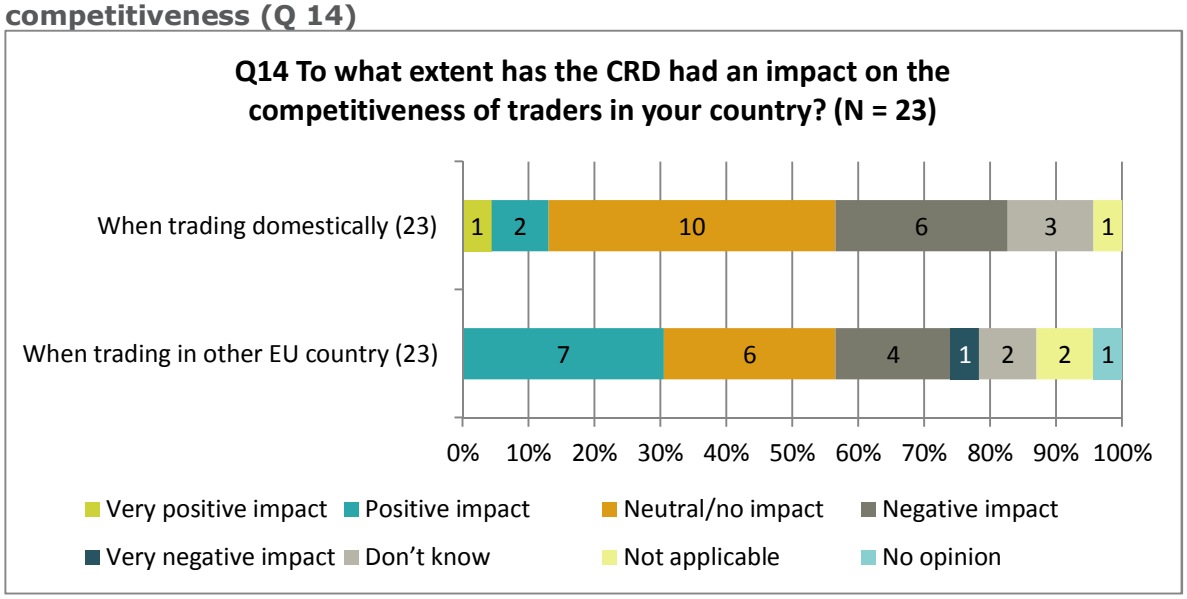
Chinese dealers do not keep too many of the rights and sell cheaper and without control etc. but to consumers it does not matter, because for 80% of transactions, the purchase price is the deciding factor and not the consumer rights.

Permanent over-regulation leads to additional costs and too information-intensive / unclear contracts for consumers, which are then unreservedly accepted, since the consumer has been overloaded with information.

Trade associations were also asked about the impacts of the CRD on the competitiveness of traders. The following figure shows their responses. The views of trade associations

were quite divided. Only 13% of trade associations thought that the impacts had been either positive or very positive when trading domestically, although their views were more positive when trading cross-border (30% noting that the impacts had been positive). 26% and 21% of trade associations thought that the impacts on traders' competitiveness had been negative and/or very negative when trading domestically and cross-border respectively.

Figure 4-7: Traders associations' views on impacts of the CRD on traders' competitiveness (Q 14)



Among those provisions having the largest impacts on traders' competitiveness, pre-contractual information requirements for distance and off-premises contracts under Art. 6(1) appears to be the requirement with the greatest negative impacts on competitiveness both on domestic and cross-border trade. This emphasises the need for simplification, as discussed earlier in Section 4.3.1.1.

Nevertheless, some provisions appear to have had more positive impacts on competitiveness according to trade associations (see Figure 4-8 and 4-9). In particular, the following provisions of the CRD: reimbursement, inertia selling and exceptions from the RoW in both domestic and cross-border trade – were viewed as having strengthened traders' competitiveness. Through the interviews, it was suggested that the main benefits in this regard relate to increased regulatory certainty.

Figure 4-8: Traders associations: impacts on traders' competitiveness when trading domestically (Q 15)

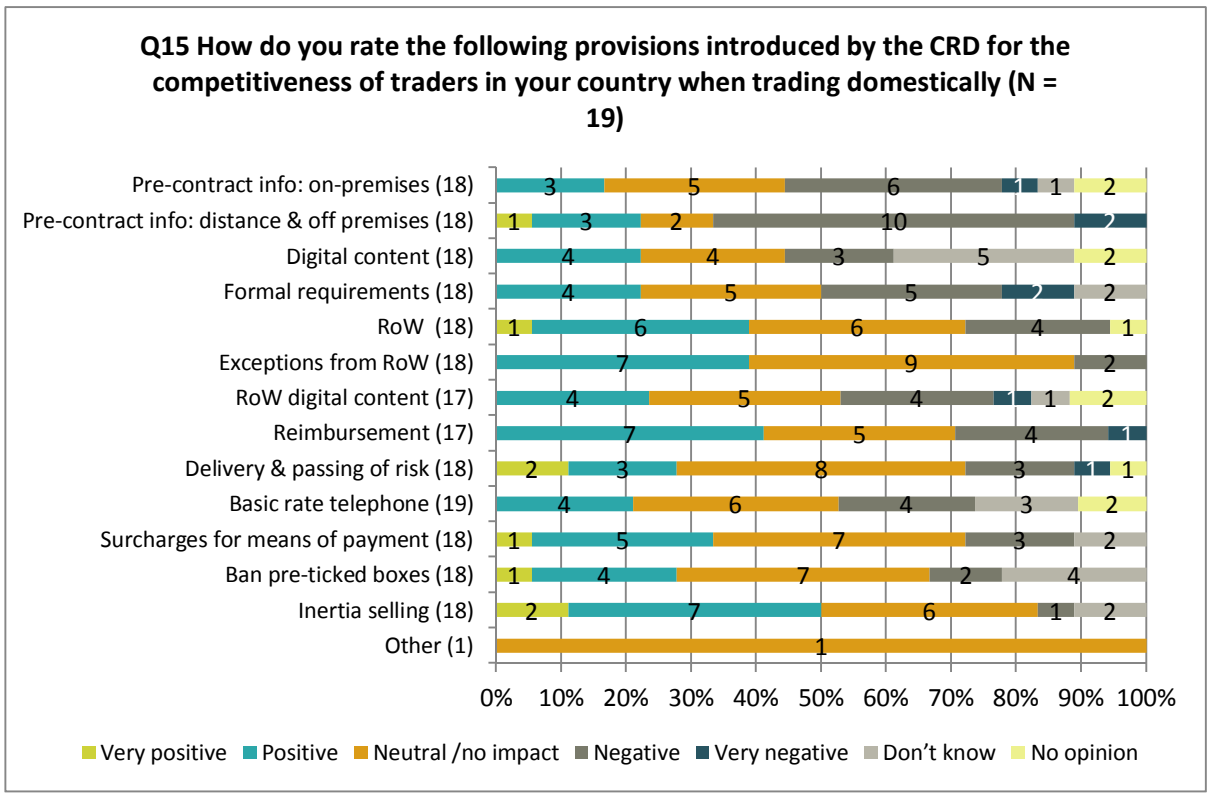
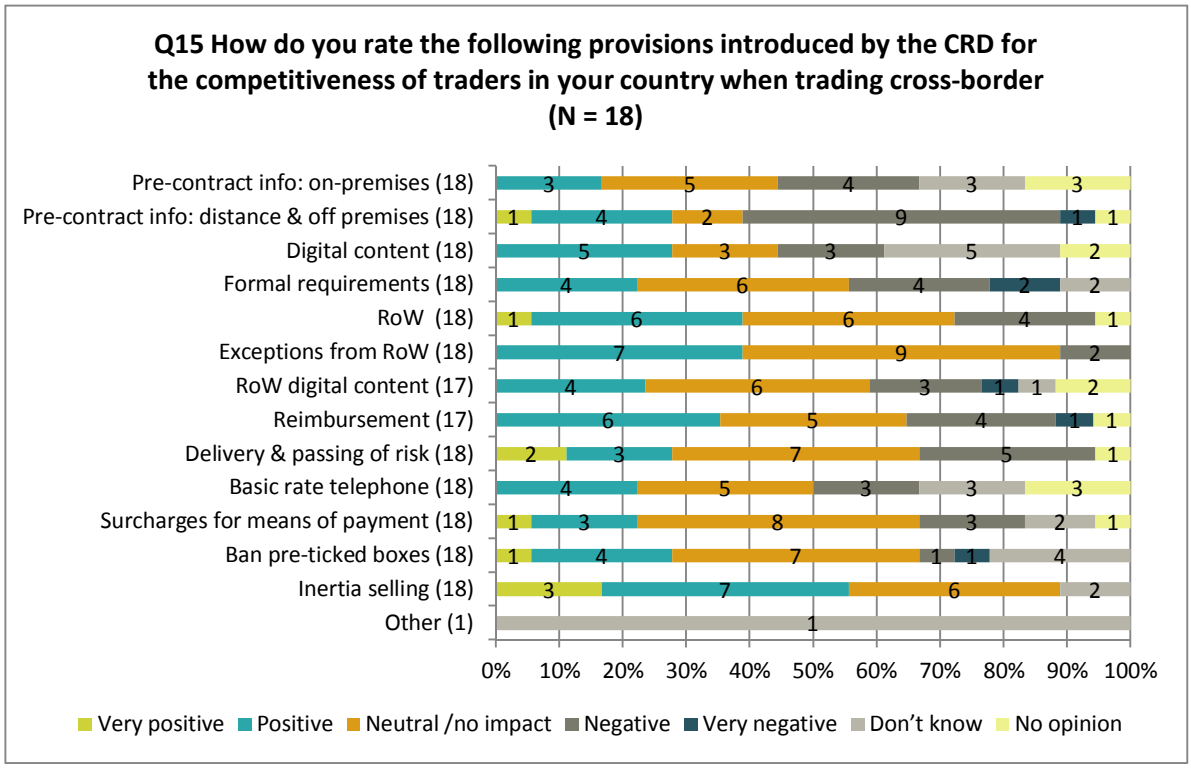
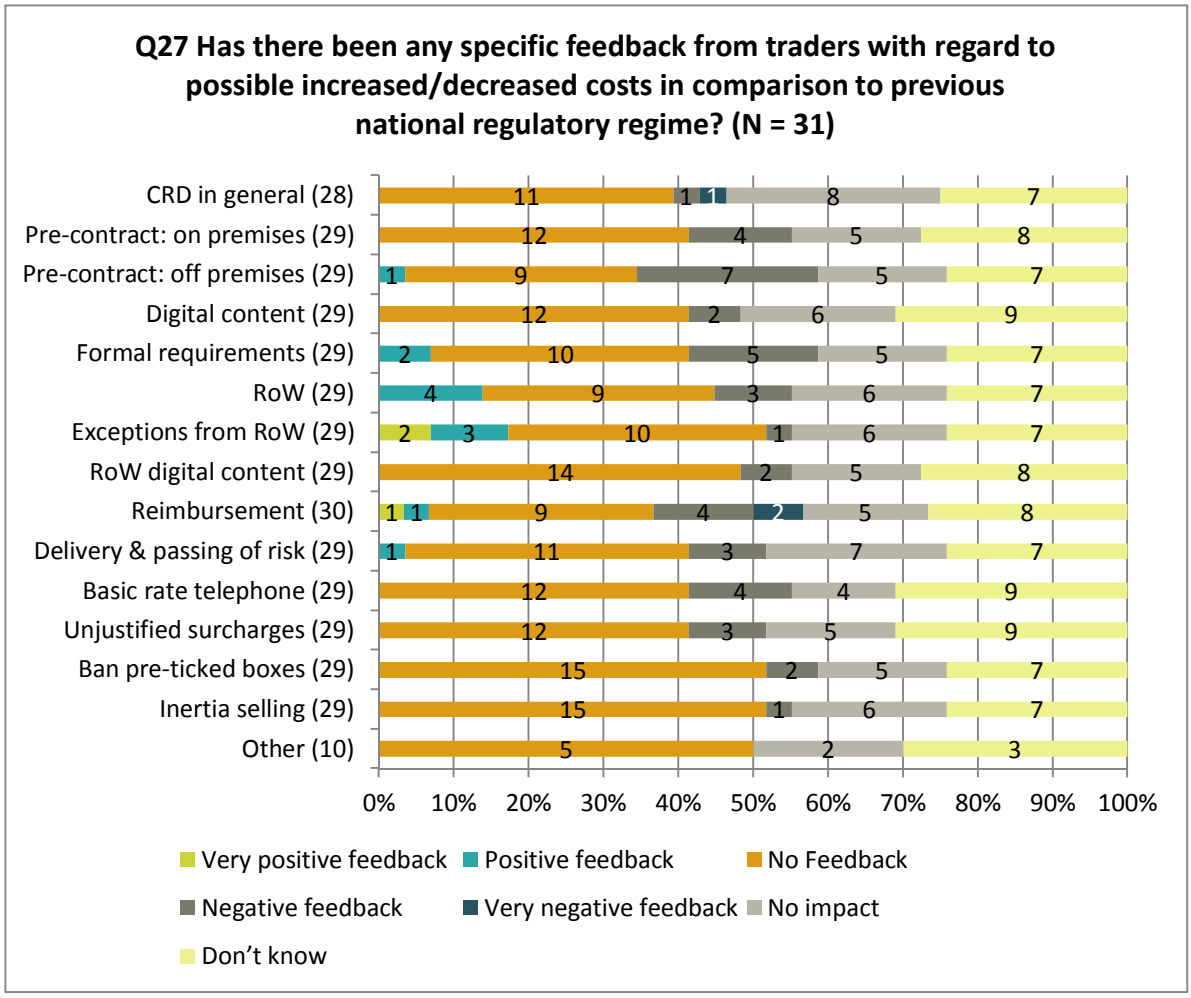


Figure 4-9: Traders associations impacts on traders' competitiveness when trading cross-border (Q 15)



National authorities were also asked whether they had received any feedback from traders on the costs in comparison with the previous regulatory regime. Only a few responded to say that they had received feedback from traders and, mostly, this was negative feedback (refer to Figure 4-10). There were however a small number of responses that elicited positive feedback in respect of particular provisions. Again, the largest number reported negative feedback from pre-contractual information requirements.

Figure 4-10: National competent authorities' feedback from traders on costs (Q 27)



4.3.4 Impacts on SMEs

The Better Regulation Guidelines of May 2015 emphasise the importance of assessing the administrative burdens of EU legislation on SMEs.

SMEs' responses to the online survey as to whether the requirements of the CRD had had an impact on costs for the business are depicted in Figure 4-11. These 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 for distance and off-premises contracts, on-premises contracts and formal requirements. The EESC's report

on the CRD however concluded that the costs for SMEs under the CRD were disproportionate to the cost of compliance for big businesses[71] (EESC, 2017).

Figure 4-11: SMEs and impacts on costs from CRD provisions (Q 16)

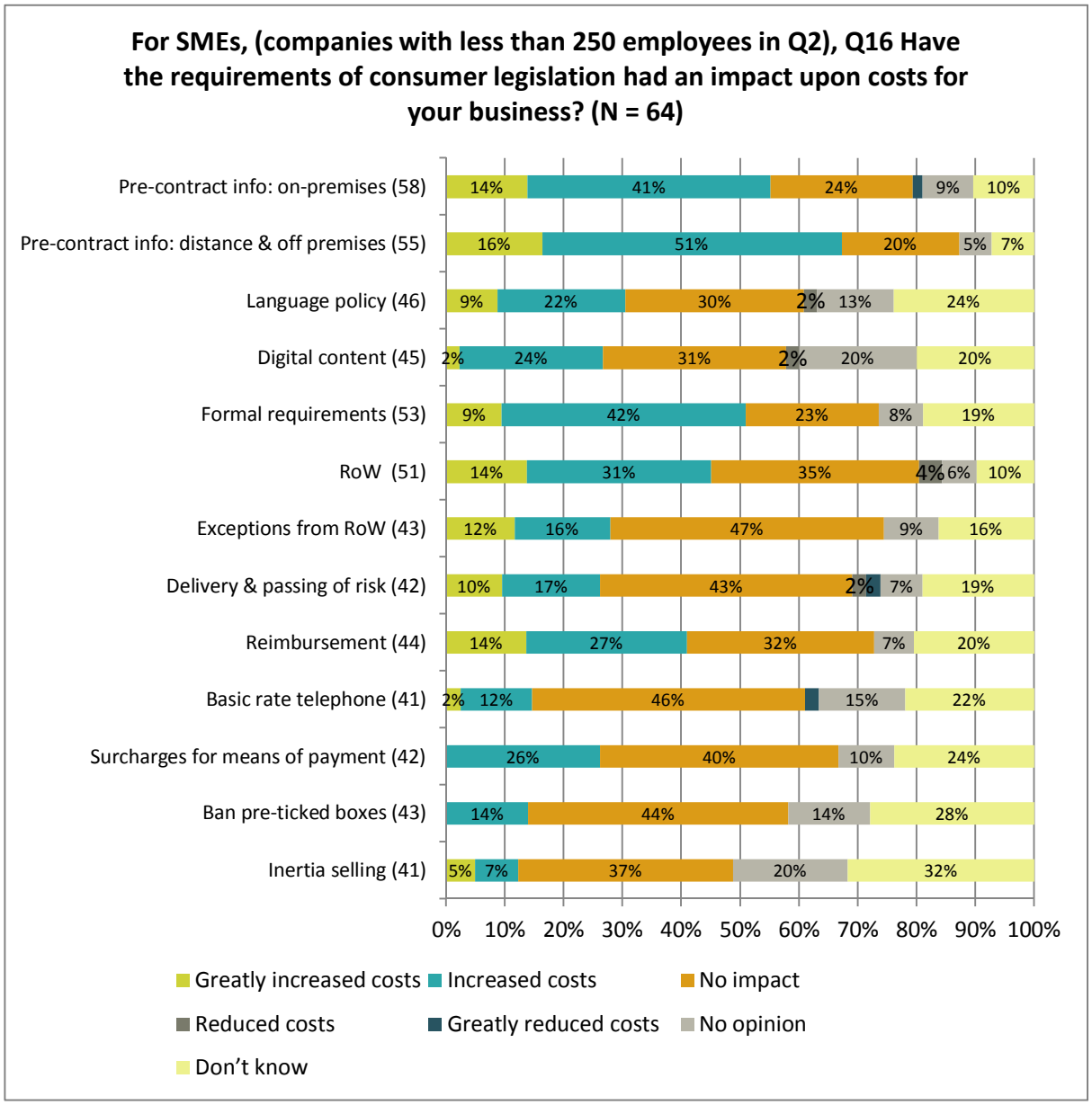
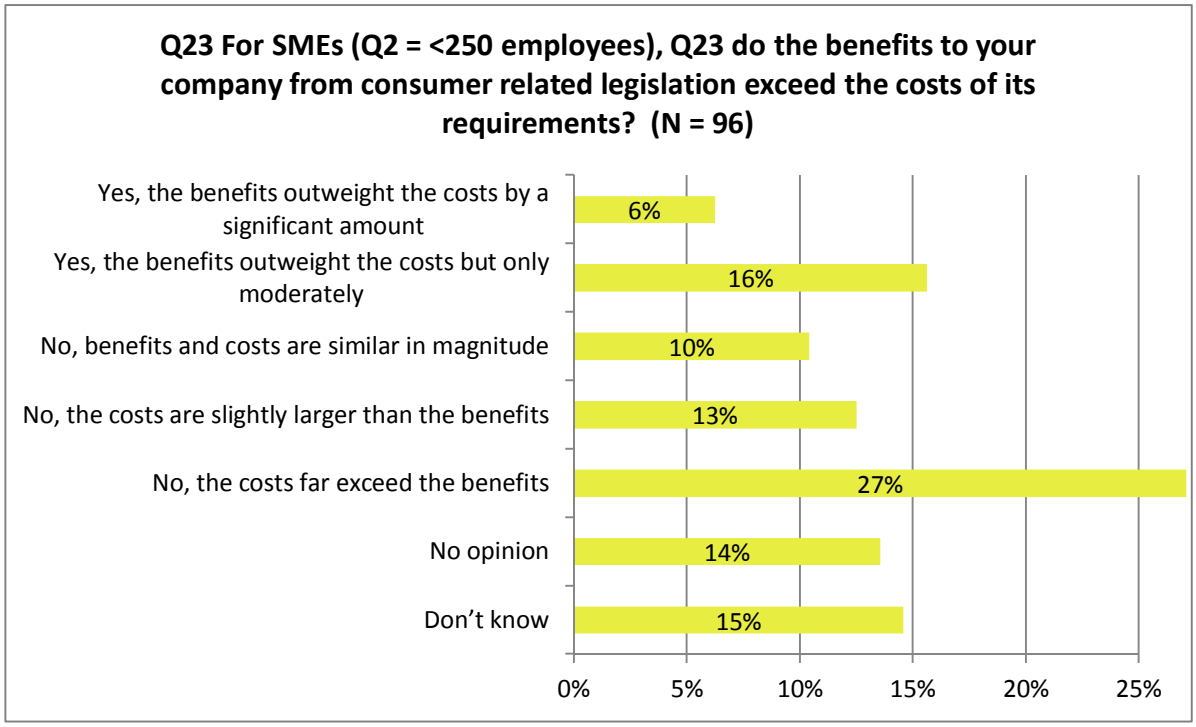


Figure 4-12 shows the responses by SMEs and micro-enterprises (including the self-employed) as to whether the benefits from the CRD exceed the costs of its requirements. The results are very similar to those in respect of the general population of traders. This may be because most traders responding to the survey are SMEs or micro-enterprises. A separate analysis of larger companies has also yielded similar results.

[71] Hearing 14.09.2016.

Whilst 22% of SMEs and micro-enterprises expressed the view that the benefits outweighed the costs by a moderate to a significant amount, less positively, 40% 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 Commission from 2014 to 2016. The campaign included a message on the benefits to traders from respecting consumer rights, aimed at SMEs, where consumers that feel respected come back. Unfortunately, none of the 24 SMEs interviewed for the case studies in the target countries recalled the campaign visuals. Thus the findings were that the campaign had not been particularly effective (Coffey and Deloitte, 2016).

Figure 4-12: Traders, benefits and costs for SMEs (Q 23)



Through the interviews, feedback on the extent to which SMEs perceived the CRD to be administratively burdensome was also received. Some consumer organisations pointed to low levels of awareness about the CRD coming into effect, and noted that many traders' websites still provide information that are non-CRD compliant and have, inter alia, out of date information about delivery and returns periods or incorrect information pertaining to the RoW.

Among SMEs interviewed, there was a perception that the costs of some aspects of CRD implementation were high, especially the costs of returns when consumers exercise their RoW, which must include credit card costs and shipping. There was a particular concern among traders about the total costs of returns for high value items sold online. Working with low profit margins in online retail puts micro and small firms at greater financial risk resulting from consumers exercising their RoW and stemming from the return of used goods, as it was discussed above. Thus, the main costs from an SME perspective are less to do with updating information and policies on their websites, which requires familiarisation time, but the administrative burdens that stem from the costs that arise from changes to the rules in respect of returns.

One possibility raised at the European Consumer Summit to avoid burdening SMEs and to make CRD implementation more cost-effective was the possibility of combining all consumer and marketing law (including the CRD) into a single piece of coherent

legislation through the adoption of a Framework Directive in the form of a European Consumer Code. This could be used as an opportunity to simplify the full body of applicable legislation and to ensure adherence to the relevant pre-contractual information requirements, as well as to post- contractual obligations.

EESC's report on the evaluation of the CRD – Impacts on SMEs and the need for simplification

In addition, pre-contractual information requirements, formal requirements for distance contracts and rules concerning the right of withdrawal could be too burdensome for SMEs[72]. 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.

Other Articles, such as delivery (Art. 18) and the passing of risk (Art. 20) do not appear to have led to extra administrative costs, since many EU MS had similar rules previously, and the new rules add clarity and regulatory certainty rather than require major changes to procedures.

4.3.5 Impacts on sectors

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. Table 4-1 shows that traders selling goods appear to be more convinced of the benefits from the Directive. For traders selling digital content the benefits appear to be limited. The results should be read with caution however due to the low level of responses.

Table 4-1: Benefits and costs from CRD by type of contract

Contract	Benefits >> costs	Benefits > costs	Benefits = costs	Costs > benefits	Costs >> benefits	No opinion	Don't know
Goods	**7**	**19**	**10**	**9**	**18**	**17**	**14**
Services	**4**	**6**	**5**	**7**	**16**	**8**	**4**
Digital					3	2	**2**
Free online				**2**	**2**	**2**	**1**
Blank	**1**	**2**	**2**	**2**	**9**	**5**	**5**
ALL	**11**	**25**	**15**	**17**	**37**	**25**	**23**

Regarding sectoral impacts, the CRD has affected online retailers more than other types of contracts covered through the Directive, since some of the new provisions are explicitly aimed at online purchases. Examples are banning pre-ticked boxes, ensuring the means of payment are displayed from the outset of the transaction and ensuring that there is a clearly displayed obligation to pay and information provided on the website about the characteristics of the product. Since digital content is an area newly covered by the Directive and not addressed in predecessor legislation, it is expected that sectors providing digital content are affected more by the Directive than other sectors (some of

[72] Questionnaire Q 5.1.1.

which stated that they did not see that many major changes compared with earlier legislation).

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 findings of the Consumer Sweep conducted in 2015 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. Earlier discussion on enforcement showed that court cases have arisen in respect of the energy sector and telecommunications.

Through the interviews, some feedback in relation to the CRD at sectoral level was identified. For instance, feedback was obtained from distance selling organisations that the CRD can be burdensome for sectors that rely on direct selling techniques, such as telemarketing. A concern among smaller firms using this sales channel is that some MS have opted to implement regulatory choices and this was seen as causing administrative burdens since traders have to ascertain MS specific rules for some Articles.

As noted earlier, sectors will be affected differently by the RoW, thus the impacts of CRD in terms of costs and benefits will also vary sector by sector. An example was provided earlier in this section with regard to sectors that are known for the high rate of returns by consumers, such as the online fashion sector and the heating oil distributors. Conversely, there are other sectors that have much lower rates of returns and would be affected less by the RoW.

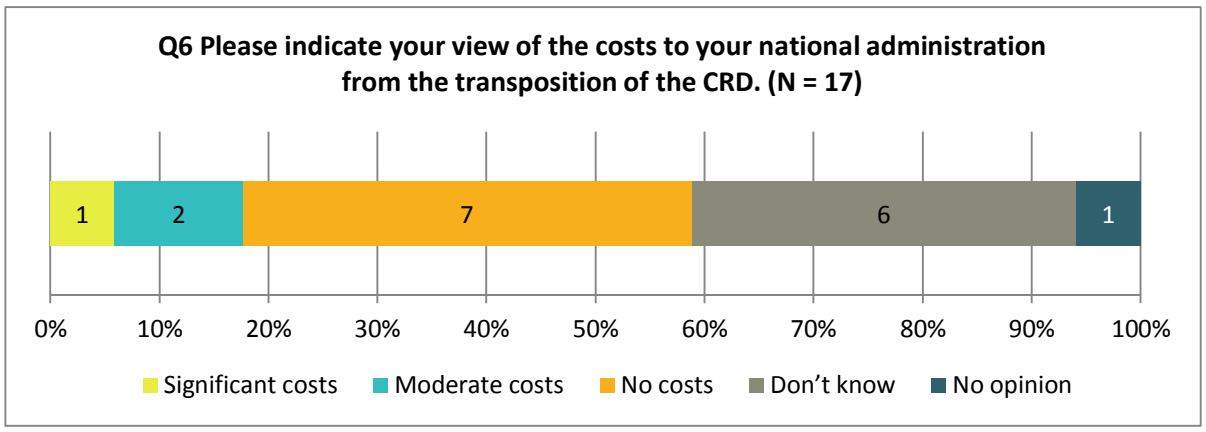
4.4 Impacts on national competent authorities

4.4.1.1 Costs of transposition

National competent authorities were also asked about the costs of transposition. The costs of transposition include for instance, the cost of consulting stakeholders and reporting requirements to the Commission. These are different from costs related to the implementation and enforcement of the provisions; or, in order words, the costs of monitoring and inspections.

Regarding the transposition costs, most of the competent authorities agreed that there were no costs from transposing the Directive into national legislation (see Figure 4-13). Only a few noticed that the costs were moderate or significant. Comments provided by national competent 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 either through amendments to existing legislation and/or a national consumer code and in some MS, through the adoption of new legislation. In this regard, in order to determine how the CRD should be transposed, some countries also organised stakeholder discussions at national level. Open comments received are provided in the box overleaf.

Figure 4-13: National competent authorities' costs from the transposition of the CRD (Q 6)



Free text from National Competent Authority survey Q 6: Please indicate your view as to the level of costs to your national administration from the transposition of the CRD. E.g. costs of consulting stakeholders and costs of reporting requirements to the Commission

The overall costs for our national administration related to the transposition of the CRD were more or less the same as the costs relating to the transposition of other similar directives.

The costs of the transposition of the CRD were covered from the regular (operational) budget of the competent authorities. No extra budget was needed.

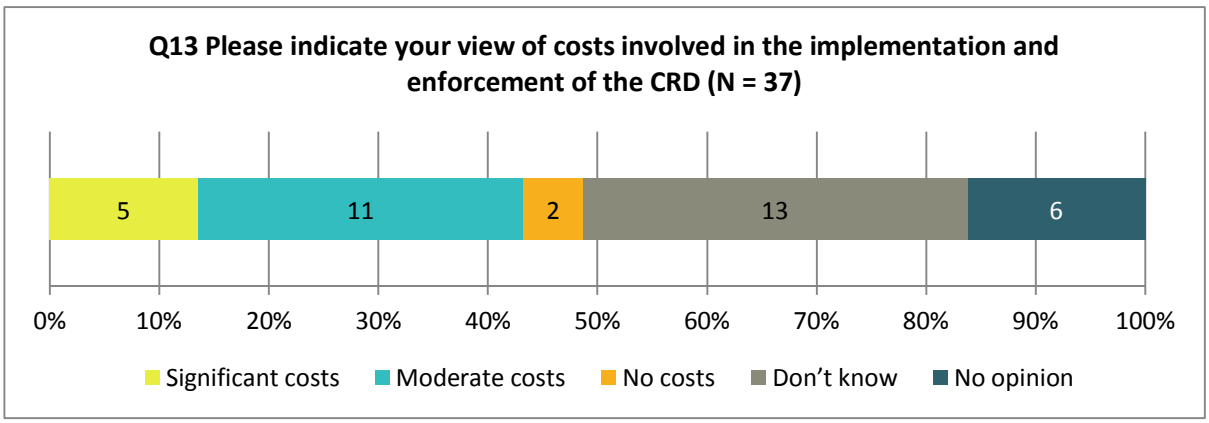
The enforcement of the CRD is only partially carried out by our competent authority. The exact costs cannot be estimated.

4.4.1.2 Costs from implementation and enforcement

As for the costs relating to CRD implementation and enforcement, these costs are reportedly higher than those from transposition.

The former group, implementation costs, include the costs of information/awareness activities. Information activities included rewriting text or creating new text for websites, launching campaigns, and running consumer helplines. In addition, human resources from national enforcement authorities were made available to help carry out the Consumer Sweep led by the Commission's DG JUST to check websites at national level.

Figure 4-14: National competent authorities' costs from implementation and enforcement of the CRD (Q 13)



Costs from conducting sweeps in Ireland

A stakeholder interviewed from an enforcement authority in Ireland stated that even though less than 30 websites had been checked, both the initial website screening to check for non-compliance and follow-up through pre-enforcement actions by writing to the traders concerned had been very time-intensive. Although court action had only been required in one instance, checking that these traders had taken the necessary steps to become compliant took up considerable resources, with a small team of several people working on the consumer sweep.

30% of national competent authorities stated that although there had been increased costs in relation to the implementation of the CRD, they had only been moderate or not as significant as expected.

Free text from National Competent Authority survey Q 13: Please indicate your view as to the level of costs involved in the implementation and enforcement of the CRD

As the number of e-traders in Estonia is increasing, we consider that the implementation of CRD is not as costly as it could be expected. For the enforcement authority it involves some additional costs in order to be able to monitor the whole market.

Many employees were involved in implementing the new rules in our organization. Because of the wide scope of the rules we had to write and rewrite many texts on our websites and in our knowledge database. Also there are costs involved in awareness-raising campaigns we launched and in enforcement actions.

A significant amount of staff resources (c.40-50%) in our consumer enforcement division is spent on the assessment of CRD issues raised by consumers. Enforcement action in the area also requires the support of our legal services division. In addition, the number of consumers contact our outsourced helpline on CRD issues is significant.

4.5 Summary of findings on efficiency

The above sub-sections have presented the findings of the consultation on the costs and benefits from the CRD and its different provisions. It has not been possible to quantify the benefits and costs of the CRD in monetary terms despite asking stakeholders for specific estimates. There are mixed views as to the costs and benefits from the directive. Although consumers and their representatives agreed that consumers' confidence and trust have increased, according to traders, this has not happened without expense.

From the online survey, 24% of the traders agree that the costs far exceed the benefits versus 16% that think that the benefits exceed the costs but only moderately. The largest costs relate to a few provisions, namely the pre-contractual information requirements and those on the RoW:

- Stakeholders felt that the pre-contractual information requirements were imposing an unnecessary burden on traders. Moreover, there is evidence of duplication in information requirements between the CRD and the UPCD (as will be discussed in Section 5 on coherence) which may create unneeded administrative costs on traders. In addition, some stakeholders believed that the amount of information can be overwhelming for consumers; and

- The potential for increased volume of returns due to a longer RoW and the impacts on traders from the return of used products. In addition, the lack of exceptions from the RoW seems to have affected some sectors in particular, such as the heating oil and the online bidding platforms. However, other sectors viewed the exceptions from the RoW as positive in enhancing the impacts of the Directive on their competitiveness, such as the hotel sector.

Other costs were mentioned from formal requirements but no specific amounts were given. Among the benefits reported by traders of complying with the Directive are those from having harmonised rules thus setting a more even playing field across traders selling cross-border. Other benefits reported are that trusting consumers attract other consumers and that such consumers also tend to return (although these benefits appear to be less visible to SMEs, according to the evaluation of the awareness campaign). Although, in general terms, online sales have increased in the last few years, the link with consumer protection legislation was not that clear to all stakeholders. In traders' opinion, however, the benefits from the CRD do not outweigh the costs.

The effects for SMEs are reportedly similar to the effects for larger companies and for trader respondents overall. Redesigning websites is said to be especially costly for micro and small firms. Further challenges include the point that working with low profit margins in online retail puts micro and small firms at greater financial risk resulting from consumers exercising their RoW (Art. 11). At the European Consumer Summit held in October 2016, the possibility of having a single European Consumer Code containing all consumer legislation was raised by stakeholders. This goes in the direction of reducing rather than increasing the number of individual pieces of legislation applicable and may benefit SMEs in particular.

Most competent authorities reported moderate administrative costs to transpose the Directive but have experienced higher costs associated with raising awareness about the new requirements in the CRD, and in relation to enforcement activities (checking compliance of traders' websites, writing pre-enforcement letters and checking traders' compliance after having received these, drawing attention to areas of non-compliance, taking court action in strategic deterrent cases). It should be noted that although they could not be quantified, the extent of costs and benefits were found to vary depending on the MS concerned, and the predecessor legal framework.

Generally, positive impacts are reported on consumers by most consumers and their associations answering the survey. 47% of the national competent authorities confirmed that they have received positive feedback on the benefits from the CRD in general. Again, most of the benefits stem from the harmonised 14 days RoW for distance and off-premises contracts. Unfortunately, most national competent authorities replying to the questionnaire could not provide data on the uptake by consumers of the exercise of their rights under the CRD.

In summary, although it has not been possible to quantify the benefits and costs of the CRD in monetary terms, there are mixed views as to the costs and benefits from the directive. Although positive impacts are reported on consumers, the impacts on traders vary from positive to negative according to the specific provisions. One of the main issues raised by interviewees relates to the pre-contractual information requirements and the need for simplification. Another outstanding issue relates to the volume and return of used products and the financial risk to companies from having to provide full refunds, unable to account for diminished value.

Table 4-2: Summary of findings on CRD and its efficiency

Key to rating:	
0: no noticeable impact	
+: small positive impacts	-: small negative impacts
++: moderate positive impacts	--: moderate negative impacts
+++: significant positive impacts	---: significant negative impacts
What are the costs and benefits (monetary and non-monetary) associated with the application of Directive 2011/83/EU in the Member States?	-/+: Positive impacts for consumers from specific provisions (e.g. common 14 day RoW across the EU, common rules on delivery, passing of risk). Negative impacts are reported for traders from some specific provisions (pre-contractual information requirements, increased volume of returns due to a longer RoW) but also positive impacts, such as greater regulatory certainty (e.g. delivery, passing of risk). Impacts could not be quantified.
What are the increased/reduced costs for businesses, such as administrative and compliance costs or costs for handling complaints and returns, legal advice, etc.;	--/+: negative impacts on costs reported from provisions such as the increase in pre-contractual information requirements, the requirement to make information available upfront in the transaction process and the practical difficulties in doing so on m-commerce websites. However, traders are more positive that various exceptions from the RoW have been included in Art. 16 and the exceptions have been made clearer compared with previous legislation.
What are the compliance/administrative costs of public authorities?	--/0: most competent authorities reported moderate administrative costs to transpose the Directive but the costs of monitoring and enforcement are reported to be higher.
What are the effects on SMEs and additional costs for companies that operate in only one Member State?	--/-: effects for SMEs reportedly similar to those of the overall survey and larger companies. Views were divided among respondents.
What are the burden and benefits for businesses arising from obligations on traders under the Directive at different stages of the transaction (i.e. pre-contractual stage, stage of conclusion of the contract and post-contractual stage), in particular, regarding their	--/+: the Article resulting in the highest costs is reported to be the provision of pre-contractual information requirements but no estimates of costs could be provided by consultees. Having harmonised rules on the provision of information on goods, services and digital content has been reported to be rather beneficial. Most traders did not report an increase in sales over the last two years.

Table 4-2: Summary of findings on CRD and its efficiency	
Key to rating: 0: no noticeable impact +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	 -: small negative impacts --: moderate negative impacts ---: significant negative impacts
administrative costs and removal of barriers to cross-border trade?	
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 are characterised by more frequent breaches of the Directive's provisions.	-/+: All market sectors are affected by the CRD, with the exception of those sectors specified in Art. 3(3) as being outside its scope, and the specific circumstances in which exceptions can be granted in Art. 16 (Exceptions from the RoW). The research has identified some sectors have been the subject of more frequent breaches of the Directive's provisions, such as the energy sector and telecommunications but other sectors are being particularly affected by certain provisions, such as the textile sector, due to the return of used products.
What are the specific challenges to SMEs, in particular micro enterprises, with respect to the implementation of the Directive? What good practices in terms of their cost-effective application can be identified?	-/+; Among the specific challenges for SMEs in implementing the Directive is the difficulty in meeting the costs of further customising a website to ensure that it is CRD-compliant. Redesigning websites can be especially costly for micro and small firms. Larger firms are better able to spread the costs of compliance across their activities and sales channels. Further challenges include how working with low profit margins in online retail puts micro and small firms at greater financial risk resulting from consumers exercising their RoW (Art. 11). Some good practice was identified in terms of cost-effective application where trader associations were providing their members with standard forms to send out to suppliers.
What, if any, specific provisions in the Directive can be identified that make cost-effective implementation more difficult and hamper the maximisation of the benefits? In particular, what is the (unnecessary/cumulative) regulatory burden identified?	-/+: In terms of unnecessary regulatory burdens, the main burden identified relates to the duplication of information requirements. There is evidence of duplication in information requirements between the CRD and the UPCD and the CRD (more on this in the section on coherence).
Were the outputs and effects achieved at a reasonable cost? Could the same results have been achieved with lower costs or in a simpler way? Could the use of other policy instruments or mechanisms have provided better cost-effectiveness?	+/+++: The transposition of the CRD was achieved at reasonable cost for national competent authorities. Many national authorities said that there had been negligible costs, although the costs of implementing and enforcing the CRD were higher. The costs from provisions such as pre-contractual information requirements are considered to be significant for traders and more burdensome for SMEs. One

Table 4-2: Summary of findings on CRD and its efficiency	
Key to rating: 0: no noticeable impact +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	 -: small negative impacts --: moderate negative impacts ---: significant negative impacts
What possibilities are there for simplification?	possibility raised at the European Consumer Summit to avoid burdening SMEs and to make CRD implementation more cost-effective was the possibility of combining all consumer and marketing law, including the CRD into a single piece of coherent legislation through the adoption of a Framework Directive in the form of a European Consumer Code. Other suggestions for simplifications include the provision of linkages or references to websites where all pre-contractual information can be accessed.

5 The CRD and its coherence with other EU consumer law

5.1 Overview of Section

This section deals with coherence. Coherence relates to what extent the different Articles and sub-Articles within the legal text of the CRD are consistent and relate to other "external" interventions, including other related horizontal Directives as well as sector specific legislation. The former group includes the Services, e-Commerce, and Payment Services Directives, as well as the Unfair Commercial Practices Directive (UCPD) and the Directive on Consumer Alternative Dispute Resolutions (ADR). The latter group includes, for instance, electronic communications and passenger transport services-related legislations. The list of Directives to be observed under this study was agreed at the start of the project.

The evaluation questions are replicated below.

- To what extent is the intervention coherent internally?
- 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 online survey and interviews asked national competent authorities whether they had had problems with transposition and interpretation of the different articles vis-à-vis other Directives as well as the extent to which *the CRD had proved to be complementary to existing measures and actions to strengthen consumer protection*

A few papers under the OPC provided opinions on consumer law in general, including aspects of coherence related to how several requirements (e.g. information obligations) were covered by more than one directive.

5.2 Coherence between the CRD and other horizontal directives

Article 6(8) of the CRD states that the information requirements of the CRD are in addition to information requirements contained in Directive 2006/123/EC, the Service Directive, and Directive 2000/31/EC, the e-commerce Directive, and does not prevent MS from imposing additional information requirements in accordance with those Directives. However, if a provision of Directive 2006/123/EC or Directive 2000/31/EC on the content and the manner in which the information is to be provided conflicts with a provision of the CRD, the provision of the CRD shall prevail.

Traders responding to the OPC emphasised the need to simplify the information provided to consumers and consolidate the information requirements with similar or overlapping provisions in other Directives. They highlighted how some aspects of consumer protection (e.g. price indication provisions) are covered by several directives including the CRD. Several respondents to the online survey agreed that the marketing/pre-contractual information requirements within the CRD and other Directives should be regrouped and streamlined. Some same conclusions were reached in the Consumer Summit held in October 2016. The EESC's report on the CRD also concluded that the CRD could be improved by better provisions on information by simplifying and aligning the information requirements currently spread across the EU consumer and marketing acquis (EESC, 2017).

Example comments on information requirement of CRD and related horizontal Directives

"Existing consumer information requirements are too burdensome. [When it] comes to the existing consumer information requirements set by several directives, we consider it a very important aim to review the interplay and coherence of those obligations."

"A consolidation exercise [in the area of information requirements] could therefore be useful, but without the need for a fully-fledged legislative revision.

"There should be good synergies between the different Directives to avoid any gaps which could be exploited by illegally operating businesses."

"It has been suggested to simplify information requirements, focusing on quality rather than quantity of information to be provided"..as well as "to improve coordination and coherence among different pieces of EU legislation…"

The different horizontal Directives are analysed in more detail below against the provisions of the CRD.

5.2.1 Coherence with the Service Directive

The scope of the CRD also includes service contracts. These are defined as any contract other than a sales contract under which the trader supplies or undertakes to supply a service to the consumer against consideration, with some exemptions. The Services Directive, Directive 2006/123/E, applies to all services which are not explicitly excluded from it. The list of exclusions from both Directives is quite similar, and refers to sectors covered by specific sectoral legislation.

The following table sets out the information requirements of the CRD vis-à-vis the Services Directive. As it can be seen, the CRD contains less information requirements about the trader but more about the rest of key areas, as some, of course, will not apply to the Services Directive (say information provisions on digital content when it is provided in the form of service). It needs to be noted that the Services Directive (Directive 2006/123/EC) was adopted 10 years ago, when means to contact a trader were typically different (e.g. fax and phone number, but often no website or contact email address). Due to rapid developments in technology, providing information via a website and ensuring that a contact email address is available for consumers is now considered to be essential.

Article 22(5) of the Services Directive allows MS to impose additional information requirements applicable to providers established in their territory. The option of extra information requirements under this directive (as well as the e-Commerce Directive) is one of the regulatory choices available to national legislators under Article 6(8) of the CRD. As noted in Section 2, however, only four EU MS have made use of this option (UK, HU, CY and FR). Stakeholders from these countries have not, however, highlighted any specific issues with regard to coherence.

An examination of the coherence where other provisions apply to both Directives (ticks in two columns) shows that there is no significant incoherence between the two.

Table 5-1: The CRD and the Services Directive – comparison of key provisions

Key area	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC
I. Information about the trader		
I.1. Name	✓ Article 5(1)(b) Article 6(1)(b)[73]	✓ Article 22(1)(a): The name of the provider, his legal status and form
I.2. Address and contact details	✓ Article 5(1)(b) Article 6(1)(c) Article 6(1)(d)	✓ Article 22(1)(a) Article 27
I.3. Trade or other public register (if applicable)		✓ Article 22(1)(b)
I.4. VAT number		✓ Article 22(1)(d)
I.5. Specific requirements for regulated professions		✓ Article 22(1)(e)
I.6. Conflict of interest		✓ *At the recipient's REQUEST (Article 22(3) (c)*
I.7. Supervisory authority		✓ Article 22(1) (c)
II. Conclusion of the contract		
II. 1 Cost of using the means of distance communication	✓ Article 6(1)(f)	
III. Description of the Product		
III.1. Characteristics	✓ Article 5(1)(a) and Article 6(1)(a)	✓ Article 22 (1)(j)
III.2. Functionality	✓ Article 5(1)(g) and Article 6(1)(r)	
III.3. Interoperability	✓ Article 5(1)(h) and Article 6(1)(s)	
IV. Price		
	✓ Article 5(1)(c) and Article 6(1)(e)	✓ Article 22(1)(i)
V. Performance of the contract		
V.1. Delivery and payment	✓ Article 5(1)(d) and Article 6(1)(g)	
V.2. Complaint handling	✓ Article 5(1)(d) and Article 6(1)(g)	
V.3. Financial	✓ Article 6(1)(q)	

[73] Article 6(1) sets out the information requirements for distance and off-premises contracts whilst Article 5(1) sets out these requirements for other (on-premises) contracts

Key area	Consumer Rights Directive 2011/83/EU	Services Directive 2006/123/EC
guarantees		
V.4. Legal guarantee	✓ Article 5(1)(e) and Article 6(1) (l)	
V.5. Commercial guarantee and after-sale	✓ Article 5(1)(e) 6(1)m	✓ Article 22(1)(h)
VI. Validity of the contract in time		
VI.1. Duration and termination of the contract	✓ Article 5(1)(f) and Article 6(1)(o) (6)(1)(p)	
VI.2. Right of withdrawal	✓ Article 6(1)(k) Article 6(1)(h)Article 6(1)(i)Article 6(1)(j)	
VII. Legal terms		
VII.1. General conditions		✓ Article 22(1) (f)
VII.2. Applicable law and jurisdiction		✓ Article 22(1) (g)
VII.3. Codes of conduct	✓ Article 6(1)(n)	✓ *At the recipient's REQUEST (Article 22(3)(d))*
VII.4 Out-of-court complaint and redress mechanisms	✓ Article 6(1)(t)	✓ *At the recipient's REQUEST (Article 22(3)(e)),* Article 27(4)
VIII.5. Professional liability insurance		✓ Article 22(1) (k)

5.2.2 Coherence with the E-commerce Directive

The Electronic Commerce Directive, Directive 2000/31/EC, adopted in 2000, sets up an internal market framework for electronic commerce. It establishes harmonised rules on issues such as the transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary service providers. These services include also services provided free of charge to the recipients and funded, for example, by advertising or sponsorship such as price comparison sites. The following table sets out the key requirements of the CRD vis-à-vis the E-commerce Directive.

Table 5-2: The CRD and the E-commerce Directive – comparison of key provisions

Key area	Consumer Rights Directive 2011/83/EU	E-commerce Directive 2000/31/EC
I. Information about the trader		
I.1. Name	✓ Article 5(1)(b) Article 6(1)(b)[74]	✓ Article 5(1)(a)
I.2. Address and contact details	✓ Article 5(1)(b) Article 6(1)(c) Article 6(1)(d)	✓ Article 5(1)(b)-(c)
I.3. Trade or other public register (if applicable)		✓ Article 5(1)(d)
I.4. VAT number		✓ Article 5(1)(g)
I.5. Specific requirements for regulated professions		✓ Article 5(1)(f)
I.7. Supervisory authority		✓ Article 5(1)(e)
II. Conclusion of the contract		
II. 1 Cost of using the means of distance communication	✓ Article 6(1)(f)	
II. 2 Technical steps		✓ Article 10(1), Article 11(1)
III. Description of the Product		
III.1. Characteristics	✓ Article 5(1)(a) and Article 6(1)(a)	
III.2. Functionality	✓ Article 5(1)(g) and Article 6(1)(r)	
III.3. Interoperability	✓ Article 5(1)(h) and Article 6(1)(s)	
III.4 Promotional offers		✓ Article 6
IV. Price		
	✓ Article 5(1)(c) and Article 6(1)(e)	✓ Article 5(2)
V. Performance of the contract		
V.1. Delivery and payment	✓ Article 5(1)(d) and Article 6(1)(g)	
V.2. Complaint handling	✓ Article 5(1)(d) and	

[74] Article 6(1) sets out the information requirements for distance and off-premises contracts whilst Article 5(1) sets out these requirements for other (on-premises) contracts

Key area	Consumer Rights Directive 2011/83/EU	E-commerce Directive 2000/31/EC
	Article 6(1)(g)	
V.3. Financial guarantees	✓ Article 6(1)(q)	
V.4. Legal guarantee	✓ Article 5(1)(e) and Article 6(1) (l)	
V.5. Commercial guarantee and after-sale	✓ Article 5(1)(e) 6(1)m	
VI. Validity of the contract in time		
VI.1. Duration and termination of the contract	✓ Article 5(1)(f) and Article 6(1)(o) (6)(1)(p)	
VI.2. Right of withdrawal	✓ Article 6(1)(k) Article 6(1)(h)Article 6(1)(i)Article 6(1)(j)	
VII. Legal terms		
VII.1. General conditions		✓ Article 10(3)
VII.3. Codes of conduct	✓ Article 6(1)(n)	✓ Article 10(2)
VII.4 Out-of-court complaint and redress mechanisms	✓ Article 6(1)(t)	

While the CRD and e-Commerce Directive both contain measures on concluding the contract, the CRD provisions[75] relate to matters such as:

- The pre-contractual requirement to provide clear and comprehensible information on the cost of distance communication (where higher than basic rate) for the conclusion of the contract (Article 6(1)(f)); and

- The formal requirements for the conclusion of distance contracts (Article 8), including *inter alia* the obligation to provide the consumer with confirmation of the contract concluded, on a durable medium[76] and within a reasonable time after the conclusion of the distance contract (at the latest at the time of the delivery of the goods or before the performance of the service begins) (Article 8(7)).

[75] Article 6(1)(f) CRD.

[76] Art 10(2) of the CRD defines "**durable medium**" as any instrument which enables the consumer or the trader to store information addressed personally to him in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

By contrast, the e-Commerce Directive covers matters such as the different technical steps to be followed in order to conclude the contract; whether the contract will be filed by the service provider and whether it will be accessible; the technical means for identifying and correcting input errors prior to the placing of the order; and the languages offered[77]. As a consequence, there does not appear to be any issues with coherence between the two directives in relation to the conclusion of the contract.

5.2.3 Coherence with the Unfair Commercial Practices Directive

The Directive on Unfair Commercial Practices (UCPD) was adopted in 2005 and is a full harmonisation directive banning the exercise of certain misleading or aggressive practices that may cause consumers to take transactional decisions they would not have taken otherwise. It applies to virtually all business-to-consumer ('B2C') transactions and in all sectors.

Article 6(1)(b) of the UCPD sets out a requirement in relation to the content of the information that traders must provide, in the form of a prohibition against incorrect or otherwise misleading information about the main characteristics of a product, if this is likely to cause the average consumer to take a transactional decision he would not otherwise have taken. Information requirements about the main characteristics of a product are additionally referred to in Article 7(4)(a) of the UCPD in the context of an 'invitation to purchase'. The Commission's guidance on the UCPD notes that compliance with the more onerous provisions of the CRD should normally also ensure compliance with Article 7 of the UCPD:

> '*Given the more exhaustive character of the information requirements in the CRD, complying, already at the stage of invitation to purchase, with the requirements laid down by the CRD for the pre-contractual stage should normally also ensure compliance with Article 7(4) UCPD, as far as the content of the information is concerned.*'

Thus, it would appear that there are no issues with coherence between the CRD and the UCPD concerning the descriptions of the product. Table 5-3 sets out the requirements of both Directives vis-à-vis. This would suggest that issues with coherence should remain minimal. However, a stakeholder responding to the OPC raised concerns about overlapping rules and different definitions in the CRD and UCPD (as well as the Price Indication Directive) resulting in practical difficulties when determining which law is applicable and stressing the claim for simplification of similar information requirements under both Directives.

Coherence between the CRD and UCPD on definitions

'*Use of different terms such as 'final price', 'selling price' and 'total price' can ultimately make interpretation difficult. In turn, this can lead to legal uncertainty until clarification is provided by the ECJ*'.

[77] Articles 10(1) and 11(1) e-Commerce Directive.

Table 5-3: The CRD and the UCPD – comparison of key provisions

Key area	Consumer Rights Directive 2011/83/EU	Unfair Commercial Practices Directive 2005/29/EC
I. Information about the trader		
I.1. Name	✓ Article 5(1)(b) Article 6(1)(b)[78]	✓ Article 7(4)b
I.2. Address and contact details	✓ Article 5(1)(b) Article 6(1)(c) Article 6(1)(d)	✓ Article 7(4)b
III. Description of the product		
III.1. Characteristics	✓ Article 5(1)(a) and Article 6(1)(a)	✓ Article 2(i) Article 6(1) (b) and Article 7 (4)(a)
III.2. Functionality	✓ Article 5(1)(g) and Article 6(1)(r)	
III.3. Interoperability	✓ Article 5(1)(h) and Article 6(1)(s)	
III.4 Promotional offers		
IV. Price		
	✓ Article 5(1)(c) and Article 6(1)(e)	✓ Article 5(2), 6(1)(d), 7(4)(c)
V. Performance of the contract		
V.1. Delivery and payment	✓ Article 5(1)(d) and Article 6(1)(g)	✓ Article 6(1)(b) and 7(4)(d)
V.2. Complaint handling	✓ Article 5(1)(d) and Article 6(1)(g)	✓ Article 6(1)(b) and 7(4)(d)
V.3. Financial guarantees	✓ Article 6(1)(q)	
V.4. Legal guarantee	✓ Article 5(1)(e) and Article 6(1) (l)	✓ Article 6(1)(g)
V.5. Commercial guarantee and after-sale	✓ Article 5(1)(e)	✓ Article 6(1)(g)
VI. Validity of the contract in time		

[78] Article 6(1) sets out the information requirements for distance and off-premises contracts whilst Article 5(1) sets out these requirements for other (on-premises) contracts

Key area	Consumer Rights Directive 2011/83/EU	Unfair Commercial Practices Directive 2005/29/EC
VI.1. Duration and termination of the contract	✓ Article 5(1)(f) and Article 6(1)(o) (6)(1)(p)	✓ Article 6(1)(b) and 7(4)(a)
VI.2. Right of withdrawal	✓ Article 6(1)(k) Article 6(1)(h)Article 6(1)(i)Article 6(1)(j)	✓ Article 6(1)(g) and 7(4)(e)
VII. Legal terms		
VII.1. General conditions		✓ Article 10(3)
VII.3. Codes of conduct	✓ Article 6(1)(n)	✓ Article 10(2)
VII.4 Out-of-court complaint and redress mechanisms	✓ Article 6(1)(t)	✓ Article 6(1)(b) and 7(4)(d)

5.2.4 Coherence with the Payment Services Directive

Directive 2007/64/EC which entered into force on 25 December 2007 is also a full harmonisation Directive. It aims to foster the internal market on payment services, and more especially the Single Euro Payments Area (SEPA), by eliminating differences between domestic and cross-border payments within the euro area. Revisions introduced in 2015 include a prohibition of surcharging (additional charges for the right to pay e.g. with a card) whether the payment instrument is used in shops or online. Under the 2007 Payment Services Directive, several MS have banned credit card charges. However, under the successor 2015 Payment Services Directive II, from 2018, credit card charges will be prohibited in all EU MS. This will require updating of the CRD in the future since credit card charges will be outlawed altogether.

Art. 19 and changes to the Payment Services Directive

Art. 19 of the CRD provides that '*MS shall prohibit traders from charging consumers, in respect of the use of a given means of payment, fees that exceed the cost borne by the trader for the use of such means*.' However, under the revised Payment Services Directive there is an obligation that traders cannot charge for the use of credit, and debit, cards. Should Art. 19 not be changed, legal uncertainty may arise for traders, since the Payment Services Directive refers to banning surcharges altogether, whereas the CRD allows traders to charge consumers up to the financial transaction costs incurred by the trader (e.g. charges levied by a payment services provider such as Paypal or a card services providers such as Visa and Mastercard).

5.2.5 The ADR Directive and the CRD

Resolving disputes through ADR is typically easier, faster and less expensive than resolving disputes before a court. In the EU, ADR procedures take different forms e.g. mediation, conciliation, the use of an ombudsmen and arbitration. Directive 2013/11/EC (the ADR Directive), aims to ensure that European consumers have access to ADR entities and procedures complying with the requirements as set out by the Directive (e.g. expertise, independence, impartiality, fairness, transparency, effectiveness) for

resolving their contractual disputes with traders (without prejudice to the form which ADR procedures take in the Member States). Access to ADR is ensured no matter what product or service they purchase, whether the product or service was purchased online or offline and whether the trader is established in the consumer's MS or in another one (only disputes regarding health and higher education are excluded from the scope of application of the ADR Directive).

It is important to emphasise that the CRD precedes the ADR Directive, since the ADR Directive was only adopted on May 2013.

Under the ADR Directive, online traders must inform consumers of the dispute resolution body/bodies by which they are covered. They should do this on their websites and in the general terms and conditions of sales or service contracts. They are required to provide a link (i.e. http://ec.europa.eu/odr) from their website to the Online Dispute Resolution platform (ODR platform http://ec.europa.eu/odr)), a web-based platform developed by the European Commission since 15 February 2016, enables European consumers to solve their domestic and cross-border problems with traders with the help of the ADR entities.

The interaction of ADR with the CRD relates to both *coherence* (the CRD precedes the ADR Directive, since the ADR Directive was only adopted on May 2013), and to *effectiveness*, since ADR mechanisms support the CRD's full and effective implementation, in saving consumers and traders money by avoiding court action.

Article 13 (Consumer information by traders) of Directive 2013/11/EU sets out a requirement that traders must inform consumers about the ADR. It is worth comparing this to the information requirements in the CRD. However, there do not appear to be any coherence issues regarding the interplay between the CRD and the ADR Directive. For example, Article 3(3) of the ADR Directive ("Relationship with other Union legal acts") makes clear that "Article 13 of this Directive shall be without prejudice to provisions on consumer information on out-of-court redress procedures contained in other Union legal acts which shall apply in addition to that Article". This is relevant since Article 6(1)t states in relation to information requirements for distance and off-premises contracts that where applicable, consumers should be given 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. However, given that there are a wide variety of national ADR mechanisms (mentioned in the recitals of the ADR Directive), it does not prescribe a particular type of ADR. However, no equivalent is stated under Article 5 for contracts other than distance and off-premises, which could arguably be a legal gap.

The ADR Directive was viewed by stakeholders interviewed as being closely linked to, and supportive of the effective implementation of the CRD (see box below). As noted earlier however consumers responding to this survey appeared not to have received too much information on out-of-court and redress mechanism (refer back to Figure 3-26 in Section 3) but this is more to do with compliance than with coherence between the two Directives.

The role of ADR in ensuring compliance with the CRD – EESC report on findings

The role of alternative dispute resolution (ADR) mechanisms was raised during several fact-finding missions. Since spring 2016, Latvia has had an ADR mechanism ('The Dispute Resolution Commission') which has a sectoral membership structure, with retired judges making recommendations to the state authorities[79]. In Italy, the role of mediators is seen as that of listeners rather than active conciliators[80]. In Spain, dispute settlement mechanism is used for consumers and companies and it is deemed to work well: 3000 complaints dealt with in the last year[81]. In Poland, ADR is a technical possibility, as consumers can go the national organisation to find out whether their rights were violated. However, if there is no agreement, consumers have to go court[82]. Belgium introduced an ADR system in 2015 (a general consumer ombudsman service) and the initial impression of consumer representatives is that it has been useful[83].

5.2.6 The Injunctions Directive and the CRD

The Injunctions Directive (ID) (2009/22/EC) aims to ensure the protection of collective interests of consumers in the internal market. The Directive provides that all MS put in place injunction procedures for stopping infringements of EU consumer rights (as enumerated in the Annex to the Directive and transposed into national law). In the context of the CRD, - the purpose of an injunction issued by a court or an administrative body in a is to require the trader to cease a practice non-compliant with the obligation as set out by the Directive.

The Directive harmonises some aspects of the injunctions procedure across the EU. It allows qualified entities from a MS – in particular consumer representative bodies and/or independent public bodies - to seek an injunction in their MS and another MS where the infringement originated. As such, the ID is concerned with both domestic and cross-border infringements and national procedures and the legal standing of qualified entities in another MS where the infringement originated. Injunctions are applicable to a broad range of consumer law infringements and qualified entities can bring an injunction for infringements which harm collective consumer interests as set out in the Directives relating.

The current Annex I to the Injunctions Directive refers to the two predecessor Directives in respect of off-premises and distance contracts respectively (i.e. Directive 85/577/EEC and Directive 97/7/EC). Since the ID was adopted in 1998 and codified in 2009 prior to the CRD's adoption in 2011, the Annex refers to the two pieces of outdated legislation. However, Article 31 (Repeals) of the CRD makes clear 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 ID therefore covers the CRD, although the ID is not explicitly mentioned in the correlation table in the annex to the CRD, unlike for example the CPC. Whilst not seen as a major issue from a stakeholder perspective, if the CRD were to be modified in future, then the annex in the ID referring to the CRD should be amended, as was the case for the ADR Directive.

[79] Mission Riga, Meeting with Employers.
[80] Meeting Rome, Meeting with Consumers Organisations.
[81] Mission Madrid, Meeting with Employers.
[82] Mission Warsaw, Meeting with Employers.
[83] Mission Brussels, Meeting with Consumer Organisations.

The ID is part of the Fitness Check of the EU consumer and marketing law. In this context, the functioning of the injunction procedure at national level and ideas for possible solutions to strengthen its effectiveness at EU level was the subject of a breakout session at the European Consumer Summit. Feedback received relating to the effectiveness of the injunctions procedure addressed a series of issues not specifically related to the CRD. Examples of recommendations made to strengthen the ID's effectiveness include: the need to increase legal certainty (with the same rules for all injunction proceedings) and the importance of integrating injunctions into a consistent systems of mechanisms for the enforcement of consumer law. No specific problems were identified pertaining to the relationship between the ID and the CRD since when the ID was adopted, there was already an explicit reference in the Annex that the Directive applies to both off-premises and distance contracts. As a tool to potentially enhance the effectiveness of CRD implementation, further feedback was that the ID in general, and cross-border injunction proceedings in particular, are too infrequently used against traders with insufficient harmonisation across EU MS in respect of the types of procedures and the frequency of use of the mechanism.

Feedback at the Consumer Summit also pointed to variations between Member States in respect of the sanctions applied in relation to non-compliance with injunctions orders issued. However, it should be noted that the ID does not cover sanctions for infringements of EU consumer law themselves, which are instead addressed in the relevant national laws (or consumer codes) relating to the transposition of the CRD used.

5.3 Coherence between the CRD and sectoral legislation

Many sectors are excluded from the scope of the Directive (Art 3(3)). The CRD does not apply in sectors such as financial services and package holidays since these are regulated through sector-specific legislation[84]. The full list is given below.

Sectors generally outside the scope of the CRD

- Social services;
- Health care;
- Gambling;
- Financial services;
- Real Estate;
- Construction of new buildings;
- Package travel, package holidays and package tours;
- Timeshare, long-term holiday product, resale and exchange contracts;
- Public office-holders who have a statutory obligation to be independent and impartial in ensuring the consumer only concludes the contract on the basis of careful legal consideration and with the knowledge of its legal scope;
- The supply of foodstuffs[85], beverages or other consumption goods delivered directly to the consumer; and
- Passenger transport services (however, there are some Articles of the CRD that are

[84] For instance, timeshare, long-term holiday product, resale and exchange contracts are regulated through Directive 2008/122/EC of 14 January 2009 and package travel, package holidays and package tours are regulated through the new Package Travel Directive (2015/2302/EU), which extended protection beyond the 1990 EU Package Travel Directive.

[85] Note that the Food Information to Consumers Regulation sets out information requirements to be given to consumers on nutritional value but it is not considered a core regulation relevant to the CRD – yet, our research suggest no issues with coherence.

applicable – see analysis below).

In addition, the provisions of the Directive do not apply to contracts:

- Concluded by means of automatic vending machines or automated commercial premises; and
- Concluded with telecommunications operators through public payphones for their use or concluded for the use of one single connection by telephone, Internet or fax established by a consumer.

Consultation undertaken for this study has not revealed significant issues with the CRD and sector specific legislation. Germany was the only MS highlighting inconsistencies between the CRD with other EU Directives. According to a working staff document produced by the Ministry of Justice and Consumer Legislation in 2016, inconsistencies were mainly identified between the CRD and the Distance-selling of Financial Services Directive (Directive 2002/65/EC — consumer protection in cases of distance-selling of financial services) in the area of pre-contractual information obligations, including information obligations relating to the RoW. The document does not provide a specific analysis illustrating practical examples of inconsistencies however.

Respondents to the evaluation conducted by the EESC on the CRD suggested that the Directive could be extended to some of the above and other sectors, such as the real estate and pharmaceutical sectors, financial services, telecommunication operators and package travel. However, the Committee concluded that *it is not considered the right time to extend the scope of the Directive* to any of the sectors currently excluded *because of two reasons:*

- *the subject matter is regulated and*
- *it is included under the exceptions.*

Other sectors are however included under both the CRD and sectoral legislation. These include, inter alia, electronic communications and energy and passenger transport services. Article 3(2) of the CRD notes that if any provisions of the Directive conflict with a provision of another Union Act governing specific sectors, the provision of the Union Act shall prevail and shall apply to those specific sectors. A particular focus has been put on certain sectors, such as electronic communications and energy, and other sectors subject to sectoral legislation but required to comply with specific articles of the CRD, such as passenger transport services.

5.3.1 Coherence with electronic communications and energy

The CRD was designed to complement existing sector-specific consumer protection rules in areas such as electronic communications and energy[86]. With regard to information requirements set out in sector-specific legislation, additional requirements are set out for instance in the Universal Service Directive (2002/22/EC)[87] for e-communications services (dealing with end-user rights), the Audiovisual Media Services Directive (2010/13/EU) for audiovisual services, and in the energy sector, Directive 2009/72/EC for electricity, Directive 2009/73/EC for natural gas and Directive 2012/27/EU on energy efficiency[88].

[86] See: http://europa.eu/youreurope/citizens/consumers/energy-supply/contracts-energy-consumption/index_en.htm

[87] See: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32002L0022

[88] The Commission has proposed to expand consumer rights in the energy sector in order to allow them to actively participate in the energy market (see https://ec.europa.eu/energy/en/topics/markets-and-consumers/consumer-rights-and-protection).

In respect of consumer rights relating to contracts in the energy sector, to the extent that the sector is not subject to sector-specific legislation in this area, traders are required to follow the general principles of the CRD. Research undertaken for this study has shown that there have been a number of complaints and legal cases in respect of non-compliance with the provisions of the CRD in the energy sector[89]. In some cases, these are due to the complexities of the sector in terms of pricing, which has resulted in greater potential for consumers to be misled. Other breaches specific to the CRD include: lack of pre-contractual information about the trader's identity (Art. 6), various obstacles to the exercise of the RoW (Art. 9) and inertia selling (under Art. 27). The enforcement authority has taken action against energy companies (refer to Section 3 for cases found in Italy under the enforcement and compliance sub-section). Compliance issues were also identified in the EESC's report.

In the area of electronic communications services, whilst a number of legal cases were identified concerning telecommunications companies, for instances, those providing phone and broadband internet services, these cases typically related to Art. 21 (Communication by telephone), i.e. the lack of provision of access to a standard rate phone call upon the conclusion of a contract. There did not appear to be any problems in respect of the CRD specific to this sector, or relating to the interaction between the CRD and sector-specific legislation either.

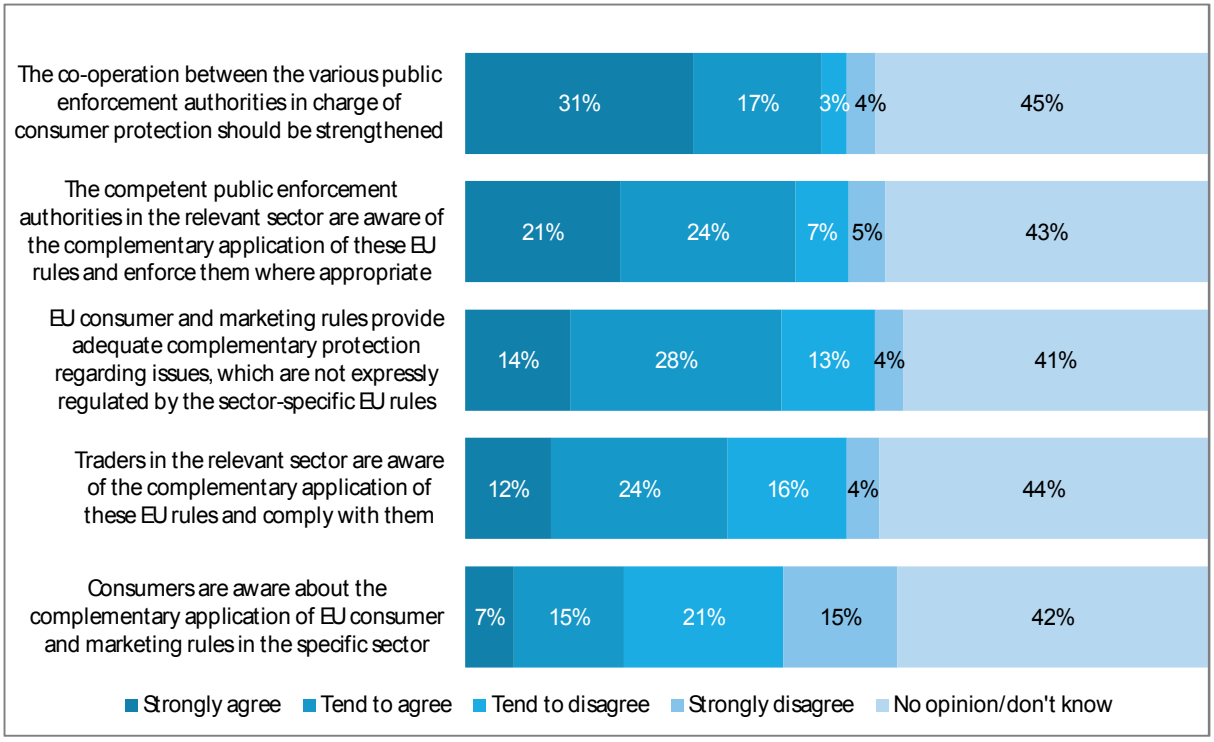
Respondents to the OPC were asked to assess the interplay between EU consumer and marketing rules and EU sector-specific consumer rights in the area of electronic communications services (CIVIC, 2016). The results are replicated in the next Figure. 42% of respondents agree that EU consumer and marketing rules provide adequate complementary protection regarding issues which are not expressly regulated by the sector-specific EU rules in the area of electronic communications services and 17% disagree and/or tend to disagree (third bar in the figure[90]). 41% responded with "no opinion/don't know" (these responses are mostly from traders and their associations). Note however that these rules include other rules rather than the CRD rules alone, thus caution is needed when interpreting the results.

[89] www.agcm.it/en/newsroom/press-releases/2283-ps9769-ps10000-ps9815-ps9999-ps9578-ps9406-ps9834-fines-of-%E2%82%AC6-0-million-to-7-companies-providing-electricity-and-gas-services-for-the-activation-of-unsolicited-supplies.html

[90] Note that the other bars in the chart refer to aspects of awareness and enforcement; thus, they will be covered in other sections of this report.

Figure 5-1: Views on the interplay between EU consumer and marketing rules and EU sector-specific consumer rights in the area of electronic communications services

Question: How strongly do you agree or disagree with the following statements about the interplay between EU consumer and marketing rules and EU sector-specific consumer rights in the area of electronic communications services?



Source: CIVIC (2017): *Public consultation for the Fitness Check of EU consumer and marketing law.*

5.3.2 Coherence with passenger transport-related legislation

Passenger transport services are not generally subject to the CRD, with the following exemptions:

- Articles 8(2): obligation to pay in relation to distance contracts[91],
- Article 19: unjustified surcharges for the use of means of payment and
- Article 22: additional payments which ban pre-ticked boxes[92].

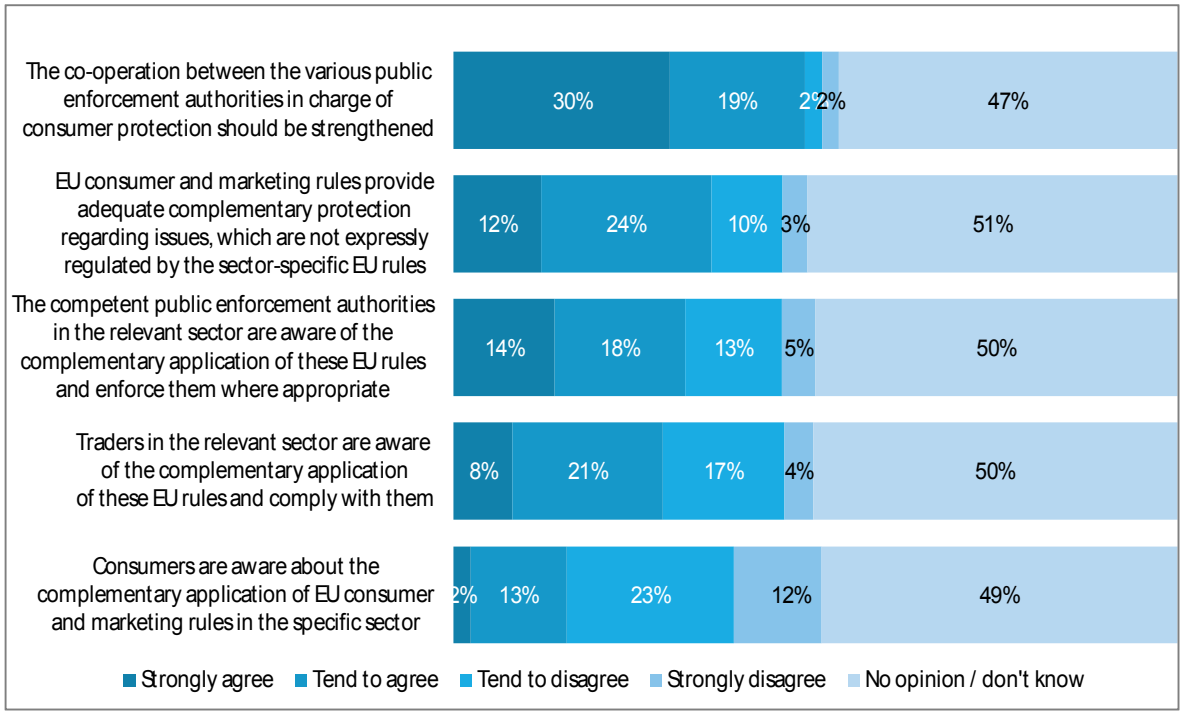
[91] Art. 8(2) states that "if a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader shall make the consumer aware in a clear and prominent manner, and directly before the consumer places his order".

[92] According to the DG JUST interpretative guidance document on the CRD, pre-ticked boxes prohibited by Article 22 could concern, for example: an insurance contract when buying an air ticket.

The OPC reported on stakeholders views on the interplay between EU consumer and marketing rules and EU sector-specific consumer rights in the area of passenger transport. 29% of respondents noted that traders were aware of the complementary application whilst only 15% thought consumers were. Moreover, 36% strongly agree or tend to agree that EU consumer and marketing rules provide adequate complementary protection regarding issues which are not expressly regulated by the sector-specific EU rules in the area of passenger transport. Only 13% disagree with this statement (either tend to disagree or strongly disagree), with 51% selecting "no opinion/don't know".

Figure 5-2: Views on the interplay between EU consumer and marketing rules and EU sector-specific consumer rights in the area of passenger transport

Question: How strongly do you agree or disagree with the following statements about the interplay between EU consumer and marketing rules and EU sector-specific consumer rights in the area of passenger transport?



Source: CIVIC (2017): Public consultation for the Fitness Check of EU consumer and marketing law.

Through the interviews, CRD stakeholders were also asked whether there were any particular problems in respect of the interaction between the CRD and the passenger transport sector. Stakeholders did not perceive there to be any problems relating to the CRD and legislation specific to the transport sector. As for the broader question as to whether it has caused any difficulties to have three Articles within the CRD which are applicable to the passenger transport sector, this does not appear to have proved problematic. Moreover, some synergies have been highlighted between the provisions of the CRD and passenger transport legislation. In particular, Regulation 1008/2008 prohibits the use of pre-ticked boxes in the air transport sector, in line with Art 22 of the CRD.

Yet, there are arguably a number of issues relating to how compliant the passenger transport sector is with Article 22. The EESC's evaluation show that 22% of respondents report that the occurrence of additional payments by means of tick boxes while shopping online has decreased since June 2014, but 20% believe it has stayed the same and 15% believe it has actually increased. 43% did not know (EESC, 2017). According to 34% of the EECs responding to the questionnaire, consumers have complained to them often about pre-ticked boxes (refer back to Figure 3-24 in Section 3). Although, they did not provide specific data on passenger transport or sector, it is known that in 2015, 22% of all complaints addressed to the ECC network was related to airline services and 36% to transport overall (CEC, 2016).

5.3.3 Sectors outside the scope of the CRD

In relation to sectors outside the scope of the CRD, there are a number of issues worthy of attention in relation to coherence. This is because, although certain types of contracts are exempt from the Directive, the general principles of the CRD may still apply (as shown by the analysis of enforcement cases).

The financial services sector is excluded from the CRD, since there are specific rules governing consumer financial services, namely Directive 2002/65/EC of 23 September 2002 concerning the distance marketing of consumer financial services and Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers. However, it is important to note that the CRD applies when financial services are incorporated within a sales or service contract i.e. through ancillary contracts (even though they would still be subject to the sector-specific legislation applicable to financial services mentioned above). DG JUST guidance notes that *"the same sales or service contract may also cover services that are not governed by the CRD. For example, a sales or service contract may make it possible to pay the price in instalments at a certain interest rate. Such a contract would also be subject to the specific rules governing consumer financial services. The rules on ancillary contracts in Article 15 of the CRD would apply to such contracts by analogy" (pg. 7).* This may increase legal uncertainty for consumers.

The CRD and financial sector legislation

A **comparative law perspective** is provided in a 2016 book that deals with the risks of Distance Selling[93] between Directive 2002/65/EC on the distance marketing of consumer financial services and Directive 2011/83/EU. This notes that stronger levels of protection are needed in some sector-specific areas than the more general approach of the CRD. *"There are material differences among financial services and other ordinary consumer contracts. Financial services are more material and the level of vigilance required by the consumer is higher".* Moreover, it is noted that "most of the differences relate to the type of pre-contractual information required. Under Directive 2002/65/EC, *"more information is required about the providers' representatives in the MS where the consumer is established and about any professional intermediaries, about the trade registry of the provider and about the supervising authority".*

[93] "Dematerialized" Insurance - Distance Selling and Cyber Risks from an International Perspective, Editors: Marano, Pierpaolo, Rokas, Ioannis, Kochenburger, Peter (Eds.), 2016

5.4 Coherence with proposed new EU legislation

Since the CRD was adopted, the Commission has adopted the Digital Single Market ("DSM") Strategy in May 2015. Under the DSM, the EC also launched two new proposed Directives that are related to the CRD, namely:

1. A Proposal for a Directive on certain aspects concerning contracts for the supply of digital content (COM/2015/0634 final - 2015/0287 (COD))
2. A Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods (COM/2015/0635 final - 2015/0288 (COD)).

The Digital Contracts Directive Proposal[94] is intended to fill the legal gap in consumer law that relates to contractual aspects. It would supplement the CRD and amend/repeal other directives. The proposal highlights that whilst some MS (e.g. the NL, the UK) have already developed legislation for contractual aspects related to digital content, there are no EU rules that protect consumers from digital content that is not in conformity with the contract. The proposal therefore aims to avoid further legal fragmentation. It also intends to deal with two contractual issues (the modification and termination of long term contracts) that have previously been highlighted as problems. In addition, it supplements Directive 2000/31/EC (E-commerce Directive). The directive would be a full harmonisation directive and would apply to any contract where the trader provides digital content to the consumer for money (i.e. a price) or in return for data (personal data or other data).

The proposal for a directive "on certain aspects concerning contracts for the online and other distance sales of goods" aims to partly replace the existing Consumer Sales and Guarantees Directive[95] with regard to distance sales of tangible goods (both online and offline). It is proposed that this Directive would also be a maximum harmonisation Directive.

Whilst the above Directives do not appear to be formally within the scope of this study, a number of issues and concerns were raised about the possible effects of the Digital Contracts Directive Proposal on the CRD by some stakeholders. In particular, although most stakeholders welcome the extension of consumer protection to include free online digital content and free online subscription services, there is a concern that digital content is already covered through the CRD and adding to the existing body of legislation goes against the Better Regulation principles and the need for regulatory simplification (more on this in Section 6 & 7).

On 25 May 2016, the Commission adopted a proposal to review the CPC Regulation (as a part of the Digital Single Market e-commerce package). The review is aimed at ensuring more effective and coherent enforcement of EU consumer legislation across borders by clarifying and enhancing the powers of enforcement authorities, detecting and addressing infringements faster, and improving market surveillance and alert mechanisms.

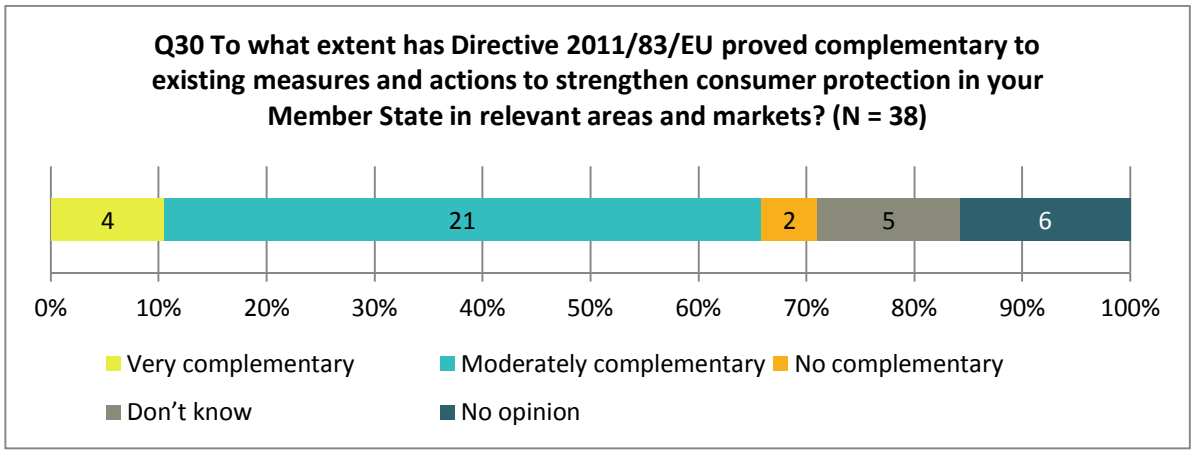
[94] European Commission (2015): Proposal for a Directive of the European Parliament and of the Council on certain aspects covering contracts for the supply of digital content, COM(2015) 634 final.
[95] Directive 1999/44/EC

5.5 Coherence with actions at national level

The survey asked national competent authorities to what extent had the Directive proved complementary to existing measures and actions. Nearly 70% noted that this had been moderately to very complementary (refer to Figure 5-3).

Several competent authorities provided additional comments. One respondent stated that the majority of the requirements of the CRD had existed (in principle) prior to its adoption, whilst a further respondent commented that the transposition of the CRD into national law was used as an opportunity for a systematic review of consumer protection rules.

Figure 5-3: National competent authorities: To what extent has the CRD proved complementary to existing measures and actions to strengthen consumer protection in your MS? (Q30)



5.6 Summary of findings on coherence

Overall, the Directive has been found to be coherent with other relevant EU legislation. The information that traders are required to provide about themselves is substantively similar across the CRD, the Services Directive and the e-Commerce Directive respectively but the CRD includes more detailed pre-contractual information requirements in respect of the description of the product (i.e. main characteristics, functionality and interoperability of digital content) and price. This means that the provision of pre-contractual information by a trader in accordance with the CRD is sufficient to comply with the requirements of the e-Commerce and Services Directives. The fact that the information requirements in older pieces of horizontal legislation were drawn up in different time periods is also an important fact to recall. Moreover, should a provision of the e-Commerce Directive or the Services Directive on the content and the manner in which the information is to be provided conflict with a provision of the CRD, the provision of the CRD shall prevail (according to Article 6(8)(2)). Notwithstanding differences in the underlying objectives of the legislation, some stakeholders agreed that steps could be undertaken to simplify information requirements (through an alignment process and future legislative review or by including all the general information provisions in the CRD and making explicit reference to these being applicable in other pieces of legislation).

As for sectoral legislation, no major problems have been identified relating to coherence. This is because sectors with sector-specific legislation are generally exempt from the CRD and the *lex specialis* principles under Art. 3(2) notes that if any provisions of the CRD conflict with a provision of another Union Act governing specific sectors, the provision of the Union Act shall prevail and shall apply to those specific sectors.

On the other hand, the new legislative proposals on digital content and the online and other distance sales of goods will offer a perfect opportunity to address some remaining uncertainty concerning digital products, as highlighted by the stakeholders.

The following Table summarises the findings of the evaluation in terms of coherence.

Table 5-4: Summary of findings on CRD and its coherence

Key to rating: (reflecting range in evaluation when more than one key) 0: no noticeable impact +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	-: small negative impacts --: moderate negative impacts ---: significant negative impacts
To what extent is the intervention coherent internally?	+/++: although the CRD has reduced legal uncertainty with regard to aspects of consumer protection (e.g. delivery times, passing of the risk, banning pre-ticked boxes), some provisions have been more difficult to interpret and apply such as the exemptions from RoW and the effects from the RoW on traders (diminished value). Some recommendations to improve internal coherence include the provision of additional guidance on definitions, application to free-digital content, exemptions from RoW, accounting for diminished value. Most of the issues raised concern about the specific requirements for online platforms.
To what extent is this intervention coherent with other interventions which have similar objectives?	++: Examination of the linkages between the CRD and other Directives has not revealed significant inconsistencies. However, some stakeholders pointed to the fact that there might be scope to strengthen coherence in respect of the information requirements set out in the CRD and in other relevant horizontal Directives, namely the Services Directive and the e-Commerce Directive, in order to harmonise the basic common requirements across all three Directives insofar as possible. There is a specific issue in relation to improving the coherence between the information requirements set out in Art. 6(1) of the CRD and Art. 7(4) of the Unfair Commercial Practices Directive (UCPD). Many, although by no means all stakeholders, supported eliminating the need to meet information requirements in the UCPD at the marketing stage when such requirements are already incorporated into the CRD at the pre-contractual stage.
To what extent is the intervention coherent with wider EU policy?	++: The Commission has adopted the Digital Single Market ("DSM") Strategy in 2015. Under this, it launched two new proposed Directives that are related to the CRD on digital content and the online and other distance sales of goods. The purpose of the above Directives would be to further harmonise consumer contract rules on remedies for e-commerce and digital content transactions. They will cover free online services such as social media or cloud services and free digital content thus complementing the CRD. No problems with coherence are thus envisaged.
To what extent is the intervention coherent	0/++: the Directive is said to be complementary to existing measures and actions at national level. Nearly 70% noted that

Table 5-4: Summary of findings on CRD and its coherence	
with measures and actions to strengthen consumer protections at national level in relevant areas and markets?	this had been moderately to very complementary but the explanations given did not provide a great level of detail.

6 The relevance of CRD in the current market

6.1 Overview of Section

The assessment of relevance looks at the relationship between the needs and problems in society and the objectives of the intervention. Under this criterion, it is necessary to consider how far the objectives set by the Directive remain relevant, in particular, the objectives of:

- Achieving 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.

The evaluation questions are set out below.

- To what extent have the (original) objectives proven to be appropriate for the intervention in question?
- How well do the (original) objectives (still) correspond to the needs within the EU? Have the needs of consumer protection changed since the adoption of the Directive? Is the scope of the Directive still appropriate? This will include, for example, the following questions:
  - How well adapted is the intervention to subsequent technological or scientific advances? (N.B. Could include issues related to the specify policy here e.g. social, environmental) How well adapted is the Directive to technological or scientific advances?
  - How relevant is the EU intervention to EU citizens? Have the relevant markets changed significantly rendering some of the provisions in the Directive less effective than expected?

6.2 Stakeholders' views on relevance of CRD

The first objective of the CRD, achieving a high level of consumer protection across the EU remains highly relevant, moreover, as online purchases by internet users are only expected to increase in the future. This objective is also incorporated into the Lisbon Treaty and the Treaty on the Functioning of the European Union (TFEU). Article 114 TFEU establishes the legal basis for harmonisation measures aimed at establishing the internal market. It also emphasises the objective of ensuring a high level of consumer protection. As distance and off-premises trade increases, it is also necessary to ensure that enterprises are treated fairly; thus the objective of the CRD on achieving the right balance between consumer protection and the competitiveness of enterprises also remains relevant.

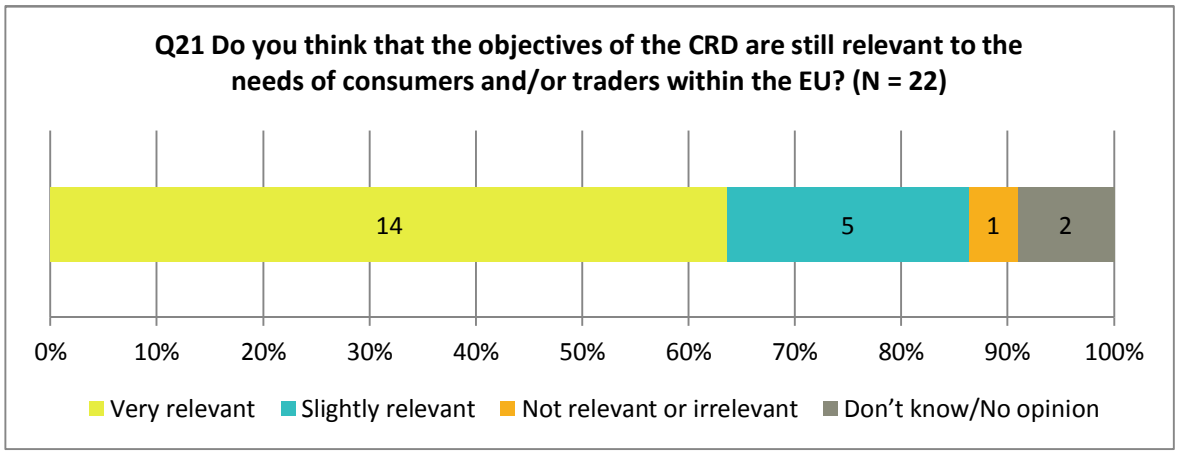
The survey asked stakeholders whether the objectives of the CRD were still relevant to the needs of consumers and traders within the EU. Their views are described below.

Free text from Consumer and Trade Associations survey Q 21: Do you think that the objectives of the CRD are still relevant to the needs of consumers and/or traders within the EU?

- *I would say quite relevant. […].*
- *These objectives are still relevant. However, due to the quick pace of technical development especially in the E-Commerce sector, there will be a need of greater flexibility and more technically neutral solutions than currently shown by the CRD.*
- *Pre-contractual information obligations of traders have to be reduced and simplified. We wonder how icons could help in this respect. An icon/symbol can only present the category of information but not the content of the information.*
- *Under current economic conditions, it is important to protect consumers' economic interests and control unfair and abusive business practices especially in the field of e-commerce.*
- *Yes, these objectives intend to reduce the uncertainty plaguing consumers and businesses when they intervene in these cross-border business transactions*

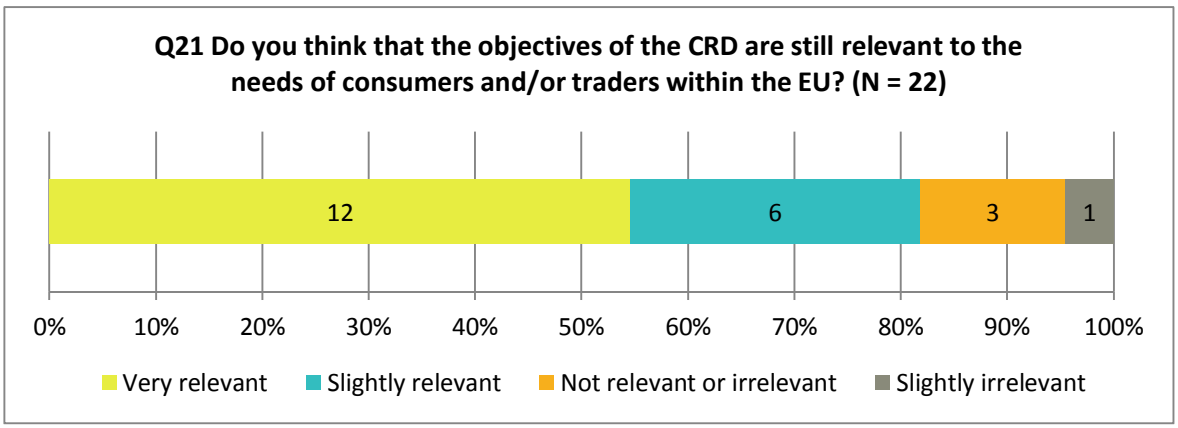
The EESC's report on the evaluation of the CRD also asked stakeholders about the relevance of the Directive. Consumer and business associations as well as trade unions *confirmed the relevance* of this directive on commercial transactions between consumers and businesses including SMEs (ESSC, 2017). The vast majority of the consumer associations (see Figure 6-1) responding to the survey agree that the objectives of the CRD are still relevant to the needs of consumers.

Figure 6-1: Consumer associations' views on the objectives of the CRD and their relevance (Q21)



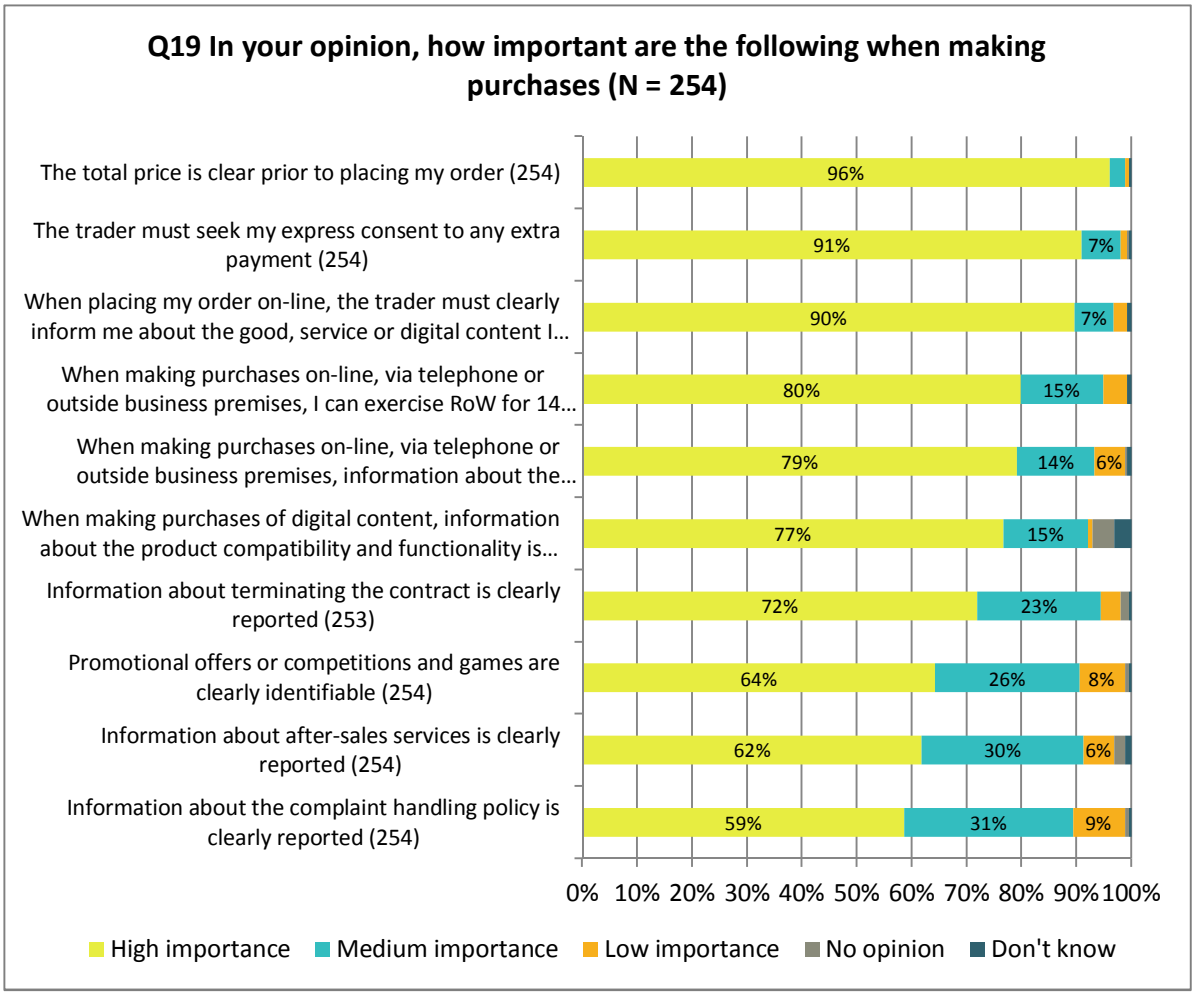
Trader associations' views were also quite positive on the relevance of the objectives of the CRD, with very small differences in opinion in comparison with the consumer representatives (see Figure 6-2).

Figure 6-2: Trade associations' views on the objectives of the CRD and their relevance (Q21)



Consumers were asked which aspects were the most relevant when making purchases with regard to current requirements. Figure 6-3 shows that having the price clear prior to placing the order is regarded as the most important. Of more moderate importance are the after sales and complaint procedure, but still considered to be of high importance by 59% of the consumers responding to the online survey.

Figure 6-3: Consumers' views on the relevance of different provisions (Q19) (NB: % of less than 5% not given).



NB Figure 6-3: More than one option could be selected, hence the sum of the different options is higher than the respondent base (N)

The behavioural experiment also asked consumers about the relevance of different information requirements. The most relevant information requirements were deemed to be the arrangements for payments and total prices, including taxes. Less important, but still relevant to make a decision, were the out-of-court complaint and redress mechanisms (around 60% thought this was relevant).

There is also strong stakeholder support among European and national consumer organisations for the CRD, which is important not only in terms of protecting consumers' rights, but also from a jobs and growth perspective. Throughout the interviews conducted, the Directive was recognised by national authorities and by consumer organisations as being particularly relevant in the context of the launch of the DSM Strategy in 2015.

The use of self and co-regulation in combination with the CRD was suggested as an approach to keep up with the evolving nature of the digital and e-commerce markets. This would still afford the protection provided by the CRD, but also provide an industry specific standard that could be quickly updated.

6.3 Trends and future-proofing

Throughout the interviews and the literature review it has become clear that the increased use of social media by both traders and consumers has given rise to some gaps in ensuring consumer protection. A few stakeholders have identified certain gaps in consumer protection with regard to online platforms and free online services to which the rules of the CRD do not apply. The specific comments concerning these relate to:

- Information requirements (Art. 6 (1)): the CRD applies to all traders. However, stakeholders have mentioned the lack of detailed guidance as to how far information requirements should apply to traders operating via e-marketplaces or online platforms (who is responsible for information requirements, i.e. the online platform or the third party provider).

Example comments related to the sharing economy from the OPC

"Concerning transactions in the context of the sharing economy, it must be clear to consumers whether they are concluding a contract with a consumer or a trader."

"Sharing platforms and sharing economy based suppliers tend to use reputational feedback mechanisms to improve trust between suppliers and consumers (reviews, trustmarks, etc.). However, in our view, those monitoring mechanisms cannot replace mandatory consumer regulation in a case where a sharing economy based supplier is doing frequent and wide-scale consumer business."

".....intermediary businesses should continue to be able to act as a simple exchange channel between private individuals, without having to vouch for the quality of the services provided by private suppliers."

- The CRD does not contain obligations for online platforms to inform the consumer about the criteria they use for the (default) ranking of information they present to consumers, such as offers by competing third party suppliers.

Enforcement authorities and ECCs consulted have noted that there are significant levels of non-compliance with information requirements from traders with regard to their obligations under the CRD when operating via online platforms and e-marketplaces. This view was shared by some consumer organisations about online platforms, particularly with regard to the sharing economy (where many non-professionals provide goods or services without qualifying as traders under the CRD).

Online platforms and information requirements on traders

There remains a question with regard to who is responsible for information requirements: is it the online platform or the actual service provider? And moreover, who is the consumer accountable to in the event of withdrawal (in accordance with Article 14)?

As an example, when signing a contract with an online platform offering hire car services and signing up for fully comprehensive insurance, it is not uncommon that when picking up the vehicle from the car rental company, a credit card deposit is taken in case of accidental damage. Sometimes, the terms and conditions of the ultimate service provider may differ from those of the online platform. Moreover, if any charge is levied following the car hire, the consumer faces uncertainty as to how to proceed to claim his/her money back (must he/she claim this back from the online platform provider or the car rental company who may have already deducted the money). This creates uncertainty for consumers that frequently do not know how to proceed in case of a conflict or do not know whether the platform is an intermediary or the real service provider.

Similarly, stakeholders have raised concerns about the different requirements applying to online platforms acting on behalf of traders and those acting on behalf on individuals or both, say for instance in the case of hotels and platforms such as Air B&B, where many individuals might offer their private properties for accommodation purposes in addition to professional traders. According to one trade association, there are significant asymmetries between the information requirements set on professional versus those that apply to non-professionals (currently particularly topical in the sharing economy context).

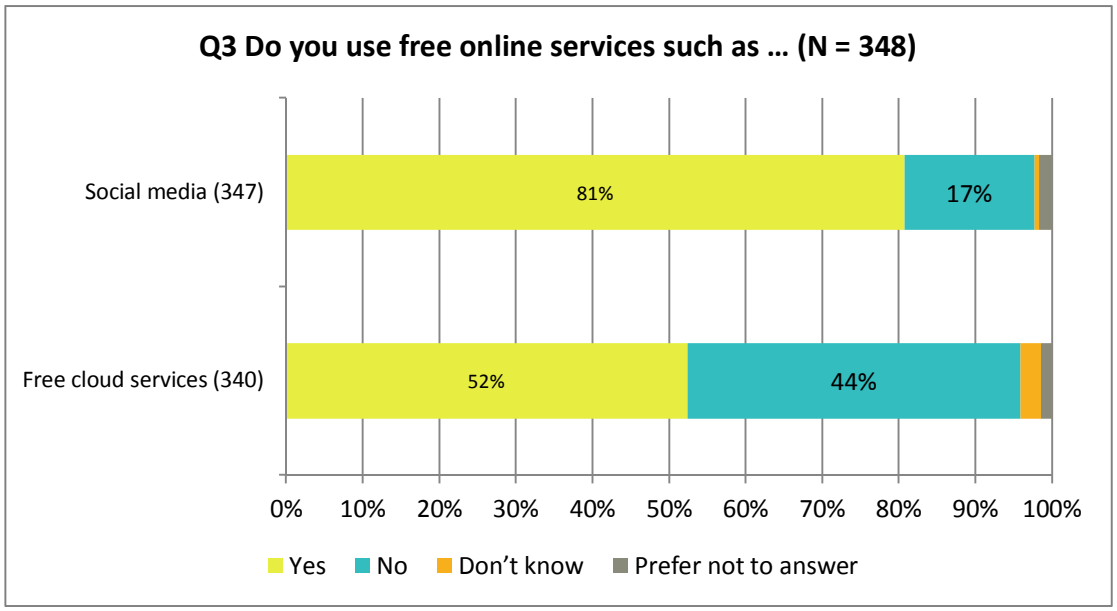
The EESC's report notes:

> *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 often exclude all their obligations under the Terms and Conditions and the CRD only governs the direct relationship between the trader and consumer.*

As regards other platforms such as free online services there are also articles in the press with regard to consumers complaining directly to social media providers about frequent changes in terms and conditions in respect of privacy aspects and the use of data by free online services. At present, the trend is for consumers to complain directly, however, since they do not feel they have the right to complain to an ECC or national consumer authority under EU consumer and marketing law unless they have paid for a good or service. This may suggest that free online platforms such as social media and storage services are included within the scope of the CRD.

Stakeholders were asked about the use of free online services and consumer protection in the survey. Around 81% of consumers responding to the online survey use social media and around 52% use free cloud services. Consultation has revealed that the level of information provided about these services is however low. Nearly half of the respondents noted that they did not receive very much information about these services or they received no information at all.

Figure 6-4: Consumers: Use of free-online services (Q3)



Stakeholders were asked about the following changes to the scope of the CRD in relation to online platforms:

- Changes to the pre-contractual information requirements for free online services: before subscribing to a free online service (such as social media e.g. Facebook, Twitter etc. or cloud storage of pictures, movies), should the consumer receive all the relevant information about such a free service contract – the same as for a paid service contract?
- Changes to the information requirements for search engines and online platforms: When using an online platform to search for information or a product, should the consumer be informed about the ranking criteria that the platform uses when presenting the results?
- Changes to the RoW: When subscribing to a free online service (such as social media e.g. Facebook, Twitter etc. or cloud storage of pictures, movies), should the consumer have a RoW from such a free service contract within 14 days from conclusion?

The views of national competent authorities and consumer associations are depicted in Figures 6-5 and 6-6. There is general support to extend the scope of the CRD to these services to ensure coherence and the same level of protection.

Figure 6-5: National competent authorities' views on additional requirements for online platforms

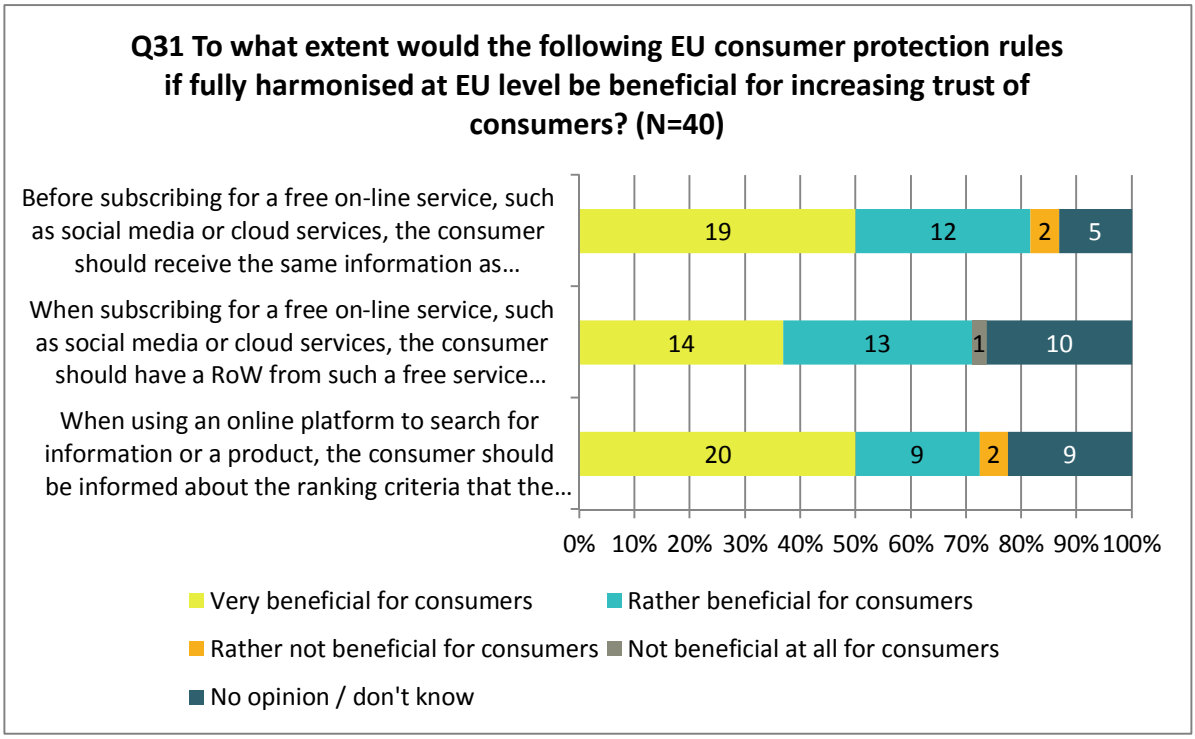
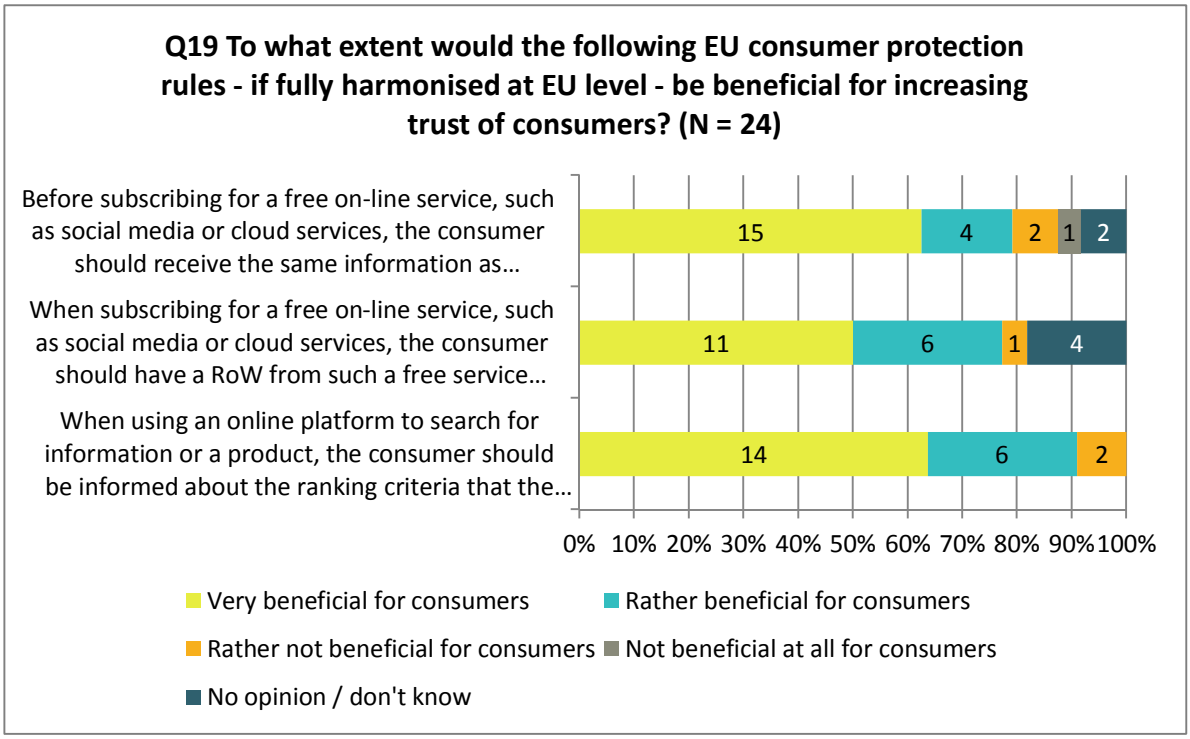
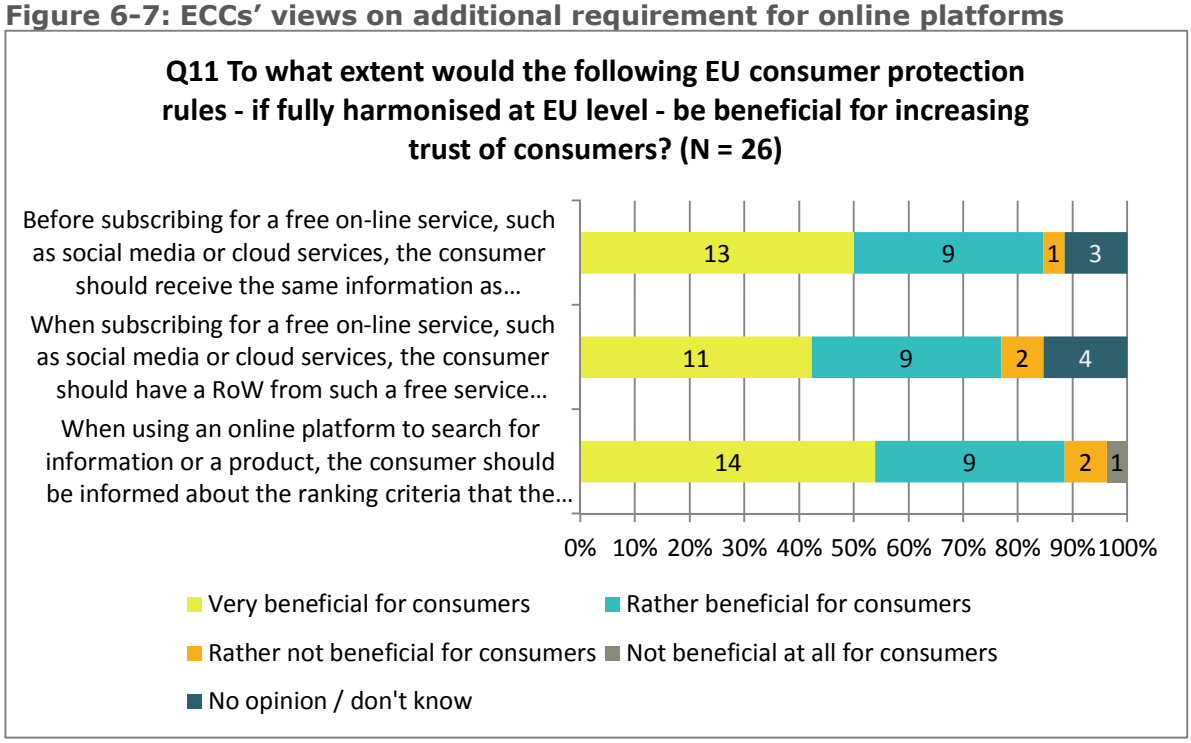


Figure 6-6: Consumer associations' views on additional requirement for online platforms



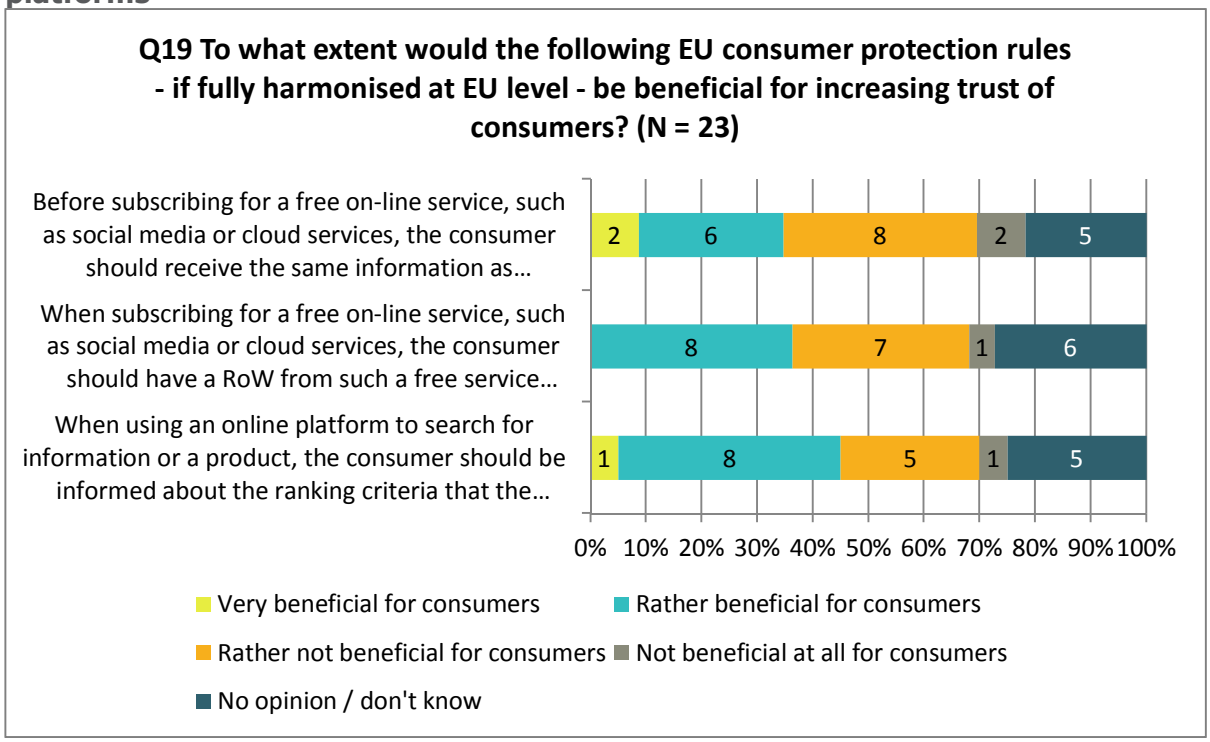
ECC also thought that these measures would be beneficial for consumers, as depicted in Figure 6-7.

Figure 6-7: ECCs' views on additional requirement for online platforms



Trade associations' views with regard to free online services were more mixed, with roughly the same percentages thinking that this would be rather beneficial and not beneficial for consumers (Figure 6-8). Some of their responses are given below. The main obstacle to further regulation is that it can stifle innovation but some agreed that the level of protection should be the same.

Figure 6-8: Trade associations' views on additional requirement for online platforms



Trade Associations' views

As elaborated above, consumers should rely on equal protection standards, irrespective of whether the commercial service remunerates money or other kind of remuneration…

Transparency of ranking criteria is important. Equally important is that these requirements are easy-to-understand and come in conjunction with a general obligation for non-discrimination.…

providing information on ranking may act against the commercial sensitivity of information for traders whereas additional requirements on free online service may stifle innovation.

The creation of new or increased legal information requirements or RoW for online services which are offered without payment, would create obstacles in the development of new services. It would hinder the flexibility in the development of these free services and it might even lead to a reduction of free offers

Many services provide this information anyway whether or not the service if free and is a good thing but insisting this is provided may be a burden to business as it is likely the consumer would not read this information as it is a free service so they see it as irrelevant.

Free online services are currently de facto delivering lots of information and offering easy ways to quit service due to competitive reasons - consumer regulation not needed.

There are reasonable doubts that making things more and more difficult/complicated will be beneficial for consumers. Transparency with regard to online platforms is an important aspect.

In May 2016 the EC launched a comprehensive assessment of the role of online platforms and adopted a Communication on Platforms. According to the Communication, online platforms are subject to existing EU rules in areas such as competition, consumer protection, protection of personal data and the single market freedoms. The Communication also notes that effective enforcement is crucial. Among the general principles highlighted are: transparency and fairness for maintaining user trust. However, it is important again to strike the right balance between users and businesses, as *the platform economy presents major innovation opportunities for European start-ups, as well as for established market operators to develop new business models, products and services.*

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS Online Platforms and the Digital Single Market Opportunities and Challenges for Europe

A 2016 Eurobarometer survey on online platforms showed that 72% of responding consumers were concerned about the data collected about them or their activities. 72% also considered that online platforms should be regulated to limit the extent to which they display different results to users based on the data collected about their activities. At the same time, 56% of responding consumers indicated that they did not read the terms and conditions of online platforms.

Over 75% of respondents among the general public consider that more transparency is needed, in particular on how platform remuneration influences the listing of search engine results, on identification of the actual supplier of services or products, and on possible misleading practices including fake reviews.

Source: CEC (2016)

In addition, in June 2016[96] the EC adopted a Communication on a European agenda for the collaborative economy and a staff working document on guidance on implementation of the Unfair Commercial Practices Directive (UCPD) in May, both of which provide guidance on how to apply EU consumer and marketing law in the sharing economy context. The findings of the EESC suggest changes to the definition of consumer in the light of the sharing economy.

The CRD – Future proof

An updated CRD must be clear in identifying the beneficiaries of consumer rights. Finally, due to developments in the area of e-commerce, the current definition of the average consumer is out of date and too demanding on the consumer. A better distinction of consumers and professional is needed when it comes to online platforms (Blablacar, Airbnb).

Source: EESC (2017)

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

The evaluation is also aimed at assessing the relevance of specific requirements, in particular the pre-contractual information requirements and the RoW, and whether there is the possibility of simplifying the rules without endangering the achievement of the goals.

With regard to pre-contractual requirements, the different sources of information for this evaluation study (including the findings from the Consumer Summit) have questioned the added value of pre-contractual information requirements as they currently stand in the CRD. It has been suggested during the interviews that the pre-contractual requirements should be reduced and/or simplified, to the benefit of both traders and consumers. The EESC report further suggested simplifying information requirements, focusing on quality rather than quantity. It notes that *one solution would be to provide that references to websites where all information is accessible.* Stakeholders attending the Consumer Summit also agreed that pre-contractual information requirements *should always be included and easy to find on traders' websites*.

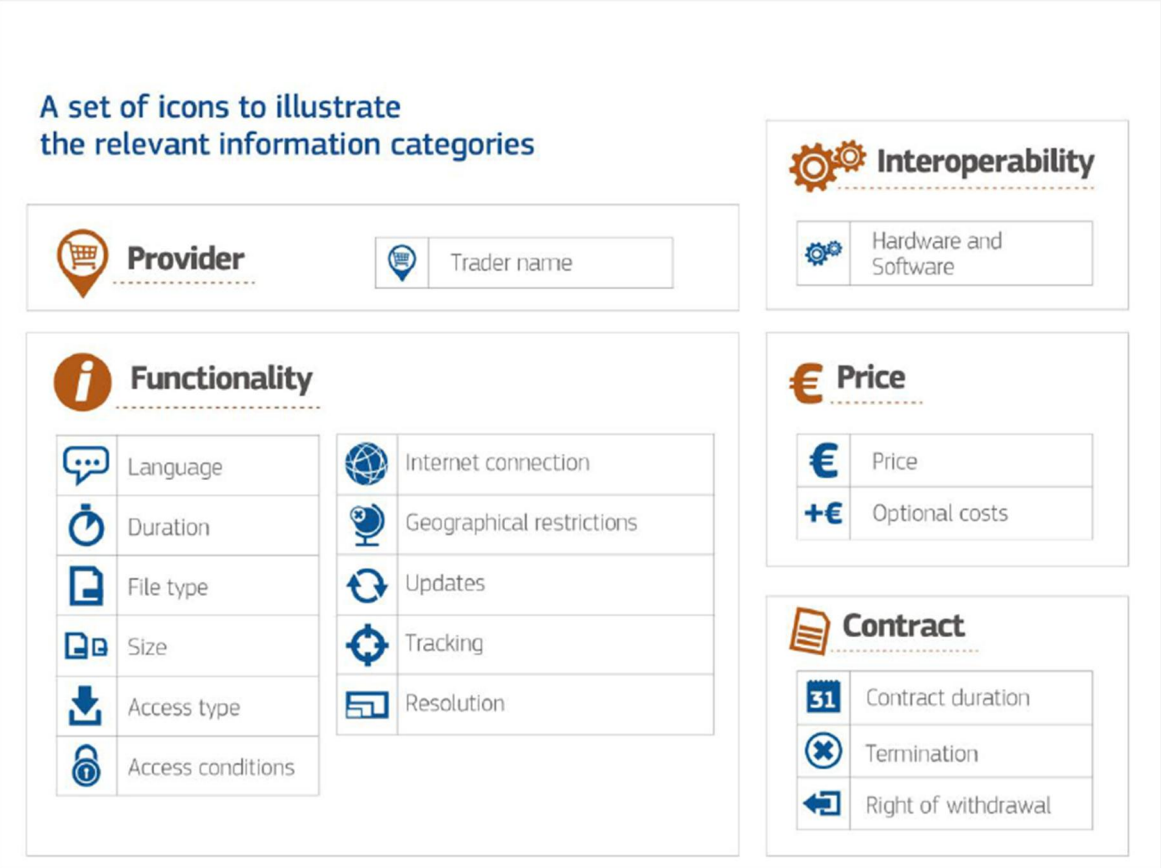
In addition, the relevance for consumers of all pre-contractual information has been questioned. As noted in Section 6.2, some provisions such as the total price and the characteristics of the product when making purchases of digital content are more relevant to consumers than others (such as information on complaints policy). One possible solution is to use icons or pictograms so consumers can find the pre-contractual information easier to digest. The use of icons is suggested in the model form for digital content in the CRD guidance, in its Annex I.

[96] COM(2016)0356

Annex I – Model for the display of consumer information about online digital products

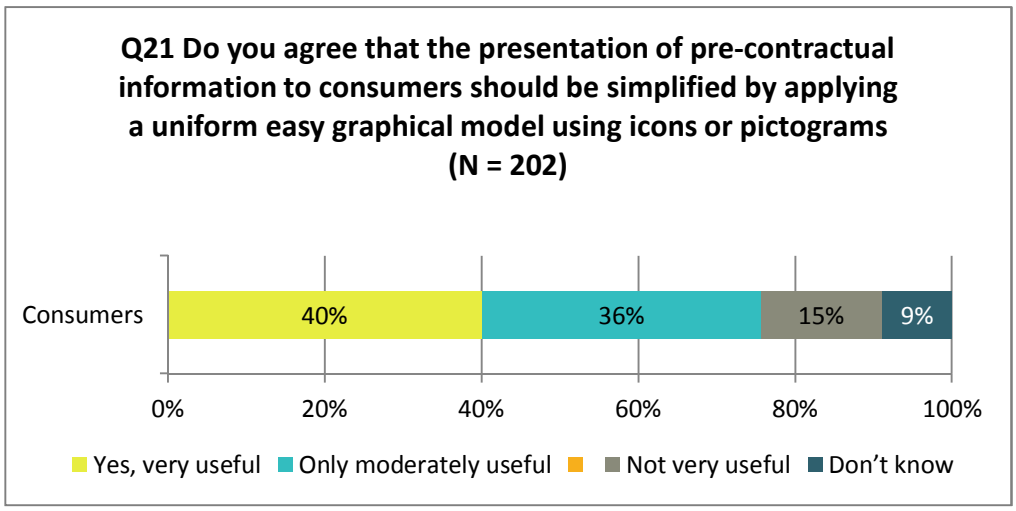
The model is intended both to provide consumer information in a uniform and comparable manner and to help industry comply with the information requirements under the Directive for digital products. Specifically, the model provides one way for traders to give the necessary pre-contractual information about a digital product in accordance with Article 8(2) and (4) of the Directive (discussed above in Chapter 5). It does not restrict the trader's right to provide the required information in another legally compliant form.

Traders should be encouraged to use the information categories with their icons, the table-like display, and the order of the information items as shown in the following examples. Other graphical elements, such as font or colours, can be adapted by traders to their selling environment.



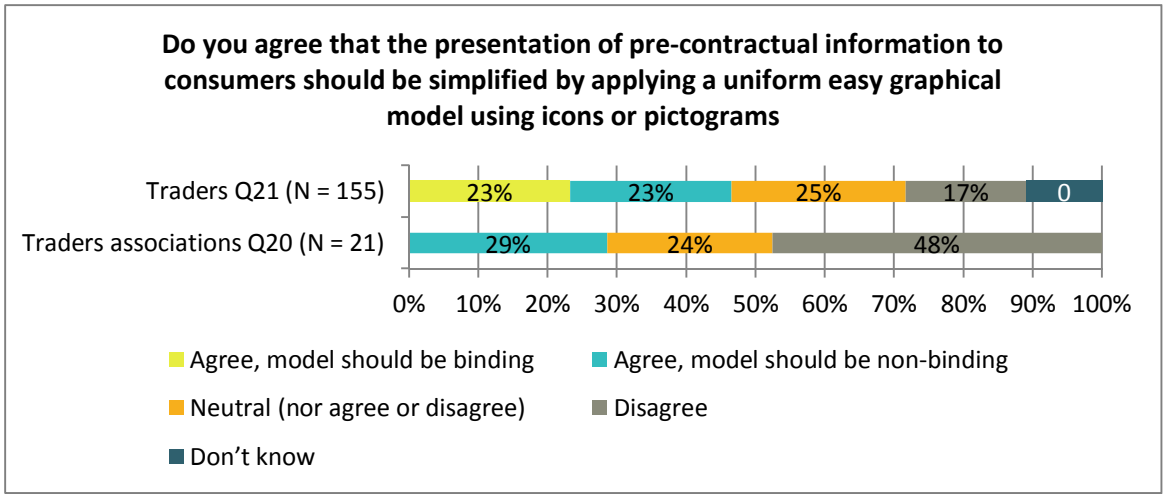
The online survey asked stakeholders about their view on whether pre-contractual information requirements could be simplified by using a uniform easy graphical model with icons. 40% of consumers agreed that the presentation of pre-contractual information in graphic form would be very useful.

Figure 6-9: Consumers' views on the use of a graphical model with icons for pre-contractual information



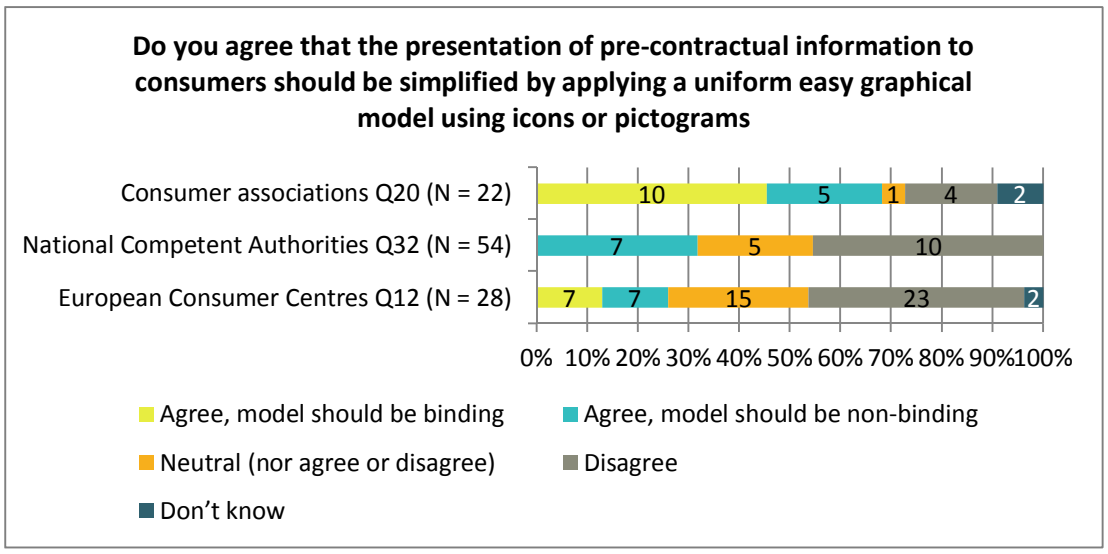
Although traders advocated the simplification of pre-contractual information, the view of traders and trade associations on a uniform graphical form with icons differed from that of consumers and their associations. 32% of the trade associations agreed to the use of non-binding icon model (note that the total number is 10 as 22 trade associations responded to this question), 46% disagreed with the use of a graphical model with icons. Traders however were more in favour of the icon model with views divided on whether this should be binding or not.

Figure 6-10: Trade associations' views on the use of a graphical model with icons



The views of the national competent authorities, the consumer associations and the ECCs on the use of a uniform graphical model with icons are depicted in the next Figure.

Figure 6-11: Views on the use of a graphical model with icons for pre-contractual information



The consumers' representatives and ECCs tend to agree that the model should be binding; most of the national competent authorities disagreed with this recommendation.

The finding of the behavioural experiment seem to suggest that there may little added value from presenting pre-contractual information in the form of icons. The 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[97] goods. The products were smartphones and streaming content (movies). The study findings[98] concluded that the presence of icons hardly seems to affect the use of pre-contractual information. Thus, it did not seem to matter much whether the CRD items were presented with or without icons. However, the presence of icons does influence respondents' understanding of CRD items. When icons were present, the CRD information was understood less well compared to when no icons were present. Thus, adding icons did not seem to facilitate understanding of the information and for some information items even lowers understanding. There may thus be little added value in using icons. Support for a binding model also varies among stakeholders consulted under this study.

A key finding from the European Consumer Summit was that whilst the possible future use of a model form to communicate required information to consumers was welcomed, there was a consensus that this should be voluntary only, since some written information is still required; 69% of respondents were in favour of including graphical elements (e.g. icons) in such model.

Evidence from the survey and the sweeps also suggest that the withdrawal form is not being used as much as it was intended. The added value of the withdrawal form therefore is less than certain at this time. However, enforcement actions have been carried out by the national authorities as a result of the recent EU CRD sweep; so impacts in this regard are expected to be more positive in the near future.

[97] Information and communications technology.
[98] The final findings are expected to be available on time for their inclusion in the Final Report of this evaluation study.

6.5 Summary of findings on relevance

Although there is already a high degree of approximation as a result of the CRD (refer to legal map in Section 2), the CRD's objective of proper functioning of the internal market by approximating certain aspects of MS's laws is still relevant. This is mainly due to 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 MS other than their own; thus reducing the costs of meeting other MS' regulation when trading cross-border.

Stakeholders responding to the survey and in our interviews have thus recognised that the CRD is, overall, still relevant in terms of promoting the growth and development of B2C e-commerce. From an internal market perspective, the CRD is seen as crucial to ensure protection for cross-border online purchases of goods, services and digital content.

The fact that the Directive covers digital content for the first time is especially relevant from the point of view of pursuing the objectives in the DSM Strategy which was adopted in 2015. The Directive was recognised as being particularly relevant in the context of the launch of the DSM Strategy in 2015. However, the increased use of social media by both traders and consumers has highlighted some gaps in ensuring consumer protection. Gaps have been identified by stakeholders with particular mention of free trials, free online services and digital content that need addressing.

There was recognition among some consumer associations and national authorities interviewed however that free services should be covered by the CRD. The rationale given was that social media and "free" digital content and services are markets that are developing rapidly and increasingly being used by traders, including rogue traders. Thus, it is important to extend rights to these areas even if no payment is made to provide consumers with adequate protection. It is however equally important to strike the right balance not to stifle innovation and the competitiveness of enterprises. There is scope to address these gaps under the DSM Strategy and the CRD working in coordination.

On the other hand, although consultation under this study has supported the use of a graphical model with icons for presenting the pre-contractual information, the findings of the behavioural experiment seem to suggest very little added value in terms of adding icons and their understanding. Thus, it can't be recommended that the use of model forms with icons is made compulsory but there may be merits in promoting it on a voluntary basis for specific sectors and product categories, similar to the present suggestions given in the CRD guidance. Perhaps, a possibility is to include this under the self and co-regulation advocated by traders, owing that traders appear not to object to the use of graphical models (as reflected in the survey responses).

The following table summarises the findings of the evaluation with regard to the relevance of the CRD.

Table 6-1: Summary of findings on CRD and its relevance	
Key to rating: 0: no noticeable impact +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	 -: small negative impacts --: moderate negative impacts ---: significant negative impacts
To what extent have the (original) objectives proven to be appropriate for the intervention in question?	++/+++: According to the legal map presented in Section 2 MS's regulatory frameworks have been harmonised and they are no longer a barrier to traders for conducting cross-border activities.
How well do the (original) objectives (still) correspond to the needs within the EU?	+/++: Generally, stakeholders agree that the objectives are still highly relevant, as there needs to be a common framework for the different contracts, but concerns have been raised with regard to free trials and online services as well as gaps in protection for digital content.
How well adapted is the intervention to subsequent technological or scientific advances?	-/0: The increased use of social media by both traders and consumers has highlighted some gaps in ensuring consumer protection. Consultation has highlighted that traders using social media sometimes fall short of compliance. The Directive falls short to technological or scientific advances; for instance there is legal uncertainty with regard to the regulatory framework applicable to online platforms.
How relevant is the EU intervention to EU citizens?	+: as above (the increase in the use of social media has made the CRD slightly less effective in ensuring consumer protection, according to consultees). This highlight the importance of EU intervention in order to strike the right balance between consumers protection but also not to stifle innovation and the competitiveness of enterprises. There is scope to address these gaps under the DSM Strategy and the CRD working in coordination.
Is there a possibility of simplifying the Consumer Rights Directive's rules and their effects on the entire EU consumer and marketing regulatory framework and of reducing the burden on businesses without endangering the achievement of the goals of Directive 2011/83/EU?	+: main issue raised by interviewees relates to the pre-contractual information requirements and the need for simplification. The merits of setting a binding system for graphical model using icons is not warranted on the basis of consumer understanding and use of pre-contractual information but these could be promoted on a voluntary basis.

7 Added Value of the CRD and its Implementation

7.1 Overview of section

The Treaty on the Functioning of the European Union (TFEU) states that consumer protection issues are a shared competence of the EU and the MS. Once EU legislation in this domain has been drawn up, adopted and has come into force, it is then the responsibility of the MS to implement EU legislation, as transposed into national laws, and to effectively enforce the rules.

Under the principle of subsidiarity (Article 5 Treaty on European Union), the EU should only act when the objectives can be better achieved by Union action rather than by potentially varying action by MS. It requires consideration of the value and improvements which are caused by the EU rather than another party taking action.

The assessment of EU-added value has examined the extent to which changes can reasonably be argued to be due to EU intervention, rather than any other factors. In both cases, European added value may be the results of different factors: strengthened coordination, greater legal certainty for traders and consumers within the context of the internal market, and increased consumer protection on a more harmonised basis, the extent of effectiveness of the CRD in terms of its regulatory approach (maximum harmonisation), complementarities, etc.

The evaluation questions on added value are set out in the following box.

- What is the additional value resulting from Directive 2011/83/EU, compared to what could have been achieved through MS legislation at national and/or regional levels?
- 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 survey included a question with regard to the added value of the CRD. The CRD follows the principles of subsidiary in that it allows MS a number of regulatory options, as described in Section 2.3. Only a few MS have however taken up these choices in respect of a limited number of sub-Articles within the CRD. Stakeholders that participated in this study have been given a chance to provide their opinions on the impacts of these regulatory options in order to assess whether they have had any added value.

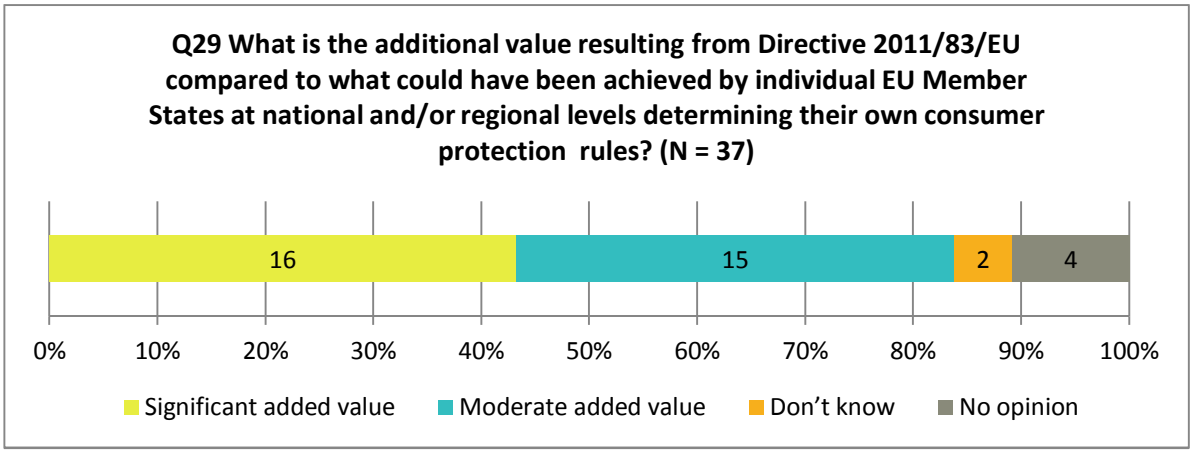
7.2 View of stakeholders on added value

To answer the first evaluation question, national competent authorities were asked specifically about the added value of the CRD. Their responses are depicted in Figure 7-1. As can be seen, 43% of competent authorities viewed there as being significant added value from the Directive and another 41% saw moderate value added in the intervention. None of the competent authorities responding viewed there as being "no added value" from the CRD.

Comments indicated that uniform and harmonised rules on consumer rights across Europe was the key area of added value. This has led to added value for traders in the form of increased cross-border sales, access to a wider market, greater legal certainty, and compliance cost reductions; it has also led to benefits for consumers such as increased buying confidence, equal treatment, greater legal certainty, more choice and

lower prices. These benefits suggests that the Directive has added value. In addition to these areas, it was also commented that the CRD has helped to strengthen the enforcement of consumer rights and the handling of cross-border complaints and infringements.

Figure 7-1: National competent authorities' views on added value of the CRD (Q 29)



A small number of national competent authorities stated that arrangements or rules for consumer protection already existed or would have been implemented had the CRD not been adopted. The grey box below shows a sample of comments made by national competent authorities.

Free text from National Competent Authority survey Q 29: What is the additional value resulting from Directive 2011/83/EU compared to what could have been achieved by individual EU Member States at national and/or regional levels determining their own consumer protection rules relating to purchasing goods, services and digital content?

A European set of rules applicable to all the EU member states: easier for traders, easier for consumers (same period of withdrawal, information, confirmation of contracts, etc.)

The added value is related mainly to cross-border transactions. Harmonised rules in all member states make consumers more confident when purchasing online and make it easier for traders to offer goods and services cross-border.

Promoting intra-Community trade and the provision of services, providing greater legal certainty for traders.

The additional value is the uniformity on information and withdrawal. Equal treatment of consumers throughout the community. No burden on consumers to research different rights if buying from other member state websites. Uniformity is also important for traders. The same compliance requirements across all their businesses within the community means reduced compliance costs. The more markets the trader operates in the greater the cost saving and increased exposure to business. Increases consumer confidence in engaging in cross-border distance contracts.

The CRD harmonised only certain areas of consumer protection rules. The existing consumer legislation across the EU is still fragmented and therefore complicated and full harmonisation could be in some cases helpful. Fully harmonised rules may increase legal certainty for both consumers and traders across the EU, but only those rules, that are essential for cross-border trading. The purpose of the said directive is to mainly contribute to the proper functioning of EU market; therefore the full harmonization was

necessary to reach this goal. Moreover, there is another benefit in the form of better enforcement of consumer rights across the EU.

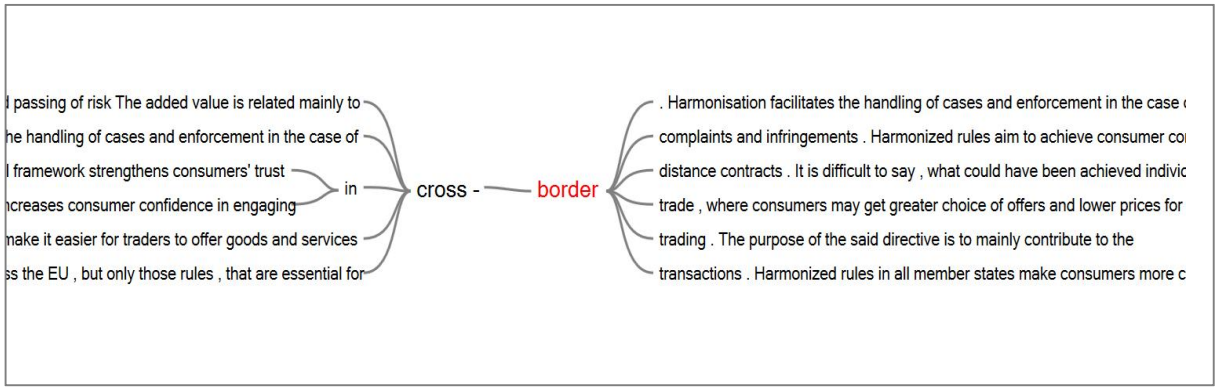
The following word cloud[99] shows the words most frequently used by the competent authorities in their comments. The figure illustrates how added value is understood in the context of cross-border trade and harmonisation. Of note too are the RoW and legal certainty for distance contracts.

Figure 7-2: Most frequently used word by national competent authorities in relation to added value

Using word trees generated from the most frequently used words (see example of a word tree in the figure below), it was possible to explore the use of a word in context, and therefore to identify any key themes associated with that word.

[99] 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.

Figure 7-3: Example of a word tree for 'border'



The word cloud analysis also allows the most frequently used words to be linked with the number of themes generated. A summary is provided in the box below. This analysis supports the idea that the CRD increases the volume of cross-border transactions, by strengthening trust both among and between consumers and traders. In addition, according to some stakeholders, a maximum harmonisation approach has been helpful in strengthening cross-border enforcement of provisions in EU consumer rights legislation, with an improvement due to CRD implementation compared with the predecessor legislation.

Examples of stakeholder comments on themes identified through the word cloud analysis

'Border':

- Harmonisation facilitates the handling of cases and enforcement in the case of cross-border complaints and infringements
- The uniform legal framework strengthens consumer trust with regard to cross-border trade

Value:

- The added value of the Directive consists in improved cross-border transactions resulting from a more uniform legal framework

Harmonized:

- Harmonised rules increase consumer trust when purchasing online
- Harmonised rules make it easier for traders to offer goods and services cross-border

The legal mapping provided in Section 2 concluded that, generally, the CRD has increased the level of protection across the EU compared with predecessor legislation, with very few exceptions. This would indicate that there has been added value from the adoption of the CRD as a whole across most MS as it seems unlikely that this would have been achieved by MS acting alone at national and/or regional level.

The CRD also takes the principles of subsidiarity in that it allows MS a number of regulatory options, as described in Section 2. Stakeholders contributing to this study have been given a chance to provide their opinions on the impacts of these regulatory options in order to assess whether they have had any added value. Consumer associations' responses are shown in Figure 7-4. Almost half of the responding consumer associations said that the specific requirements applying in their country had been

positive (36%) or very positive (9%) for consumers. Trade associations' views were mixed concerning the impacts on competitiveness (see Figure 7-5). Specific mention concerning the positive impacts was given to the confirmation of contracts concluded by telephone (Art. 8). Other choices such as the exclusion based on value are not seen to be very positive by consumer associations.

Figure 7-4: Consumer associations' views on national requirements and impacts for consumers (Q 7)

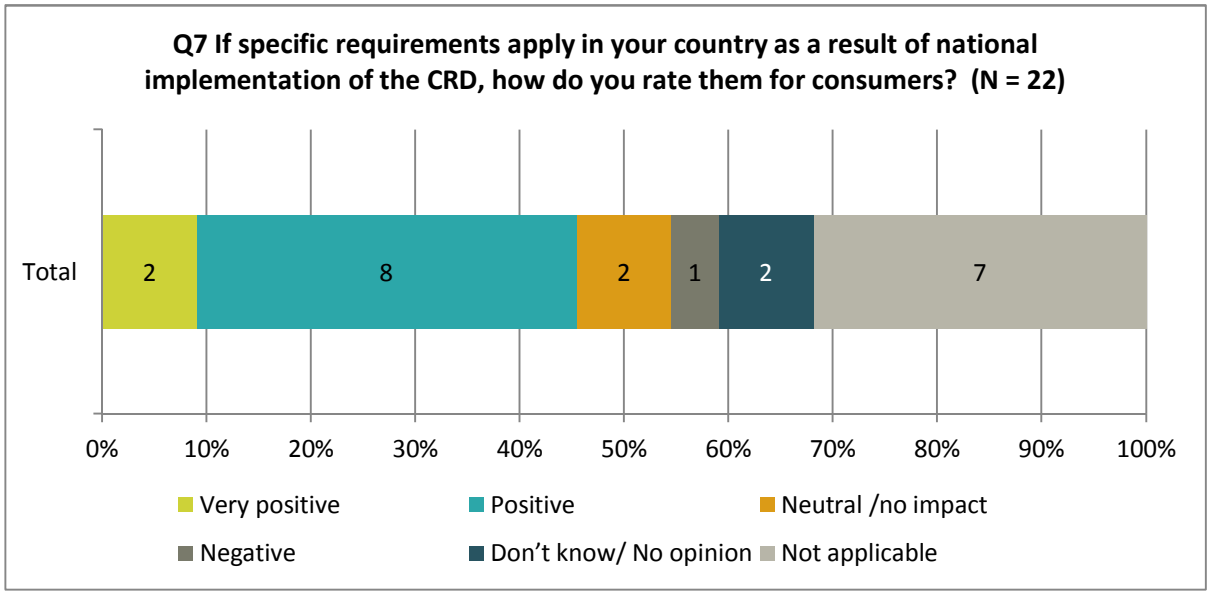


Figure 7-5: Traders' associations' views on national requirements and impacts for traders (Q 16)

Free text from Consumer and Trade Association survey Q 7: If there are specific requirements that apply in your country as a result of national implementation of the Consumer Rights Directive, how positively or negatively do you rate them for consumers?

France has maintained protective consumer provisions that already existed in its regulations (for example, prohibition of payments in the case of door-to-door selling, specific rules for telephone sales and language requirements). It is imperative that these provisions be maintained.

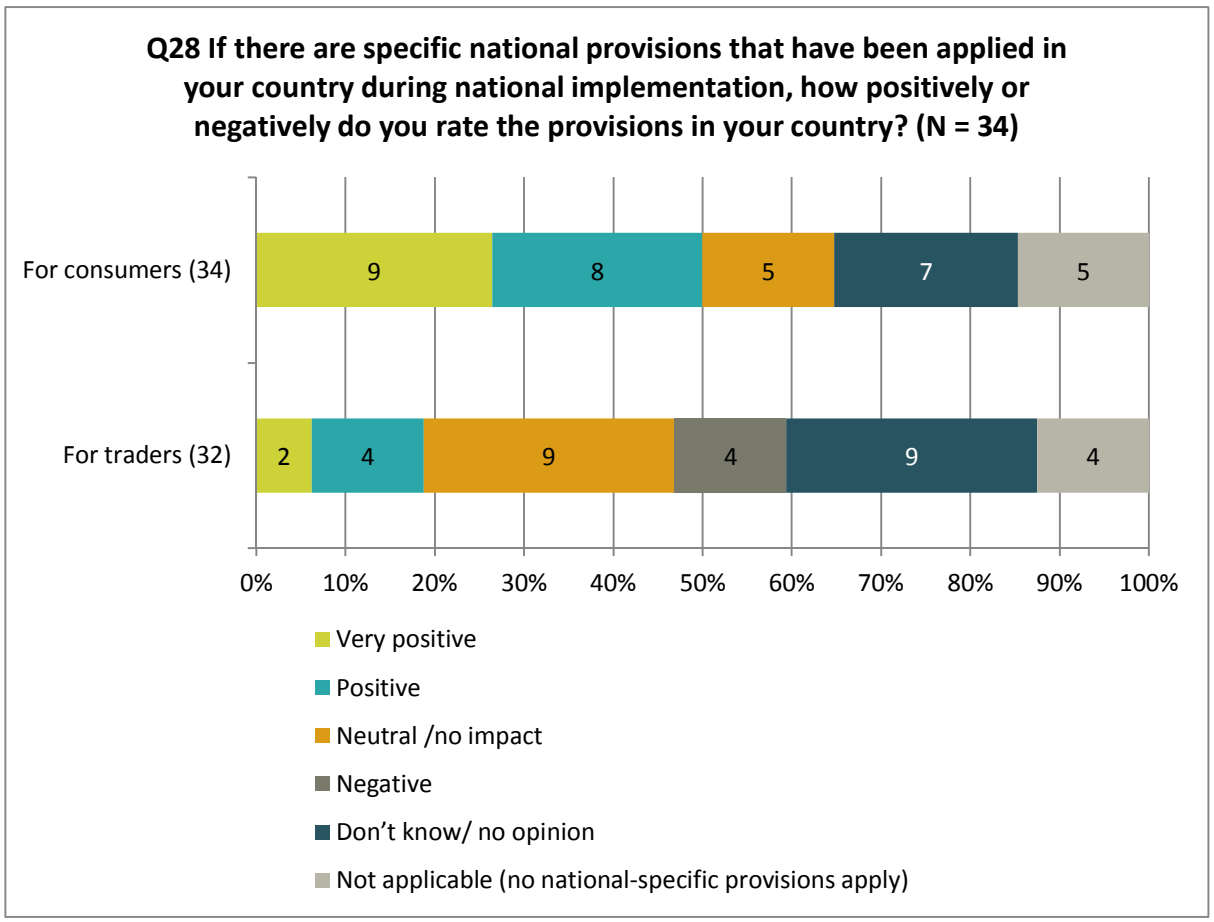
Requiring written confirmation for contracts concluded by telephone represents more security for consumers and solves the problem regarding the proof whenever the consumer has not concluded the contract.

To require written confirmation for contracts concluded by telephone - does not work in practice (Lithuanian experience); Not to apply a simplified information regime for off-premises contracts to carry out repairs or maintenance - this provision applies only for orders of urgent/express services.

In Austria there is an exemption for off-premises transactions below € 50, which is too high in some cases. Besides there is a possibility that this limit may be abused by inventive new contract/business models. Concerning contracts to carry out repairs or maintenance Austria implemented simplified information obligations. This provision is rarely applicable in practice as consumers often do not know in advance the exact price they will have to pay (as the price depends on the volume of the repair or maintenance). Austria implemented the requirement of a written confirmation for contracts concluded by telephone which is good for consumers as they are more aware of the conclusion of the contract.

National competent authorities were also asked about the impacts from regulatory choices on both consumers and traders. Half of the respondents thought that the regulatory choices had been very positive or positive for consumers. For traders, the impacts were regarded to be less positive and 28% of respondents agreed that the impacts on traders from the regulatory choices had been negative. The main reason for this negative impact is that the regulatory choices work against the principles of full harmonisation.

Figure 7-6: National competent authorities' views on national provisions and impacts on consumers and traders (Q28)



7.3 Summary of findings on added value

The main added value from the Directive had been related to the reduction in the level of regulatory fragmentation in respect of consumer protection legislation for distance and off-premises contracts across the MS. This has benefited cross-border trade for both traders and consumers. Our analysis and consultations suggest that overall, the CRD has added value to the level of consumer protection across most MS, with few exceptions. This is not to say however that the CRD could not benefit from further simplification in order to reduce administrative burdens on traders. In particular, the simplification of pre-contractual information requirements has been recommended by some stakeholders and may merit further investigation by the Commission.

The following table summarises the evaluation findings with regard to the added value of the CRD.

Table 7-1: Summary of findings on CRD and its added value

Key to rating:	0: no noticeable impact
+: small positive impacts	-: small negative impacts
++: moderate positive impacts	--: moderate negative impacts
+++: significant positive impacts	---: significant negative impacts

Table 7-1: Summary of findings on CRD and its added value	
Key to rating: +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	0: no noticeable impact -: small negative impacts --: moderate negative impacts ---: significant negative impacts
What is the additional value resulting from Directive 2011/83/EU, compared to what could have been achieved by MS at national and/or regional levels?	++/+++: most of the MS increased their level of protection from implementation and it would have been unlikely that MS could have solved regulatory fragmentation in relation to consumer protection legislation for distance and off-premises contracts on their own.
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)?	+/++: limited impact from the RoW form, according to the results of the mystery shopping and sweep but coordinated enforcement actions are being planned in the near future. Impacts in this regard are therefore expected to be more positive.

8 Conclusions and recommendations

8.1 Summary of findings

The comparative analysis of the legislative situation pre-CRD and post-CRD has highlighted that, for many of the key provisions of the CRD, consumer protection has been strengthened in most, if not all, MS. This is because there was either no such protection previously (e.g. for digital content and prohibiting default options on websites) or, where there was already some degree of protection, legal uncertainty has been reduced through more detailed wording of the applicable rules (e.g. on delivery and passing on the risk).

An examination of national legislation in the different MS prior to the CRD's implementation has shown a significant degree of variation in the rules on consumer protection among MS. For instance, the rules on delivery varied, as did the periods for the RoW. Thus, the CRD has reduced regulatory differences between MS and within the context of the internal market and a maximum harmonisation approach, has increased regulatory certainty across MS for traders and consumers selling and buying cross-border.

The previous Sections have also described stakeholders' views on different aspects of the Directive concerning the different evaluation criteria of *coherence, effectiveness, efficiency, added value* and *relevance*.

Based on a detailed assessment of the feedback from consumer and trade associations, the CRD was found to still be relevant as it provides consumers with increased protection and buying confidence, especially when looking to purchase goods and services cross-border. It also affords traders the opportunity to expand their market through cross-border sales and provides a level playing field within Europe. However, some small traders/companies find the costs of meeting some of the requirements of the directive to be burdensome. These costs stem from provisions such as pre-contractual information requirements and the consumers exercising their RoW (in relation to distance and off-premises contracts). 40% of the consumers responding to the online survey have availed their RoW but some sectors appear to be more affected by returns than others (e.g. textiles). Traders and their associations were concerned about consumers' RoW for used goods and requested legislative changes.

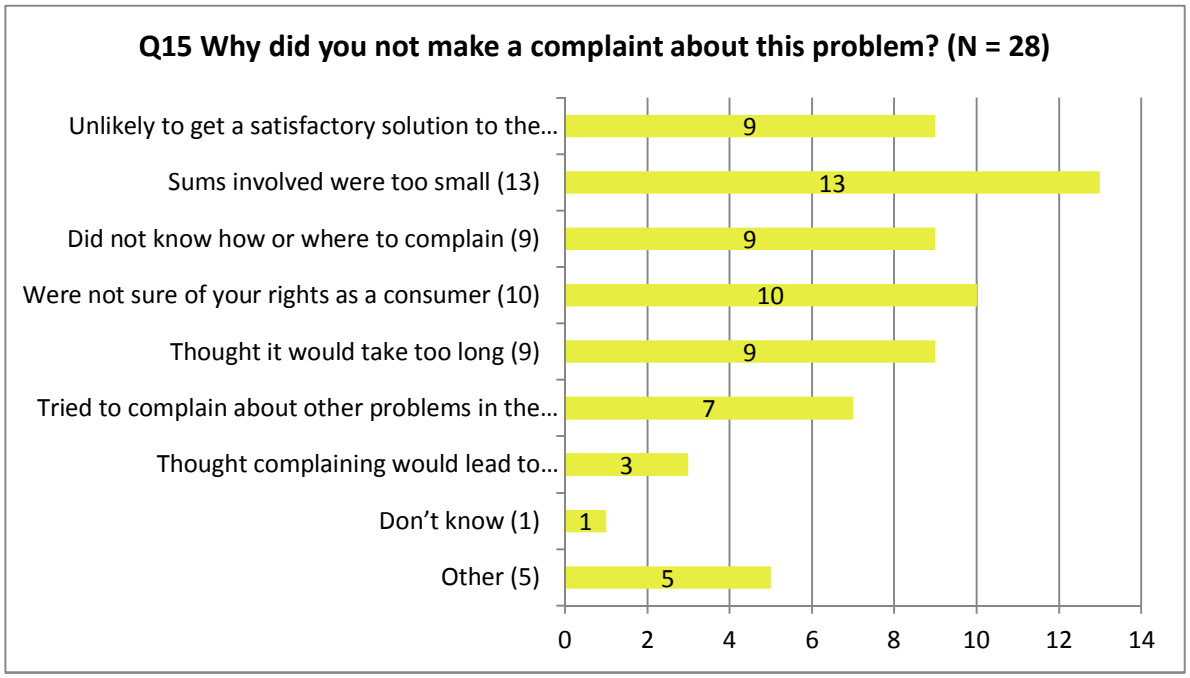
As noted in Section 4, when consumers were asked about the level of protection, a high percentage indicated that this was moderate to high, both domestically and cross-border. One of the main indicators of whether the Directive has been effective in ensuring protection and increasing trust is to see whether the consumers have experienced any difficulties in their purchasing experiences and/or when using free online services. Only 25% of consumers noted that they had experienced difficulties (from a total of 255 responses). Two third of these consumers did complain about the problem, mostly to the trader but the other third did nothing about it. The main reasons being:

- The sums involved were not too high;
- They were not sure about their rights as a consumer; and
- They did not know where to complain.

The last two highlight issues with awareness, which is one of the main reasons hindering the effectiveness of the CRD (as highlighted in Section 4). The tests conducted showed that although a high percentage of respondents are aware of their RoW, their level of

awareness about other provisions, such as the contractual remedy for inertia selling, appears to be lower.

Figure 8-1: Consumers – reasons for not making a complaint (Q15)



A more detailed summary of the findings on the different CRD provisions is provided below.

8.2 Summary of provisions found the most effective in protecting consumers

From the desk research and stakeholder consultations, it can be concluded that the CRD is seen as effective in ensuring consumer protection. The most effective provisions according to consumers and representative associations are the provision of pre-contractual information and the RoW (and related articles). A number of issues can be highlighted with regard to the different provisions. These are described below.

8.2.2 Pre-contractual information requirements (Art. 5 & 6)

Although there are benefits in receiving information about the product, service and digital content (Art. 5 and 6), traders and their representative associations advocate the simplification of pre-contractual information requirements, and streamlining the requirements to avoid overlap with other Directives such as the UCPD. It has also been suggested that the volume of information provided should be reduced for ease of comprehension by consumers or, alternatively, provided at different stages of the process and/or varied according to the value of the sale.

Another option investigated through this study is whether the provision of icons setting out relevant key pre-contractual information would be beneficial for consumers. However, the findings from the behavioural study seem to suggest that the benefits from using icons are uncertain whereas the stakeholders consulted for this evaluation have shown mixed opinions. 40% of consumers agreed that the presentation of pre-contractual information in graphic form would be useful. The view of consumer and trade associations was found to differ. At the European Consumer Summit, 45% of consumer associations thought that icons should be binding and another 22% agreed that a model with icons should not be binding. 18% of consumer representatives did not agree with

the use of icons. 31% of the trade associations agreed to the use of non-binding icons but 46% disagreed with the use of icons altogether. One option may be to use icons on a sector by sector basis in a non-binding way.

Last but not least, there appears to be legal uncertainty about the provisions applicable to off-premises contracts stemming from different interpretations of what off-premises means. This is despite the Guidance issued by the Commission in June 2014.

8.2.3 Right of withdrawal (RoW) (Art. 9 and 16)

Regarding the RoW (Art. 9), most stakeholders have agreed that having a harmonised period has helped in reducing legal fragmentation. The added value from the introduction and application of the withdrawal form is less clear. The results of related studies (sweeps and mystery shopping) show that withdrawal forms are often not provided. However, consumers still appear to be exercising their RoW as they are not bound to use the withdrawal form (40% of consumers responding to the survey have availed their RoW).

Moreover, the interviews have shown that specific sectors are still faced with legal uncertainty with particular regard to the RoW and scope of its exceptions. These include:

- In markets subject to fluctuation (Article 16 and recital 49), Section 3 of this report refers to the heating oil distribution sector and the interpretation of the CRD in German courts that the oil distribution is not exempted from the RoW. This exception has been reported to have detrimental impacts for traders in the sector and significant cost implications;

- Online auction houses are not exempt from the RoW; but hybrid auction houses where different bidding mechanisms such as face and distance bidding are combined are exempt. This represents an uneven playing field within the same sector;

- Digital content rules, in particular the need to receive express consent from the consumers that he/she loses the RoW, has led some traders to skip this step and to offer RoW regardless of whether the downloading or streaming has started which has had a negative impact on their operational costs; and

- Goods made to the consumer's specifications are exempt from the RoW, but interpreting what constitutes a bespoke good was identified as a potential problem in some interviews conducted (DE, UK and SE).

However, not all of the exceptions mentioned in Art. 16 were considered to raise concerns and legal uncertainty. Exceptions such as the provision of accommodation other than for residential purpose have benefited traders and benefits have apparently been passed on to consumers in the form of wider choice and discounts.

8.2.4 Obligations on traders in the case of withdrawal (Art. 13)

Generally the time to receive reimbursement when exercising the RoW has been reduced across most MS. However, traders and their associations report costs in refunding the amounts within 14 days of the consumer informing the seller of their intention to withdraw or sending the product, whichever is earliest. According to traders, they risk receiving products that have diminished in value after they have provided a full refund within 14 days of receiving evidence that the consumer wishes to withdraw. Moreover, there is uncertainty about how to calculate the diminished value as well as serious concern on the negative impact on business competitiveness of the RoW for used goods (Article 14).

8.2.5 Other CRD provisions

Other CRD provisions such as inertia selling and passing on the risk (Art. 20) have also been considered effective in ensuring consumer protection. However, some of the stakeholders' concerns that have been raised include:

- Applicable provisions to online platforms including social media and free online services for storage. There is legal uncertainty as to the level of protection consumers are offered when using online platforms. Around 81% of consumers responding to the online survey use social media and around 52% use free cloud services. Consultation has revealed that the level of information provided about these services is low. Nearly half of the respondents noted that they did not receive very much information about these services or they received no information at all; and

- Fees for the use of means of payments (Art. 19) and additional payments (Art. 22). The ban on the provision of pre-ticked boxes is regarded to be very positive by consumers and their associations. There is evidence that in some MS some charges for the use of means of payments are still being applied. Moreover, there is no clarity on the fees that are being borne by traders in order to assess whether fees paid by consumers are reasonable.

8.3 Summary of factors reducing effectiveness

The main reasons provided in the responses on the lack of effectiveness include the lack of awareness from the consumers' side, enforcement and implementation, and, in third place, the different MS implementations. In particular:

- A lack of consumer and trader awareness and understanding of the CRD provisions. Despite efforts by the EC and national competent authorities, there appears to be a number of provisions where awareness is still low, these include exemptions from the RoW and inertia selling. However, the Directive is considered to be a fairly new Directive (although based on two previous ones), thus the low level of awareness on new specific provisions is unsurprising.

- Compliance by traders, with particular regard to specific provisions. Although the overall level of compliance with the CRD is considered to be good, there are specific provisions that traders appear to have more difficulties complying with. These include providing all types of information and the RoW, and in particular the provision of a withdrawal form. National competent authorities agreed that these aspects will require enforcement in the future. In addition, based on the analysis of the literature and consultation, compliance appears to be more of an issue for specific sectors, such as telecommunications and energy supply, and specific contracts, such as telephone and catalogue distance selling; and

- Enforcement: there are mixed views regarding the ability of competent authorities to enforce the CRD; although most competent authorities are engaged in joint actions and pre-enforcement actions, they are not being seen as particularly effective. Moreover, the number of legal cases and level of fines vary significantly by MS. The different level of enforcement across MS may reduce the effectiveness of the CRD in ensuring compliance when trading cross-border.

8.4 Conclusions of the evaluation of the CRD (Directive 2011/83/EU)

In general, the CRD has succeeded in increasing consumer protection, particularly for distance and off-premises contracts. The level of protection is however considered lower for digital content than for goods and services. Both consumers and representative associations shared the view that the level of protection for digital content purchases is not as effective as for goods and services and this is due both to a lack of awareness and understanding but also because of the lack of compliance. Furthermore, 39% of national competent authorities responding to the questionnaire agreed that digital content related provisions would require enforcement and a few more thought these would be of concern when dealing with the RoW.

The CRD guidance clarifies that free digital content contracts are covered within the CRD's scope, since, contrary to the definition of sales and service contracts, the Directive does not mention 'payment' for the supply of public utilities and online digital content. Nevertheless, this is not explicitly mentioned or explained in the CRD, and might create some legal ambiguity. Some stakeholders noted that the new legislative proposals on online goods and on digital content respectively[100] explicitly include within the scope the provision of free digital content and free online subscription services by traders (paid for in exchange for free data). It is important that these new proposals and the CRD are made consistent.

Very limited information has been obtained on the level of costs of the different provisions of the CRD, with some exceptions related to the costs of consumers exercising the RoW and returns. Similarly, benefits have been difficult to quantify.

A few national competent authorities reported moderate to significant costs relating to the enforcement of the CRD (whilst most competent authorities reported no specific costs relating to its transposition). The level of compliance is generally regarded as being mixed, since the sweeps identified low levels of compliance in respect of online distance sellers[101]. In addition, some sectors such as electronic communication and energy sector appear to have higher incidence of breaches of the provisions of the CRD, based on an analysis of legal cases that have arisen to date and of the fines issued). Promoting higher levels of awareness about the obligations of traders, strengthening compliance levels and improving enforcement therefore appears to be a priority in some sectors.

Most of the costs to traders stem from pre-contractual information requirements. The views as to whether the costs exceeded the benefits were divided as well as in relation to the impacts on competitiveness. The view of SMEs on impacts was similar to those of the bigger companies but impacts appear to vary significantly by sector. According to most traders, the CRD could benefit from further simplification particularly in respect of pre-contractual information requirements in order to reduce administrative burdens. This has been recommended by some stakeholders and may merit further investigation by the Commission, especially for low-value items. Some stakeholders have also called for the pre-contractual information requirements between the UCPD and the CRD to be streamlined.

As for other aspects of coherence, consultation undertaken for this study has not revealed significant issues between the CRD and sector specific legislation.

The main added value from the Directive had been related to the reduction in the level of regulatory fragmentation thus benefiting cross-border trade. Our analysis and the results

[100] See COM/2015/0634 final - 2015/0287 (COD), Proposal for a Directive on certain aspects concerning contracts for the supply of digital content and COM/2015/0635 final - 2015/0288 (COD) Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods

[101] With irregularities confirmed in 63% of the total cases.

of the stakeholders consultations suggest that overall, the CRD has added value to the level of consumer protection across most MS, with very few exceptions. Some provisions are noted to have added more value than others (RoW (high) vs withdrawal form (low)). Some others may be of little added value in the future (Art.19 on fees for the use of payments) due to on-going planned EU regulatory developments (e.g. the 2015 Payment Services Directive II, whereby all credit card charges will be prohibited across the EU from 2018).

Overall, the Directive's objectives appear to be still relevant, although some gaps have been identified in relation to online platform and the shared economy. In this regard:

- Consumers are uncertain as to their rights when using online platforms and the level of consumer protection offered; and
- Compliance tends to be lower for online-platform with particular regard to requirements such as information on traders (which prevent consumers from exercising their RoW if the necessity arose). This highlights the importance of enforcement on specific provisions and services.

There is scope to address these gaps under the DSM Strategy and the CRD working in coordination. Moreover, the new proposals to review the CPC Regulation may ensure more effective and coherent enforcement of the CRD in the future.

Table 8-1 presents a summary of the findings of the evaluation under the different criterion.

Table 8-1: Summary of evaluation of CRD implementation

Criteria	Summary of evaluation
Effectiveness	+/+++: The Directive has succeeded in reducing regulatory fragmentation in respect of distance and off-premises contracts. Differences in MS legislation are no longer seen as an issue by most traders when conducting cross-border trade. Although consumer protection has increased overall, there are still some provisions where awareness is low (such as inertia selling). Other provisions are not being applied by traders as much, such as the provision of withdrawal forms or a complete set of information about the trader as required in Art. 6(1) and 5(1). Compliance varies according to the sector (e.g. lower compliance in sectors such as telecommunications and energy). Enforcement needs to be focused on those sectors where compliance levels are lower and on those provisions where instances of non-compliance were found to be more common. There are also still divergences between MS with regard to enforcement, with divergent level of penalties which may compromise effectiveness, given the common approach inherent in a maximum harmonisation Directive.
Efficiency	--/++: Significant costs have been noted from having to modify websites and incorporate pre-contractual information. Views among traders were divided but impacts appear to vary by sector (more benefits were reported by traders selling goods than those trading services and digital content). The view of SMEs about the administrative costs and burdens were similar to those of bigger companies and especially relate to the costs of meeting pre-contractual information requirements and of consumers exercising the RoW (e.g. costs of reimbursing credit card charges, shipping costs). The highest costs for national competent authorities in implementating the CRD are related to enforcement. The

Criteria	Summary of evaluation
	simplification of pre-contractual requirements could strengthen the effectiveness of the Directive from a trader perspective The benefits for consumers have been significant.
Coherence	-/++: Minor issues with regard to external coherence stem from pre-contractual information requirements related to the UCPD. Coherence with sectoral Directives is considered to be strong (also due to the lex specialis principles under Art. 3(2)). Due to the new proposals stemming from the DSM it is important that coherence is observed and current gaps addressed.
Relevance	++/+++: There is strong stakeholder support for the CRD, not only for protecting consumers' rights but also from a jobs and growth perspective. The CRD was recognised as being particularly relevant in the context of the 2015 DSM Strategy. Gaps have been identified with particular regard to online-platforms, free online services and digital content.
European Added Value (EAV)	+/+++: The Directive's added value stems primarily from its maximum harmonisation approach. Common rules could by definition not be achieved through a national approach to consumer protection legislation for distance and off-premises contracts. Some provisions are noted to have more added value than others (e.g. common duration of the RoW (high) vs EU-wide standard withdrawal form (low)) .

Key to rating (reflecting range in evaluation when more than one key) 0: no noticeable impact +: small positive impacts ++: moderate positive impacts +++: significant positive impacts	-: small negative impacts --: moderate negative impacts ---: significant negative impacts

8.5 Summary of recommendations

Based on the evaluation, the following recommendations are made:

- To explore the scope for the simplification of pre-contractual information requirements and align these with others in the EU consumer acquis;
- To update certain information requirements so as to better reflect technological/market developments, e.g. web-based contact forms as an alternative to a trader's fax number, and/or referencing via hyperlinks. The use of icons to present pre-contractual information could be explored on a sector by sector basis but at this moment it is not recommended to apply a binding model for all sectors to which the CRD applies;
- To reconsider the appropriateness of the RoW for goods that consumers have already used and therefore have a diminished value (due to the difficulties in estimating and agreeing the value between traders and consumers and the risk of traders incurring losses due to used goods not being resaleable);

- To engage in sector-based discussion to address legal uncertainty affecting specific sectors with regard to the RoW (e.g. online bidding platforms, digital content provision, heating oil distribution);

- To clarify the rules applicable to online platforms and ensure that these are enforced effectively. There is general support among stakeholders as to the need to clarify the applicable requirements, with particular regard to pre-contractual information requirements and RoW;

- To continue awareness-raising campaigns and/or ensure that there are means to facilitate these. It is suggested that information campaigns focus on those provisions of greatest interest to consumers and traders. For consumers these include RoW and its exceptions, provisions on digital content and inertia selling. For traders, these include complying with pre-contractual information[102];

- To ensure that national competent authorities have the resources available to conduct enforcement activities and focus on specific provisions, such as the provision of information on traders and/or the provision of withdrawal forms so that RoW can be availed, if needed[103]. On the other hand, the new proposal to review the CPC Regulation may ensure more effective and coherent enforcement of the CPD across borders in the future; and

- There may be scope for national competent authorities to increase the level of penalties so that they are set at a level that can act as a deterrent for traders acting cross-border; further action or guidance at EU level may be needed to achieve more uniformity in the national approaches to penalties.

[102] A best practice example was found through consultation with a trade association that provided their members with a template compliant with all pre-contractual information requirements so by using the template members could save time and resources rather than developing their own list from scratch.

[103] It is of note that 59% of consumers responding said that they had not been given access to a withdrawal form.

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Other sources of data:

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http://ec.europa.eu/consumers/enforcement/sweeps/directive/index_en.htm

Information on DSM: https://ec.europa.eu/digital-single-market/en/digital-single-market

http://ec.europa.eu/consumers/documents/roadmap_of_the_crd_evaluation.pdf

Annex 1: National implementation of CRD (country fiches)

Country	Austria
Previous situation and changes compared with previous legislation	In Austria, the Directive has been implemented into local legislation by the "Verbraucherrechte-Richtlinie-Umsetzungsgesetz" (the "Austrian Act") which came into force on 13 June 2014, applying to contracts concluded on or after that date. With the transposition the legislator adopted the Allgemeines Bürgerliches Gesetzbuch (ABGB) [General Civil Law Code] 3 and the Konsumentenschutzgesetz (KSchG) [Consumer Protection Law] 4 and additionally created a new law, the Fern- und Auswärtsgeschäftegesetz (FAGG) [Distance and Off-Premises Contracts Law]. Previously the transposition of both the Doorstep Selling Directive 85/577/EEC and the Distance Selling Directive 97/7/EC had been included in the KSchG. The new Directive was implemented in different pieces of legislation: some regulations, e.g. general information requirements under Article 5 of the Directive 2011/83/EU, were transposed into the KSchG whereas the new regime of distance selling and off-premises contracts was excluded from the general KSchG. The reason for this divided transposition was – as can be seen in the material of the legislative process – that it would not be appropriate to integrate the new regime of distance and off-premises contracts into the more compact KSchG, because due to a centralisation and standardisation of the two distribution types, the new rules are more extensive than the old ones (Directives 85/577/ECC and 97/7/EC). In comparison the newly created FAGG offered enough space to transpose the new regime systematically.[104] However this increased the fragmentation and complication of consumer protection in Austria: according to Kern (2015) this makes it more difficult for the consumer (as well as for the trader) to find out about and understand his rights and obligations.[105] Overall, consumer protection in Austria is not characterised by a uniform legal framework. The main piece of legislation is the Austrian Federal Act on Consumer Protection, which aims at protect consumer interests. Whereas sector specific provisions of consumer protection law can be found on laws regulating certain business activities, e.g. Austrian Federal Act on Payment Services (Zahlungsdienstegesetz) contains information obligations for traders, which are binding for them when dealing with consumers. Changes with the previous consumer protection law are relevant when drafting terms and conditions (i.e. pre-contractual information and cooling-off periods). Previous legislation on consumer protection was looser for contracts between traders and consumers not concluded within the business premises of the traders. The new legislation introduced further obligations for distance contracts and off-premises contracts. In addition, the consumer legislation provides the consumer with a longer cancellation period for failure to provide sufficient information: under previous legislation it used to be 3 months. Furthermore the new Federal Act on Distance Contracts and Off-Premises Contracts (Fern- und Auswärtsgeschäfte-Gesetz) has brought about substantial changes for traders, which make it necessary to adapt existing

[104] ErläutRV 89 BlgNR 25.GP 4 et seq. [Erläuterungen zur Regierungsvorlage, Beilage Nummer 89, 25. Gesetzgebungsperiode, Seite folgende – Government proposal, attachment no. 89, 25th period of legislature, pp. 4 et seq.].

[105] https://www.law.muni.cz/sborniky/off-premises2014/Off-premises-contracts.pdf

Country	Austria
	general terms and conditions in order to being compliant with the new legal framework for consumer protection in Austria. One of the most important changes is the extension of the withdrawal period for consumers from seven to fourteen days. This extension is enforced by a particular sanction: In case the trader does not provide adequate information for the consumer prior to the conclusion of a distance contract or an off-premises contract, the withdrawal period is extended until such adequate information is provided (up to a maximum extension of the withdrawal period of one year). Another important change is related to the refund period, which was not set in the previous legislation. If the consumer decided to withdraw from the contract it had to be rescinded step by step. The delivery costs were considered part of the payment, thus they were part of the refund. The consumer was entitled to claim damages if the trader "culpably" delayed the refund. Also, the consumer could only claim the costs incurred in returning the goods to the trader if it was explicitly agreed in the contract terms. Specific provisions for online content have also been implemented and include not only companies active in online businesses, but for all companies operating virtually: as a result now companies that distribute their goods or services via catalogues or web shops have to comply with further information obligations tailored to the respective distribution channel used. Among other implications for businesses, these obligations make it necessary to redesign the layout of the web pages leading to the conclusion of contracts online.
Regulatory choices	With regard to regulatory choices (Art. 29 CRD), the option provided for in Article 3(4) of the Directive has been used. In addition, only services contracts require written confirmation of contracts concluded by telephone (Art 8.6). Regulatory choices defined in art. 6(7), art. 6 (8), Art 7(4), and art. 9(3) have not been used.
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Country	Belgium
Previous situation and changes compared with previous legislation	The Directive was implemented by the Act of 21 December 2013, which introduced Book VI of the Economic Law Code on Market Practices and Consumer Protection (the "Book VI Act"), The Book VI Act entered into force on 31 May 2014. The key differences between the previous national consumer legislation and the provisions of the Directive are summarised as follows: • Increased transparency for consumer contracts (Articles 6 and 10): Belgium already had similar pre-contractual information requirements to those in the CRD. The provisions of the Book VI Act have, however, strengthened the existing requirements. For example, the sanction in the Book VI Act for failure to comply with pre-contractual information requirements has changed from the previous Belgian legislation, which stated that the cancellation period was 3 months for distance sales and unlimited for off-premises sales. • Harmonised withdrawal period (Article 9): The cooling off period for off-premises sales was previously 7 calendar days. The Directive has had no impact on the cooling off period for distance sales, which was already 14 calendar days under Belgian law. • Better refund rights (Article 13): The Directive's 14-day requirement is a change from previous legislation, which required consumer refunds to be made as soon as possible and in any case within 30 days of the day that the consumer gave notice to cancel to the trader. • New consumer protection for digital products (Articles 5 and 6): These provisions, regarding mandatory consumer information on the operability and functionality of digital content, are new requirements in Belgian law. • Clear rules delivery of goods for off-premises sales (Article 18): The requirement for a trader to deliver the goods to the consumer within a maximum of 30 calendar days of signing the contract is new in Belgian law for off-premises sales (an equivalent provision already existed for distance sales). Previously, a trader had to deliver the goods as soon as there was an agreement, and delivery could be requested by the consumer at any time from the moment the agreement came into existence – in other words the CRD is **less onerous** in this respect than the pre-existing national law. Elimination of hidden Internet charges (Articles 5 and 6), banning pre-ticked boxes (Article 22), elimination of surcharges for use of credit cards and hotlines (Articles 19 and 21) are all new requirements, though the protection against credit card surcharges was already implicit in Belgian law.
Regulatory choices	• Article 3(4) – National provisions transposing the Directive not be applied to off-premises contracts where payment to be made by the consumer is less than €50 – but only for contracts with a humanitarian purpose. • Article 7(4) – The Book VI Act allows for the possibility to not take advantage of the option of the lighter information regime for off-premises contracts for repairs or maintenance not exceeding €200. The unofficial translation notes that Belgium has made use of this option but it is the King who has the possibility of introducing a lighter arrangement for providing information. It is believed that this possibility

Country	Belgium
	has been retained but has not been used yet. • Article 8(6) – As above, the Book VI Act allows for the possibility to require written confirmation of contracts concluded by telephone. However, this requirement has not yet been applied. • Article 9(3) – There is a prohibition on the trader from collecting the payment from the consumer during a period of 7 days after the conclusion of the contract. However, this doesn't apply to off-premises contracts concluded in shows, fairs and exhibitions.

Country	Bulgaria
Previous situation and changes compared with previous legislation	The Directive has been transposed into Bulgarian law by the Consumer Protection Act of 25 July 2014 amending the Consumer Protection Act of 10 June 2006. With regard to the changes with previous legislation and the new provisions of the Directive, the Consumer Protection Act of 25 July 2014 sets the following: • On information requirements (Article 5 & 6 of the CRD): The previous legislation did not cover some aspects such as information requirements in regard to duration of the contract, conditions for terminating the contract, complaints or issues relating to digital content. Contracts for the supply of water, gas, electricity central heating and digital content (not delivered on a durable medium) were not mentioned either. The new legislation (Consumer Protection Act of 25 July 2014, Art 4 & 47) covers the Directive almost verbatim (Articles 5 & 6 of the CRD) and as in the Directive distinguishes between premises and off-premises and distance contracts. Article 6(8) has not been used (regulatory choice). • However, there are some additional requirements in the Consumer Protection Act of 25 July 2014, Art 4 (compared to the CRD) for premises contracts such as: Requirements for information on availability of the goods or services, possible hazards in regard to using the goods or services, conditions of use of the goods or services together with other goods and services and expiry date of the goods, when applicable. • Information on digital content (Art 5 & 6): This is a new requirement in Bulgaria (Art 4 & 47). • The formal requirements for distance and off-premises contracts: There were formal and specific requirements for distance and off-premises contracts but not as extensive as set in the Consumer Protection Act of 25 July 2014. E.g. No requirements in regard to digital content were mentioned, there was no fully harmonized 14 days withdrawal period, no specific withdrawal form. Under the new legislation the law is in line with the CRD as described above. • Fully harmonised 14 days' withdrawal period for distance and off-premises contracts: Prior to the Consumer Protection Act of 25 July 2014 the right of withdrawal was set to 7 working days for distance contracts (14 calendar days for financial services) and 7 calendar days for off-premises contracts. In case the trader has not informed the consumer about his/her right of withdrawal the right of withdrawal was set to 3 months.

Country	Bulgaria
	• Introduction of an EU-wide model withdrawal form: No specific withdrawal form was mentioned in earlier regulations. The trader had to inform the consumer that he/she can withdraw from the contract. The consumer had to inform the trader in writing in case he/she wants to withdraw from the contract. Under the new legislation the consumer is given a choice to use an annexed form of withdrawal or to inform the trader in another unambiguous way (Art 52). • Exemptions from the right of withdrawal (Art. 16): Previous legislation: Off premises contracts: contracts for a value of less than 120 leva (appr 61 EUR), real estate contracts, regular supply of food and beverages, catalogue sales, insurance, securities. Distance contracts: service contracts after the service has been fully performed if the performance has begun with the consumer's prior express consent (also CRD), goods and services whose price depends on the fluctuations of the financial markets (also in CRD), custom-made goods(also in CRD), non-durable goods(also in CRD), audio-, video products and programmes unsealed by the customer (also in CRD), delivery of newspapers and magazines (also in CRD), gambling and lotteries The new legislation (Art 57) is in line with the CRD (Art 16) • New rules on delivery and passing on the risk: Prior to the Consumer Protection Act of 25 July 2014 there were no explicit rules on delivery and passing on the risk for off premises contracts; For distance contracts delivery was set to 30 days from signing of the contract. In the new legislation there is a 30 days delivery deadline if no other delivery deadline was agreed upon (Art 103b). There are also explicit rules on passing on the risk (Art 103v) in line with CRD (Art 20). • The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Art 21): This is a new requirement in Bulgaria. It's worth noting that the new legislation doesn't mention 'basic rate'. The wording is "...the consumer pays for the cost of the call, without any additional fees." (Art.62g). • Elimination of surcharges for the use of credit cards and and other means of payments: This is a new requirement (Art. 62b) and the same as that of the Directive. • Better refund rights: Under the previous legislation for distance contracts the refund had to be made within 30 days following the withdrawal notice. If the delivered goods or services were different than the agreed ones, the trader had to pay for returning the goods. Refund rights were not mentioned for off premises contracts. Under the new legislation (Art 54) there is a 14 days refund period starting with the withdrawal notice. • Banning pre-ticked boxes: This is a new requirement (Art 62 d). • Provision on inertia selling: This is a new requirement (Art. 62).
Regulatory choices	• Bulgaria has not applied the exemption for contracts under €50 (Article 3(4)). • Art 6(7) – imposing national language requirements for contractual information: Bulgaria has applied this regulatory choice, requesting that the information is provided in Bulgarian (Article 47(7) of the Consumer Protection Act: 'Article 47(7) The information in the distance sales contract and off-premises contract shall be provided in Bulgarian.')

Country	Bulgaria
	• Article 6(8) and additional information requirements. This option has not been used. • Art 7(4) –It was decided not to apply this regulatory choice. • Art 8(6) requiring written confirmation of contracts concluded by telephone. Bulgaria has applied this regulatory choice. Article 49(7) of the Consumer Protection Act: 'Article 49(7) When concluding a distance contract by telephone, the trader shall confirm the offer to the consumer on a durable medium. The consumer shall be bound only once he has signed the offer or has sent his written consent stating his acceptance of the offer.' • Art. 9(3) allowing MS to prohibit to collect payment in off-premises contracts during a given period. This option has not been used.
Sources of information	http://www.lex.bg/bg/laws/ldoc/2135513678 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0083&rid=1 "ЗАКОН за защита на потребителите", в сила от 26.03.2013 (Consumer Protection Act , 26.03.2013) Information on the USE of Regulatory choices under Article 29 CRD – updated in January 2016

Country	Croatia
Previous situation and changes compared with previous legislation	CRD was implemented by a Consumer Protection Act (CPA) NN 41/14 ("ZZP = *Zakon o zaštiti potrošača" in Croatian)* which came into force in three stages, part of the law came into force on 8th April 2014, 2nd part on 13th June 2014, and finally certain provisions came into force on 1st January 2015. CPA NN 41/14 is a third version of the Croatian Consumer Protection Act that has been adopted in the last 15 years. Previous versions of the Consumer Protection Act date back to 2007 and 2003, respectively. As regards contracts negotiated away from business premises, these were already regulated by the previous versions of CPA. According to the current CPA, the definition of a distance contract also covers situations where the consumer visits the business premises for the purpose of gathering information about the goods and services and subsequently negotiates and concludes the contract at a distance. A contract concluded this way was not considered a distance contract under the old CPA. The key differences between the previous national consumer legislation and the provisions of the Directive are summarised as follows: • Increased transparency for consumer contracts (Articles 6 and 10): Croatia already had similar, although less-extensive pre-contractual information requirements under its previous legislation. • Fully harmonised 14 days' withdrawal period (Article 9): before adopting the CRD, the withdrawal period was set to be 8 working days after receiving a written confirmation. • Introduction of an EU-wide model withdrawal form: no model instructions on withdrawal were included in the previous versions of

Country	Croatia
	CPA. • Better consumer protection in relation to digital products (Articles 5 and 6): this is a new provision, previous Croatian legislation on consumer protection did not set any particular rules regarding buying/selling digital products. • Elimination of hidden charges and cost traps on the Internet (Articles 5 and 6): this regulatory measure was not included in previous CPAs. • Banning pre-ticked boxes on websites (Article 22) - this regulatory measure was not included in previous CPAs. • Better refund rights; clear rules on delivery and passing of risk (Article 13): previous legislation required consumer refunds to be made within 30 days from the day that the consumer gave notice to the trader. Another novelty is that the consumer must return the goods within 14 days. There was no such deadline specified under the old law. • Elimination of surcharges for the use of credit cards and hotlines (Articles 19 and 21): this regulatory measure was not included in previous CPAs.
Regulatory choices	Croatia has not used any of th regulatory choices other than Article 6(7) to impose language requirements regarding the contractual information for distance and off-premises contracts. Article 57(8) states that contractual information must be written in Croatian language and Latin script, which does not exclude other languages easily comprehensible to consumers.
Sources of information	Sources: Petrašević, Tunjica and Poretti, Paula (2016) *Consumer Protection in Croatia with a Special Emphasis on Distance and Off-Premises Contracts.* Časopis - Društveni ogledi, 3 (1). pp. 9-54. ISSN 2303-5706 EC, 2016, "HR Regulatory Choices", available at: http://ec.europa.eu/justice/consumer-marketing/files/hr_regulatory_choices_en_version.pdf [accessed July 2016] Consumer Protection Act, 2007, available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2007_12_125_3594.html [accessed July 2016] Consumer Protection Act, 2014, available at: http://narodne-novine.nn.hr/clanci/sluzbeni/2014_03_41_723.html [accessed July 2016]

Country	Czech Republic
Previous situation and changes compared with previous legislation	The CRD was implemented as part of Act No. 89/2012 Coll. (i.e. Civil Code), which came into force on 1st January 2014. However, since then several legal experts expressed the view that the Directive has not been correctly transposed. For instance, the interpretation of Article 5(2) of the Directive regarding information requirements for contracts other than distance and off-premises contracts has changed due to the way it has been translated. Therefore, its implementation in the Civil Code is not correct (i.e. Article 5(2) which reads "*Paragraph 1 shall also apply to contracts …… of digital content which is not supplied on a tangible medium*" has been translated as § 1811(2) "*Paragraph 1 shall not apply to contracts*

Country	Czech Republic
	….. of digital content if it is supplied on a tangible medium ”). Moreover, the Civil Code as opposed to the Consumer Rights Directive lacks definitions of certain expressions that are important for a correct understanding of the provisions – e.g. digital content and business premises. The **key differences** between the previous national consumer legislation and the provisions of the Directive are summarised as follows: • Fully harmonised 14 days' withdrawal period (Article 9): No changes in the period of withdrawal, also 14 days, although the earlier legislation did not include a provision for withdrawal for goods consisting of multiple lots and contract for regular delivery of goods. Under the earlier legislation, the withdrawal period could be extended to one month if the goods or services were not delivered within 14 calendar days after the doorstep sales contract was concluded). However, there was not an specified time limit for delivery by the trader in the previous legislation. • Exceptions from the right of withdrawal (Article 16): Previous national legislation already contained a regulatory measure which listed a number of exceptions from the right of withdrawal. The list of exceptions has, however, been extended under the current Czech legislation. Following exceptions from the right of withdrawal have been added: *§1837c*: the supply of alcoholic beverages; *§1837l*: the supply of digital content which is not supplied on a tangible medium if the performance has begun with the consumer’s prior express consent and his acknowledgment that he thereby loses his right of withdrawal; *§1837f*: contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance and *§1837j*: the supply of newspaper, periodical or magazine. • Better refund rights; clear rules on delivery and passing of risk (Article 13): the previous Czech legislation stated that consumer refunds must be made within 30 days of the day that the consumer gave notice to cancel to the trader. Previous legislation also stated that for distance sales the trader had a right to reimbursement of the costs in order for the goods to be returned, other than for doorstep sales where the trader had to refund all of the money that the consumer had paid, including the cost of returning the goods. • Increased transparency for consumer contracts (Articles 6 and 10): Under the Directive the trader must provide the consumer with clear information that meets a number of requirements to help the consumer make an informed choice. Failure to comply with these requirements could lead to the consumer’s right to cancel being extended up to one year. Under the precious Czech law, the cancellation period was only 3 months. • Clear rules on delivery of goods for off-premises sales (Article 18): the Directive states that unless otherwise agreed with the consumer, the trader will have a maximum of 30 calendar days to deliver the goods to the consumer from signing the contract; however there’s no mention of a time limit on when the goods must be delivered to the consumer in Czech legislation not in the new either the old legislation.

Country	Czech Republic
	• New consumer protection for digital products (Articles 5 and 6): This a new requirement under Czech law as previous legislation did not provide any such rules on digital content. • Elimination of hidden Internet charges (Articles 5 and 6), banning pre-ticked boxes (Article 22): This is a new requirement under Czech law as previously there were no rules on online sales and tick boxes. • Elimination of surcharges for use of credit cards and hotlines (Articles 19 and 21): This provision is new to Czech law.
Regulatory choices	The Czech Republic has not used any regulatory choice provided for by the Directive, with a certain exception regarding the language requirements (i.e. Article 6(7) of the Directive). This requirement is regulated in Section 1881 of the Czech Civil Code. The section stipulates that the trader must make all his communication towards the consumer in a clear and comprehensible manner in the language in which the contract is concluded; although it does not mention the Czech language.
Sources of information	Eversheds, 2016, "Consumer Rights Directive", available at: http://www.eversheds.com/global/en/what/sectors/consumer/consumer-rights-directive.page [accessed July 2016] Forejtová, M., 2016, "Směrem k revizi spotřebitelského práva", available at: http://www.pravniprostor.cz/clanky/obchodni-pravo/smerem-k-revizi-spotrebitelskeho-prava [accessed July 2016] European Commission, 2014, "Regulatory Choices under Article 29 CRD", available at: http://ec.europa.eu/consumers/consumer_rights/rights-contracts/directive/transposition_list_crd_en.htm [accessed July 2016] Vyhnal, V., 2013, "Směrnice 2011/83/EU a její implementace do českého soukromého práva", Právnická fakulta Masarykovy univerzity, available at: https://is.muni.cz/th/325927/pravf_m/Diplomova_prace.pdf [accessed July 2016] Zákon číslo 89/2012 Sb., available at: http://www.zakonyprolidi.cz/cs/2012-89/zneni-0 [accessed July 2016]

Country	Cyprus
Previous situation and changes compared with previous legislation	The 2013 Law on Consumer Rights, Law 133(I)/2013 transposes the CRD in Cyprus. With regard to the new requirements: • On information requirements (Article 5 & 6 of the CRD): Law 133(I)/2013 sets similar requirements to those of the directive, adding more provisions than earlier legislation, e.g. whether consumers may need to pay for returning the goods. It is worth noting that in the cases of omission of information on the right of withdrawal, the new law follows the Directive (in line with Article 10 of the CRD) and extends the withdrawal period to 12 months from the end of the initial withdrawal period. Prior to this law, the period was only extended by 3 months. • Information on digital content (Art 5 & 6). Digital products were outside the scope of the two earlier laws on off-premises and distance contracts (i.e. they were not included in the definition of "goods") and they are now included.

Country	Cyprus
	• New rules on delivery and passing on the risk. New requirement. • Fully harmonised 14 days' withdrawal period (Article 9). The previous legislation also had a period of 14 days for which the right of withdrawal may be invoked, unless a different period had been agreed with the trader. If the trader didn't provide the required information, the length of the withdrawal period would be 3 months. • The old regulations stipulated the information to be included in the withdrawal notice submitted by the consumer to the trader. A model withdrawal form was also included in an Annex. • Elimination of surcharges for the use of credit cards and other means of payments. No explicit mention on credit card surcharges was identified. There used to be a provision for "fraudulent use" of the consumer's payment card (δόλια χρήση της κάρτας πληρωμής), according to which, the consumer is entitled to be refunded the full payment, but it was removed in a subsequent amendment. • Better refund rights. There were provisions on refund rights in the old legislations. The amounts paid must be refunded to the consumer after s/he exercised the right of withdrawal. There are also provisions relating to credit offered to the consumer by the trader and to what goods the consumer may not return (but for which he has to pay the corresponding value). • The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Art 21) • Banning pre-ticked boxes. This is a new requirement. • Provision on inertia selling. This is a new requirement.
Regulatory choices	• Article 3(4) – Cyprus has made use of this regulatory choice, introducing a limit of €20. • Article 6(7) and language provisions. Cyprus has made use of this regulatory choice, requesting that the information is provided in at least one of the official languages of Cyprus or in the language of choice of the consumer, provided the trader also agrees. • Article 6(8)- additional info requirements: Cyprus has transposed this regulatory option. • Art 7(4) - Cyprus has not chosen to apply this choice. • Art 8(6) - Cyprus has made use of this regulatory choice asking for confirmation of the consent on a durable medium. • Art. 9(3) - Cyprus has opted not to implement this regulatory choice.
Sources of information	http://www.cylaw.org/nomoi/enop/non-ind/2000_1_14/full.html Transposition Law for Cyprus: http://www.cylaw.org/nomoi/arith/2013_1_133.pdf Old law on off-premises contracts (consolidated): http://www.cylaw.org/nomoi/enop/non-ind/2000_1_13/full.html Old law on distance contracts (consolidated):

Country	Denmark
Overview of key changes compared with predecessor legislation	Denmark has transposed the CRD into Danish Law by two legislative acts, the Consumer Contracts Act (*Lov om forbrugeraftaler, no. 1457)* and the "Act amending the Sale of Goods Act and several other Acts"(*Lov om ændring af købeloven og forskellige andre love*) no. 1460. Both acts were adopted by the Danish Parliament on 17 December 2013. **Increased information requirements.** Consumer contracts already today contain a number of specific information requirements for businesses, but the new Act extends these. Art. 17 of the Act introduces a requirement for the trader to provide information about the product's main characteristics, the trader's identity, name and place of business, terms of payment and delivery, total price, and an indication that the rules on deficiencies in the Sale of Goods Act (*'Købeloven'*) are applicable. These are seen by Danish stakeholders as important additions to the information requirements, as they helps to unify and streamline the rules for the different types of consumer agreements in one single Act. **Delivery.** According to the new rules, unless otherwise agreed, the delivery must take place "without undue delay" and within 30 days after the agreement. The rules cannot be waived to the detriment of the consumer. If a delay occurs, the Act allows the consumer the right to terminate the contract and demand a refund of his money. **Extended right of withdrawal.** Like in the previous Act, the consumer has 14 days to cancel a purchase made online from the day the goods are received. However, a new element in the Act is that the consumer does not lose the right to withdraw from the purchase if the goods are used or destroyed, but in such cases, the trader may deduct an amount for depreciation. If the consumer wants to exercise his/her right of withdrawal, an unambiguous declaration must be provided to the seller. The Act provides a standard document that can be used for this purpose. In spite of the rule that the consumer is not allowed to test/inspect the good any more than they would have done in a shop, the Act contains a new provision that still allows the consumer to return the good. Throughout the process of adopting the Act, the Danish Chamber of Commerce voiced opposition to this extension to the right of withdrawal, since it was not considered to be clear enough. **Returned goods and repayment** Under the new Act, if a consumer exercises his/her right to withdraw from a purchase, the goods must be returned to the seller within 14 days after the consumer has notified the seller of wanting to exercise their right. In return, consumers have the right, in principle, to get their money back within 14 days after the seller has received the message from the consumer. The 'old' consumer Act contained a deadline of no later than 30 days after the returned item was received by the seller. The seller may withhold the money until the goods have been received or until evidence has been provided that the goods have been returned – whichever comes first. **The consumer bears the risk of return delivery.** Under the 'old' Act, the trader bore the risk, if a good that was being returned to them got damaged on the way. With the new Act this risk has been transferred to the consumer, so the consumer is liable if the goods are lost or damaged during the return shipping. In summary, the key differences between the previous national consumer

Country	Denmark
	legislation and the provisions of the Directive are summarised as follows: • Harmonised withdrawal period (Article 9) • Introduction of an EU-wide model withdrawal form (Art. 11(3)): There were previously no formal requirements in relation to completing a form in Danish law for direct or distance selling when exercising the right of withdrawal. • The obligation to pay - must clearly signpost the customer's obligation to pay rather than simply 'order' • Banning pre-ticked boxes (Article 22) is a new requirement. • The consumer bears the risk of return delivery.
Regulatory choices	• Article 3(4) – Off-premises contracts where the value does not exceed 350 DKK (approx. 46 EUR) and where the goods and the payment are exchanged simultaneously are exempted, cf. Section 7(2)(7) of the Danish Consumer Contracts Act. • Article 6(7) – The contractual information the trader is required to give to the consumer in distance and off-premises contracts has to be given in Danish, if the trader has marketed the goods or services in Danish, unless the consumer consents to receive the information in a different language, cf. Section 8(3) of the Danish Consumer Contracts Act. Denmark has decided not to apply any other regulatory choices.
Sources of information	http://ec.europa.eu/consumers/eu_consumer_policy/consumer_consultative_group/national_consumer_organisations/docs/national-consumer-organisations_da_listing.pdf http://en.kfst.dk/~/media/KFST/Om%20os/Profilbrochure/Engelsk/2014/KFST%20profilbrochure%202014%20ENG.pdf http://ec.europa.eu/justice/consumer-marketing/files/dk_crd_regulatory_choices_english.pdf http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/sec/2008/2547/COM_SEC(2008)2547_EN.pdf http://ec.europa.eu/consumers/archive/rights/docs/comparative_table_en.pdf http://projekter.aau.dk/projekter/files/198466338/Forbrugerrettighedsdirektivets_betydning_for_dansk_ret.pdf - overview of the Impact of the Consumer Rights Directive on Danish law

Country	Estonia
Previous situation and changes compared with previous legislation	The provisions of the CRD were transposed into the Estonian Law of Obligations Act (the 'ELOA'), and the Consumer Protection Act. Both entered into force on 13 June 2014, as required by the CRD No national legislation regarding consumer protection exists in Estonia outside of the European acquis. The majority of changes that have occurred are therefore the result of changes to previous European legislation. The main changes are • Information requirements (5 and 6): The ELOA has increased the number of pre-contractual information requirements in Estonia;

Country	Estonia
	• New consumer protection for digital products (Articles 5 and 6): This a new requirement under Estonian law. • In Estonia the law already provided a 'cooling off period'/withdrawal period of 14 days. However, it has increased the cancellation period in case of omission of information on the right of withdrawal, previously 3 months under Estonian law, and now up to one year. • Written notification of withdrawal has to be sent by the consumer, with the provision of a withdrawal form being a new requirement in Estonia • If the trader fails to provide the pre-contractual information (normally provided along with the contract), the withdrawal period shall expire 12 months after the expiry of the withdrawal period • Better refund rights: there are now clearer provisions regarding the payment for return of goods. Previously in Estonia, consumer refunds had to be made as soon as possible, and at the latest within 30 days of cancelling. Under the CRD, refunds are to be received within 14 days of cancelling. • Rules on delivery of goods to the consumer._Previously the trader had only to deliver an order within 'a reasonable amount of time'. Provisions are much clearer under the implementing legislation with the trader having a maximum of 30 days to deliver a good. • Provisions concerning digital content. This is a new requirement under Estonian law. • Online sales and tick boxes. This is a new requirement under Estonian law. • Debit/credit card charges. This is a new requirement under Estonian law. • Inertia selling. This is a new provision in Estonia.
Regulatory choices	• Exemption for lower value transactions. Estonia has decided to set a lower threshold than the CRD, at 20 euros; • Following Art 6(7), Estonia has imposed national language requirements for contractual information, i.e. Estonian, unless the consumer has agreed for information to be provided in another language. • Estonia has introduced a requirement for written confirmation of contracts concluded by telephone (Art 8(6) of CRD) but only when the professional calls the consumer. No other regulatory choices have been applied.
Sources of information	http://ec.europa.eu/justice/consumer-marketing/files/ee_-_regulat_options_english.pdf Law of Obligations Act, accessed at: https://www.riigiteataja.ee Consumer Protection Act, accessed at: https://www.riigiteataja.ee

Country	Finland
Previous situation and	Prior to the CRD, the Finnish Consumer Protection Act applied. This included the transposition of Directive 97/7/EC (Distance Contracts) and the Directive on contracts away from business premises (85/577/EEC). The

Country	Finland
changes compared with previous legislation	CRD required significant changes to the Finnish Consumer Protection Act. The most significant amendments relate to the consumer's right to return goods purchased in distance or off-premises sales and to the trader's obligation to provide information to consumers. Previously, under the Finnish Consumer Protection Act, the consumer had a mandatory right to return products purchased online or via other distance selling methods without any charge. However, under the amended legislation transposing the CRD, as per Art. 14 of the CRD, the consumer will be liable for the direct cost of returning products unless the trader has agreed to bear them, or the trader has failed to inform the consumer that they are legally obliged to pay the return costs, unless specifically agreed with the trader. Some undertakings may continue to provide free returns on a voluntary basis. The CRD imposes an obligation on consumers to notify traders when returning a product. Previously, the legislation recognised the act of returning goods as notification of their return. However, under the CRD, this is not sufficient to constitute a notification of return. Under the amended national Act, if a consumer decides to withdraw from a distance contract, the consumer is bound to inform the trader of the withdrawal unequivocally beforehand, whereas the legislation previously allowed the consumer to withdraw from a distance selling contract simply by returning the product. Whilst the CRD introduces a model withdrawal form for this purpose, the consumer's notification does not need any special form to be valid. The right of withdrawal in Finland prior to the CRD, as set out in the Finnish Consumer Protection Act was 14 calendar days (i.e. no change following CRD transposition). With regard to the obligations of traders, the CRD imposes an extensive duty on the trader to provide information to a consumer prior to the purchase of distance sales or off-premises sales. Previously, the Act only included a list of general details of which consumers must be notified, such as the trader's name and address. Under the revisions to the Act to reflect CRD transposition, traders must now inform consumers about the total costs of the purchase (including taxes and delivery costs, if possible), and meet the CRD's pre-information requirements relating to informing consumers about their rights and obligations and about the digital compatibility of products. A refund must be made within 30 days of being notified of the withdrawal. Transposing the CRD required amendments to the provisions of the Finnish Consumer Protection Act, for example concerning the passing of liability for risk and delays. Furthermore, among the changes made to the Act are the inclusion of an obligation for traders to inform consumers as to the compatibility of digital content with devices and programmes. Under the amended legal Act in Finland, consumers are entitled to withdraw from a service contract after the service provider has initiated the execution of the service but not after the service has been fully completed. However, these amendments do not apply to digital content if this is delivered electronically e.g. digital music at the request of a consumer. In line with the relevant provisions in the CRD, when contacting the trader in relation to a concluded contract, consumers must not be charged more than the standard rate for telephone calls. In summary, key changes since the CRD came into effect compared with the previous situation are that:

Country	Finland
	• Consumers now have to bear the cost of returning goods whereas previously they didn't. • Previously, the return of goods in itself constituted notification of withdrawal, whereas now consumers are encouraged to complete a model proforma notifying the return of the product (either using the withdrawal form or by other unequivocal means) • Banning pre-ticked boxes (Article 22). A new section 10a has been added to Chapter 2: Collection of additional charges. This states that "Prior to concluding a contract, a trader shall seek the express consent of the consumer to any additional charges not included in the price given for the consumer good or service. A consumer's failure to reject a default option whereby he consents to additional charges shall not constitute express consent. If a consumer has not given express consent to additional charges, he shall not have an obligation to pay the same."
Regulatory choices	With regard to regulatory choices (Art. 29 CRD), the option provided for in Article 3(4) of the Directive has been used (see Chapter 6, Section 3(1) of the Consumer Protection Act, as amended by Act. No 1211/2013). According to a consultatee the limit is €30.
Sources of information	• http://www.mondaq.com/x/283224/Dodd-Frank+Wall+Street+Reform+Consumer+Protection+Act/The+Amendments+Of+The+Finnish+Consumer+Protection+Laws+Provide+For+New+Obligations+And+Rights+To+Undertakings • http://www.lexology.com/library/detail.aspx?g=094fd890-6113-4163-bdd6-5c59701278ae • http://oikeusministerio.fi/en/index/currentissues/tiedotteet/2014/06/kuluttajansuojalakiuudistuuverkkokaupankuluttajansuojaanmuutoksia.html

Country	France
Previous situation and changes compared with previous legislation	At transposition stage, the Directive was implemented into French Law through the French Law on Consumer Protection (Law no. 2014-344) which entered into force on 17 March 2014 and modified the French Consumer Code. Whilst some of the Hamon Law provisions came into effect on 17 March 2014, all the main provisions relating to the CRD (with the exception of credit/debit card charges) came into effect on the 1st of July 2014. Prior to the CRD's transposition, the Code already stated that a trader may not charge fees for using a specific payment means. One of the legal gaps identified in the Hamon Law therefore pertains to legal uncertainty as to whether fees can be charged for a particular means of payment. The French Consumer Code has however subsequently been updated in 2016[106], and came into effect from 1st of July 2016. Under the new Code, consumers have 14 days to exercise their right of withdrawal in relation to distance sales and off-premises sales, an increase from the previous period of 7 days. When a consumer exercises their withdrawal right, the trader

[106] L'ordonnance n° 2016-301 du 14 mars 2016 publiée au JORF du 16 mars 2016 et pour sa partie réglementaire, du décret n° 2016-884 du 29 juin 2016.

Country	France
	must reimburse the consumer (including delivery costs) without delay and at the latest within 14 days following the consumer's notification of their decision to withdraw. This has "reduced the time consumers need to wait for reimbursements, which was previously up to 30 days following the day that the consumer gave notice to cancel".[107] General pre-contractual information requirements are set out in Articles L131-1 to L131-4 of the revised code deal set out the pre-contractual information obligations. Under French law previously a delivery date had to be provided in all contracts where the value of the goods was in excess of EUR 500 and in all distance sales contracts. The adoption of the Code to transpose the CRD has led to this being changed to 50 EUR. The extension of the CRD to include digital content is a new requirement. The Code states that a trader must inform consumers about the functionality of digital content and where applicable, the relevant interoperability of digital content. However, it has been noted in literature on CRD implementation in France that the Code does not expressly refer to applicable technical protection measures of digital content. The requirement to ban "pre-ticked" boxes on websites is also a new requirement.
Regulatory choices	France has decided to make use of the following regulatory choices: • **Article 6(7) – language requirements.** The research found that the transposition of these Articles into French law has not led to any changes in respect of the pre-existing requirements since language requirements since already required under French law relating to the provision of pre-contractual information to consumers. • **Article 8(6) contracts concluded by telephone** - has been taken up. Section 5, Article L221-16 of the 2016 revised French national consumer code regulates such contracts. It also stipulates in Article L221-17 that it is illegal to conclude contracts through an unknown telephone number (blocked number) when a sales professional calls the consumer directly. In relation to language requirements, under the Act of 4 August 1994, known as "loi Toubon", there has been a long-standing requirement in French legislation to ensure that documents relating to goods sold in France are translated into French. In the sense that under the optional Art. 6(8) of the CRD, language requirements will continue to apply, this means that for firms already selling in France, there is no substantive change. However, for international companies selling into France, some feedback was obtained that the language requirements are regarded as an additional cost. France decided not to exclude from the Directive's scope for off-premises contracts for amounts of <EUR 50, as authorised by Article 3(4), or introduce a lighter set of requirements for pre-contractual information and the conditions for concluding contracts where these contracts do not exceed EUR 200, as authorised by Article 7(4). The reason given was that France has a legal tradition of seeking to maximise protection for the economic interests of consumers.
Sources of	• 2016 French consumer code (Code de la consommation)

[107] Eversheds, 2016, "Consumer Rights Directive"

Country	France
information	https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069565&dateTexte=29990101&categorieLien=cid • Eversheds, 2016, "Consumer Rights Directive", available at: http://www.eversheds.com/global/en/what/sectors/consumer/consumer-rights-directive.page [accessed July 2016] • Eric Wallenbrock, 2014, The 2014 French law on Consumer Protection, available at: http://www.twobirds.com/en/news/articles/2014/france/the-2014-french-law-on-consumer-protection [accessed July 2016] • JOURNAL OF EUROPEAN CONSUMER AND MARKET LAW, Volume 3 (2014) / Issue 4, Guillaume Busseuil, 'Implementation of the Consumer Rights Directive: France' (2014) 3 Journal of European Consumer and Market Law, Issue 4, pp. 270–274

Country	Germany
Previous situation and changes compared with previous legislation	Directive 2011/83/EU has been transposed in Germany through the "Act Implementing the Consumer Rights Directive (CRD) and amending the law regulating the property agency"[108] (Gesetz zur Umsetzung der Verbraucherrechterichtlinie und zur Änderung des Gesetzes zur Regelung der Wohnungsvermittlung) which came into force on the 13th June 2014. This law, while being an individual measure, has also had a profound impact on other laws and led to changes of the German Civil Code (Bürgerliches Gesetzbuch - BGB). The general provisions of off-premises contracts can be found in the general part of the BGB and in the general law of obligations, while whereas the provisions in the latter are found in non-consecutive places, namely in Sections 312 et seq. and in Sections 355 et seq. The former deal with the factual preconditions that have to be met to apply the consumer protections rules. They also standardize the basic duties to inform and the right to withdraw. The latter provisions deal with the question of how the right to withdraw is exercised and what legal consequences follow from a withdrawal. The first amendment to the Civil Code relates to the general part for which Article 13 had to be changed to clarify the term "consumer". This means that a natural person is considered a consumer when they "predominately" undertake a legal transaction for non-commercial purposes. The articles which have been affected by the Directive in the BGB are set out in the following table:

[108] Verbraucherrechtliches... (n.d.): Synopse zur Umsetzung der Verbraucherrechterichtlinie [Synopsis implementing the Consumer Rights Directive], available at http://www.verbraucherrechtliches.net/VRRL/VRRL-Uebersicht.html

Country	Germany

Table 3-1: Germany: Articles which were changed or added to the BGB following the CRD	
§ 13 BGB	§ 356 BGB a-c BGB
§ 126b BGB	§ 357 BGB
§ 241a BGB	§ 357a-c BGB
§ 312 BGB	§ 358 BGB
§ 312a-k BGB	§ 359 BGB
§ 314 BGB	§ 360 BGB
§ 323 BGB	§ 361 BGB
§ 355 BGB	§ 443 BGB
§ 356 BGB	§ 474 BGB
§ 485 BGB	§ 485a BGB
§ 510 BGB	---

In addition, the introductory law of the Civil Code was amended and the structure of that law was changed from distance sales to cover all sales channels which can be seen with Art. 246 (including paragraph § 1 until 4 (a-c)) relating to the information duties for consumer contracts.

With regards to **information obligations**, the provisions in sections 312 et seq. BGB apply not only to distance contracts, contracts negotiated away from business premises but also to consumer contracts in general. However the latter are subject to certain information obligations, but not to the statutory right of withdrawal. Thus off-premises contracts include information requirements that went beyond what was required in the former legislation: according to the former law, the consumer had to be informed only about the right to withdraw the contract.

Significant changes also occurred to the **right of withdrawal** regime: (i) the model on withdrawal defined under article 246a has been adapted to the new requirements introduced in the CRD, (ii) the consumer must exercise the right of withdrawal through an explicit declaration to the trader, i.e. sending back the goods shall no longer be sufficient (in this respect it is important that the trader provides a form of withdrawal to the consumer), (iii) the withdrawal period no longer depends on the proper fulfilment of information obligations but only on the proper instruction of the right of withdrawal (for purchases of digital content that are not stored on physical data carrier the withdrawal period already commences upon conclusion of the contract), (iv) the "eternal right of withdrawal" was removed even in case the trader did not properly instruct the consumer about his right of withdrawal, (v) all goods/payments do not have to be returned within 30 days but within 14 days.

Another article of this law which was changed is Article 247 concerning the information duties of consumer loans, financial aid for remuneration and – loan broker contracts. The Directive has also led to the adoption of secondary legislation that aims to protect consumers against unfair contract terms when purchasing goods such as on the law on the right of withdrawal. The following table compares the current regulatory regime relating to the provisions (and regulatory choice) in the CRD with the old regulatory regime.

Country	Germany
	Table 3-2: Germany Comparison of current and previous national regulatory regimes New Provisions in CDR / Corresponding Articles in CDR / Past Regulatory Measures Increased transparency for consumer contracts / Article 8(1;4) / With the introduction of the Directive online sales fall under the information duty. Clearer information on who pays for returning goods / Article 6(1h; 1i; 1j) and Article 8(4) and Article 14(1, 4a(i)) / This has been described as a decrease in consumer protection in Germany as the consumer had to pay for the returning of goods only when it cost less than 40€ while the consumer has to pay for the return as a general rule. Fully harmonised 14 days' withdrawal period / Article 9 / A withdrawal period of 14 days already existed in Germany before the introduction of the CRD. It should be noted that prior to the CRD, German consumers had an indefinite right of withdrawal if the instructions on the right of withdrawal had not been provided or had been incorrect. The GUV has not changed previous German legislation as the cooling off period in Germany was already 14 calendar days for both distance and doorstep sales. This requirement in the GUV has changed the legislation in Germany which previously stated that a trader is in default if it does not refund the consumer within 30 days. Under previous legislation, the refund had to include the costs of delivery but the consumer was obliged to bear the costs for return if the goods had a value below EUR 40.
Regulatory choices	With regard to regulatory choices, the only one used is Art. 3(4), excluding from the scope of the regulation goods that have a value below EUR 40.
Sources of information	Francuski, 2013, Neue Verbraucherrechte für Deutschland - Zur Umsetzung der EU-Richtlinie über Rechte der Verbraucher zum 13.06.2013 aus Sicht des Verbrauchers, available at: http://www.infopoint-europa.de/assets/Uploads/Beitraege-Rechtsreferendare/Francuski-Verbraucherrechte.pdf [accessed July 2016] Vyhnal, V., 2013, "Směrnice 2011/83/EU a její implementace do českého soukromého práva", Právnická fakulta Masarykovy univerzity, available at: https://is.muni.cz/th/325927/pravf_m/Diplomova_prace.pdf [accessed July 2016]

Greece	
In Greece, the CRD was transposed by Joint Ministerial Decision No Z1-891/2013 amending Law No 2251/1994 on consumer protection. In comparison with previous legislation:	
Overview	**Former provisions**
On information requirements (Article 5 & 6 of the CRD): the new law adds more detail on the required information for distance and off-premises contracts, e.g. costs of	Article 3(1) prescribed the following information to be supplied for off-premises contracts: a. *The **name or trade name and the full address of the supplier and of the party signing the contract in the name and on behalf of the supplier**. Reference of postal box number is not sufficient,*

Greece	
returning goods by consumers, and also added some more provisions. Additional information requirements are, e.g., that, where applicable, the consumer might have to pay the cost for returning the goods.	*b. **Date and full address of the place the contract was drawn up**,* *c. Description of the **nature and characteristics of the goods or services**,* *d. The **terms for the execution of the contract** and most importantly the **way and time that goods are to be delivered or services to be rendered**,* *e. **Total fees payable** by the consumer and terms of payment and most importantly, in case fees are credited or payable in instalments, the actual interest rate and the maximum allowable interest rate limit, and* *f. The **consumer's right to withdraw** the contract as per paragraph 4 of this article, and a standard statement, in a separate document, to be used for repudiation of contract by the consumer* Article 4(2) prescribed the following information to be supplied for distance contracts: *a. The **identity and the address of the supplier**,* *b. The **essential characteristics of the product or service**,* *c. The **price, quantity and transportation expenses, as well as the value added tax**, if it is not included in the price,* *d. The **method of payment, delivery and execution**,* *e. The **period in which the offer or the price stands**,* *f. The **right to withdraw**,* *g. The **cost for using a communication means from distance** when it is calculated based on a pricelist other than the basic, subject to par. 3 of this article, and* *h. The **minimum duration of the contract for contracts pertaining to the provision of products***
Information on digital content (Art 5 & 6). There were no explicit provisions for digital products in the old regulation. There was another decree dealing with the e-trade directive (2000/31). However, e-mails were included in the means of communication for distance contracts.	Not addressed in the Law prior to amendment by Joint Ministerial Decision No Z1-891/2013
Formal requirements for off-premises and	For off-premises contracts no formal requirements existed in the Law prior to amendment by Joint Ministerial Decision No

Greece	
distance contracts (Art 7 & 8). Improvements have been introduced, particularly for off-premises contracts	Z1-891/2013. For distance contracts, Article 4(9) prescribed the following: The distance contract is void in favour of the consumer if the latter does not receive in due time, during the contract's execution and, at the latest, upon delivery of the products, which are not to be delivered to third parties, in written form or through any another fixed means as per case of paragraph 1 of article 4a, to which the consumer has access, and in the language used in the proposal for the contract, at least the following information: a. *The **information as per paragraph 2 of this article**,* b. *The **name and address of the supplier's store closest to the consumer** to which the consumer can address for the repair of the product,* c. *The **method of payment including any credit terms or payment** in instalments as well as the terms for securing the payment,* d. *The **terms and the way of exercising the right of withdrawal** according to paragraph 10 and, on a separate document or electronic file, a sample form for the withdrawal. During the period covered by the contract the consumer has the right to receive these information, further to his request, in writing.* e. *Information regarding **after sales servicing and the existing commercial guarantees**, and* f. *The **terms for the termination of the contract** if it is a contract of indefinite period or with a duration longer than one year*
Fully harmonised 14 days' withdrawal period for distance and off-premises contracts (Art 9(1)). This period was the same in old legislation. The old legislation did not include the extensive list of exemptions of article 16 of the CRD, apart from point 16(b) on goods or services for which the price is dependent on fluctuations in the financial market. However, in the old regulation, if the trader didn't provide the required information on withdrawal, the length of the withdrawal	For off-premises contracts, Article 3(4) prescribed the following: *The consumer has the right to withdraw contracts as per paragraphs 1 and 2 or to abrogate a proposition submitted in accordance with paragraph 3, within **fourteen (14) calendar days** from the receipt of the contract document or from any subsequent receipt of the product, unless the contract provides for a longer period* For distance contracts, Article 4(10) prescribed the following: *In every distance contract the consumer has the right to withdraw without giving any justification **within fourteen (14) calendar days**, unless a longer period has been agreed, returning the product in its original condition, without being charged for any expenses other than return expenses. (…) If the supplier has not fulfilled the obligations stated in paragraph 9, the period for withdrawal is **three months**.* Article 4(8) also provided the following:

Greece	
period would be 3 months rather than 12 as it is currently set by the Directive	(…) *If this deadline* (NB. this is the 30 days for delivery of goods or services) *expires without the supplier having taken any action, the consumer has the right to withdraw the contract*
Introduction of an EU-wide model withdrawal form. It was not included in the legal text, as is in Annex I(B) of the CRD.	Article 3(1) stipulated that the consumer must be given a "*standard statement, in a separate document*", while Article 4(9) stipulated the consumer must be given "*a sample form for the withdrawal*". A model withdrawal form was not included in the legal text
Exemptions from the right of withdrawal (Art. 16)	For off-premises contracts, Article 3(7) stipulated the following: *The stipulations of this article are not applicable:* *a. On sales of **street vendors** who have no permanent establishment,* *b. On contracts for the **construction, sale or leasing of immovable property** and on contracts pertaining to other rights connected with immovable property. However, contracts for the supply of goods that will be integrated in immovable property or contracts for the repair of buildings fall within the scope of the stipulations of this article,* *c. On contracts for the **supply of food, drinks or any other goods which are intended for domestic daily consumption** and which are home delivered by deliverers at regular or frequent intervals,* *d. On contracts for the supply of goods or services, on condition that the following terms are fulfilled: i) the contract is made based on the supplier's **catalogue**, which the consumer has had the opportunity to read without the representative of the presence of the supplier's representative, ii) it is expected that the **supplier's representative and the consumer will continue to be in contact** for that transaction or any other future transaction, and iii) the **catalogue** as well as the contract inform the consumer that he has the right to return the goods to the supplier within a period not less than fourteen (14) calendar days as from the date of their receipt, or to terminate the contract within the same period, without undertaking any obligation other than handling those goods with reasonable care.* For off-premises contracts, Article 3(8) further stipulated the following: *The right to withdraw is not applicable on contracts pertaining to goods and services, the **price of which depends on fluctuations in the capital market** in the sense of point i, case b, paragraph 6, article 4a* For distance contracts, Article 4(13) stipulated the following: *The stipulations of this article are not applied:*

Greece	
	*a. To **automatic vendors**,* *b. To **commercial areas of automatic vending**, and* *c. To **contracts signed with telecommunication agents through public phone booths**.* *Paragraphs 10 (*NB. this is the paragraph on the right to withdraw from a distance contract*) (…) do not apply on contracts* a. *For **supply of food, drink and any other commodity intended for daily domestic consumption** and delivered at home or at the place of residence, or work of the consumer at regular or frequent intervals by distributors,* b. *For rendering of services pertaining to **transportation, hotel, food and entertainment** if the supplier undertakes the obligation to render the services on a specific date or in a specific period*
New rules on delivery and passing on the risk (Art 18 & 20)	Article 4(8) stipulated the following for distance contracts: *Unless otherwise agreed by the contracting parties, the supplier must fulfil the contract within a period of thirty (**30**) days maximum from the date the order of the consumer is communicated to him.* *If this deadline expires without the supplier having taken any action, the consumer has the right to withdraw the contract.* No provisions were made for the passing of risk (in the meaning of Article 20 of Directive 2011/83/EU
The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Art 21)	Article 4 (2) included the following among the formal requirements for distance contracts: (…) *the cost for using a communication means from distance when it is calculated based on a pricelist other than the basic* Article 4(3) stipulated the following: *The consumer is not billed for expenses of communication from distance used to communicate the acceptance of the service or the rendering of the service, unless otherwise stated in the proposal of the contract*
Elimination of surcharges for the use of credit cards and other means of payments (Art 19).	No explicit mention on credit card surcharges , but Article 4(11) stipulated the following: (…) *In case of fraudulent use of the payment card of the consumer in the context of the distance contract, the consumer may ask that the cancellation of the payment according to the stipulations of the Civil Code and the amounts paid be recredited or returned*
Better refund rights (Art 13)	Article 4(10) prescribed the following *In case the right to withdraw is exercised by the consumer as per the above, the supplier is obliged to return the amounts paid to him by the consumer within **thirty (30) calendar days***

Greece	
Banning default options (Art 22)	No provision was being made in the law
Provision on inertia selling (Art 27) - no obligation to pay for unsolicited goods or services	Article 4(4) prescribed the following: *It is forbidden to send products or provide services to the consumer without his prior relevant order, if the consumer has to pay a price for them, or if he has to return them, even if he does not have to pay any dispatch expenses.* ***In case products are sent or services are rendered as per the above subparagraph, the consumer has the right to dispose of the products or the services as he pleases, without owing any fee, and free of any obligation to store or return the products. The absence of any reply from the consumer in case he is given goods or services which he has not ordered does not constitute consent or silent acceptance of the relevant transaction on his part***
Regulatory choices	
Art 3(4)	Greece has made use of this regulatory choice, introducing a limit of €30
Art 6(7)	Greece has not introduced the language requirements
Art 6(8)	Greece have transposed the text of Art 6(8) of the Directive (almost word-by-word) in the form of Article 3β(7) of their Law 2251/1994 (as amended) but they have not introduced any concrete additional information requirements. Interviews have confirmed that no real action has been taken in this area.
Art 7(4)	The Greek legislator did not make use of the discretion allowed and implemented Article 7(4) of the Directive by way of exact transliteration
Art 8(6)	Greece has made use of this regulatory choice asking for confirmation of the consent on a durable medium
Art 9(3)	Greece has made use of this regulatory choice, forbidding collection of payment during the withdrawal period.
Sources of information	
Transposition Joint Ministerial Decree for Greece: http://www.synigoroskatanaloti.gr/docs/law/gr/KYA-Z1-891-2013.pdf Greek Law 2251/1994 in its latest form: http://www.efpolis.gr/el/library2.html?func=download&id=388&chk=6e1d381ae706129744176e857561d642&no_html=1	

Country	Hungary
Previous situation and changes compared with previous legislation	The Directive is transposed into Hungarian law by Government Decree 45/2014 of 26 February 2014 laying down detailed rules for contracts between consumers and undertakings. The Decree overrules Government Decree No. 213/2008. (VIII.29.) on doorstep sales and No. 17/1999. (II.5.) on distance sales. With regard to the changes with previous legislation and the new provisions of the Directive, Decree 45/2014 sets the following: • On information requirements (Article 5 & 6 of the CRD): The Decree

Country	Hungary
	changes previous legislation in Hungary. Hungary already had some (albeit different) information requirements in relation to both distance and doorstep sales, however, the requirements of the Decree are more extensive. • Information on digital content (Art 5 & 6). This is a new requirement in Hungary. The Decree specifies that before contracting, the trader has make reasonable efforts to provide the consumer with clear information about the functionality of digital content, the application of any technical protection measures and its compatibility with hardware and software. • The formal requirements for distance and off-premises contracts. Under previous legislation, in the case of distance sales, the trader could not assume the acceptance of its offer where the consumer failed to give express consent. The Decree has made this provision more certain, particularly with regards to payments. • Fully harmonised 14 days' withdrawal period for distance and off-premises contracts. The Decree has changed previous legislation in Hungary under which there was a cooling off period of 8 working days. • Introduction of a new model withdrawal form was a new requirement • Delivery deadlines were already specified in the civil code. • The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Art 21). • Elimination of surcharges for the use of credit cards and other means of payments. This is partially a new requirement in Hungary. Under previous legislation, the trader had to inform the consumer about all additional costs generally, but there were no specific regulations on methods of payment and charging fees for certain payment methods. The Decree now clarifies this. • Better refund rights. The trader now has to refund the whole amount paid by the consumer without delay but at the very latest within 14 days including the cost of the performance. The Decree has changed the previous legislation in Hungary, according to which, for distance sales, the trader had to refund the whole amount paid by the consumer without delay but at the very latest within 30 days. In the case of doorstep sales there were no deadlines under Hungarian legislation. • Banning pre-ticked boxes. The trader now has to obtain the consumer's express consent for any payments. If the trader does not comply with this requirement, the contract is void. Under previous legislation, in the case of distance sales, the trader could not assume the acceptance of its offer where the consumer failed to give express consent. The Decree has made this provision more certain, particularly with regards to payments. • Provision on inertia selling. As above.
Regulatory choices	Hungary has only applied the regulatory choice under Art. 6(8) on additional information requirements. The Government Decree has broadens the information requirements in reference to information requirements contained in Directive 2006/123 and Directive 2000/31. It has laid down additional requirements on the provision of information on warranties and guarantees (which may be provided using a model given in Annex 3 of the decree); Information on the right to conciliation; and providing information

Country	Hungary
	on electronic correspondence other than for off-premises or distance contract.
Sources of information	http://ec.europa.eu/justice/consumer-marketing/files/hu_reg_choices_art_29_en_version.pdf Consumer rights directive Multijurisdictional guide (second edition) http://www.eversheds.com/global/en/what/sectors/consumer/consumer-rights-directive.page http://ec.europa.eu/justice/consumer-marketing/files/overview_regulatory_choices.pdf

Country	Ireland
Previous situation and changes compared with previous legislation	The Directive was implemented in Ireland by the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013) (the "Irish Regulations"). The Irish Regulations entered into force on 13 June 2014. They apply to contracts concluded on or after that date. The key differences between the previous national consumer legislation and the provisions of the Directive are summarised as follows: • Increased transparency for consumer contracts (Articles 6 and 10): The new pre-contractual requirements change previous legislation which stated that the cancellation period could be extended up to 3 months on top of the cooling off period of 7 days for failure to provide sufficient pre-contractual information. • Harmonised withdrawal period (Article 9): This provision in the Irish Regulations is a change from previous Irish law, which provided for a cooling off period of 7 working days for both distance sales and off-premises sales. • Better refund rights (Article 13): This new provision changes previous legislation which stated that, as long as the consumer exercises his right to cancel during the cooling off period, the trader must reimburse any sums paid by the consumer (except the direct cost of returning the goods) as soon as possible and in any case not later than 30 days. • Rules on delivery (Article 18): Section 29(2) of the Sale of Goods Act 1893, which provides where no delivery time has been fixed the period within which the seller should send the goods should be "reasonable", has been amended by the Irish Regulations to reflect the CRD's maximum 30-day delivery requirement. • Passing of risk (Article 20): Passing of risk in contracts of sale in Ireland was previously regulated by section 20 of the Sale of Goods Act 1893. This provided that, unless otherwise agreed by the parties, the goods remain at the seller's risk until the property in (i.e. the ownership of) the goods is transferred to the buyer. Once that property has been transferred to the buyer, the goods are at the buyer's risk whether

Country	Ireland
	delivery has been made or not. Though the passing of the property in the goods will often coincide with their delivery, it may also precede it. If the property in the goods passes prior to delivery and the goods are then lost or damaged while still in the seller's possession or while in transit to the buyer, the loss or damage will fall on the buyer. • New consumer protection for digital products (Articles 5, 6): These provisions, regarding mandatory consumer information on the operability and functionality of digital content, are new requirements in Irish law. Elimination of hidden Internet charges (Articles 5 and 6), banning pre-ticked boxes (Article 22), elimination of surcharges for use of credit cards and hotlines (Articles 19 and 21) are all new requirements in Irish law.
Regulatory choices	• Article 3(4) – Irish Regulations apply exemption for off-premises contracts where payment to be made by the consumer is less than €50. • Article 7(4) – Regulation 8 of the Irish Regulations takes advantage of the option. Other regulatory choices do not apply.
Sources of information	http://ec.europa.eu/justice/consumer-marketing/files/ireland_-_regulat_options_13_dec_2013.pdf

Country	Italy
Previous situation and changes compared with previous legislation	The Legislative Decree No. 21/2014 dated 21 February 2014 (the "Decree") implemented the CRD (Directive 2011/83/EU) and entered into force as of 13 June 2014. The Decree involved many changes to the previously applicable national legislation, the Italian Consumer Code (the "codice del consumo"), known as CodCons for short. In the new decree, Chapter I, Title III, Part III – Articles 45 – 67 of the previous applicable CodCons was completely replaced with a new Chapter, entitled *"Consumer rights in contracts".* Section II (Art 49-59 CodCons) transposes Art. 6 – 16 of the CRD. Art. 52-59 of CodCons transposes Art. 9-16 of the CRD relating to the provisions on the exercise of a withdrawal from a contract. The 2014 Decree addresses distance contracts and traditional contracts, although the main changes are focused on distance and off-premises contracts. Unlike the previous national legislation in force, the decree provides for full harmonisation in the field of distance contracts and in contracts negotiated away from business premises, and a minimum level of harmonisation for contracts other than distance contracts in line with the CRD. With regard to the scope of application, the new rules apply to the following types of contract concluded between a trader and consumer including: (i) sales contracts; (ii) service contracts (excluding financial services); (iii) contracts for supply of water, gas, electricity or district heating, including by public providers; (iv) contracts of digital content supplied online or downloaded and (v) distance contracts and vi) off premises contracts. However, several types of consumer contracts fall outside of the application

Country	Italy
	of the new rules, such as contracts related to gaming, lotteries and betting; distance contracts relating to financial services; sales transferring rights on real estate properties; contracts for tourist services and package holidays; and contracts negotiated away from business premises "for which the payment to be made by the consumer does not exceed €50". The applicable Italian legislation respects the principle of a single public enforcer of consumer protections rules. The Decree entrusts the power to enforce the new rules to the Italian Competition Authority ("ICA"). In terms of obligations upon companies concluding contracts with consumers, the Decree mainly deals with (i) consumer information for contracts other than distance or off premises contracts; and (ii) consumer information and right of withdrawal for distance and off-premises contracts. With regard to contracts other than distance or off-premises contracts, i.e. contracts negotiated on business premises, Art. 48 of the amended ICC establishes the minimum content of pre-contractual information to be provided by the trader, such as the characteristics of the goods and services; the identity of the trader; trader's address and contact number; the total price; and interoperability features in the case of contracts relating to digital content. Requiring such information as part of pre-contractual requirements is a major improvement compared with the previous legislation (as it stood before it was amended), since similar requirements in the pre-contractual phase previously existed only for certain contracts (i.e. holiday packages or distance contracts). A key change is that the CRD has extended the pre-contractual information obligation to any type of consumer contract. In relation to distance and off-premises contracts, the new rules provide: (i) an extension of the content of the information that the trader shall provide to the consumer in the pre-contractual phase; (ii) the provision of formal requirements; and (iii) the provision of a strengthened right of withdrawal. Obligations for pre-contractual information to be supplied to the consumer in a clear and transparent manner are more specific now than in the ICC before it was amended. For example, in relation to distance contracts concluded by electronic means, there is now a specific formal requirement that the consumer be informed that, by activating a button or a link, that he is then obliged to pay. Regarding contracts concluded by telephone, the trader must confirm the proposal and give acceptance in writing. Compared with the previous national regulatory regime, the right to withdraw from a contract has been *extended from 10 to 14 working days*. The submission of a written form is no longer required and it is sufficient for the consumer to use any type of statement to exercise their right of withdrawal, provided that this is unequivocal.
Regulatory choices	• Article 3(4) – national provisions transposing the Directive shall not be applied to off-premises contracts where payment to be made by the consumer is less than €50 • Article 6(7) – the trader is required to provide contractual information if the consumer requests it • Regulatory choices defined in art 6(8 and art 7(4) are not used in Italy • Article 8(6) – where a distance contract is to be concluded by telephone, the written confirmation of the contract is a mandatory

Country	Italy
	requirement. • Article 9(3) – no promissory note with a due date less than 15 days after delivery of goods
Sources of information	• DECRETO LEGISLATIVO 21 febbraio 2014, n. 21 Attuazione della direttiva 2011/83/UE sui diritti dei consumatori, recante modifica delle direttive 93/13/CEE e 1999/44/CE e che abroga le direttive 85/577/CEE e 97/7/CE. (14G00033) (GU Serie Generale n.58 del 11-3-2014), available at: http://www.gazzettaufficiale.it/eli/id/2014/3/11/14G00033/sg [accessed July 2016] • Eversheds, 2016, "Consumer Rights Directive", available at: http://www.eversheds.com/global/en/what/sectors/consumer/consumer-rights-directive.page [accessed July 2016] • The Main Innovations Of The Italian Legislative Decree No. 21/2014 Transposing Directive 2011/83/EU on Consumer Rights, Anna Argentati. Rivista Italiana Antitrust / Italian Antitrust Review, ISSN: 2284-3272. www.iar.agcm.it/article/view/10207 • Alberto De Franceschi, 'Implementation of the Consumer Rights Directive Italy' (2014) 3 Journal of European Consumer and Market Law, Issue 2, pp. 123–126. 'The EU Digital Single Market Strategy in Light of the Consumer Rights Directive', Alberto De Franceschi . ISSN: 2364-4710 ID: EuCML2014020 https://www.kluwerlawonline.com/abstract.php?area=Journals&id=EuCML2014020

Country	Latvia
Previous situation and changes compared with previous legislation	In Latvia, the CRD has been implemented by making amendments to a pre-existing piece of legislation, the Consumer Rights Protection Law ("CRPL"). The amendments were adopted by parliament on 24 April 2014. The main provisions came into effect on 13 June 2014. Amendments which implement other parts of the Directive came into force on 1 July 2014 and 1 January 2015 (depending which part of the CRD). There was already a 14 calendar day cooling-off period in Latvia so there was no change in the length of the right of withdrawal period. However, the implementation of the CRD has required amendments to the CRPL that have meant changes since previously in Latvia, consumer refunds for distance sales had to be made as soon as possible and at the latest within 30 days of the date that the consumer informed the trader through a cancellation notice. Section 12 of the Consumer Rights Protection Law (CRPL) of the Republic of Latvia and Cabinet Regulation No.207 'Regulations Regarding Distance Contracts' state that consumers may exercise the right of withdrawal and unilaterally withdraw from the contract within a time period of 14 calendar days. With regard to pre-contractual information, the CRPL sets out all the information that the trader is required to supply to the consumer and mirrors the requirements in the Directive. The cancellation period will only be extended to one year for both distance and off-premises contracts if the trader has failed to inform the consumer about his right to cancel and the

Country	Latvia
	applicable cancellation terms. Prior to the implementation of the Directive, the cancellation period was extended for distance sales to 3 months for the failure to provide written information (or in a similar format) regarding the name of the trader, their registration number, address, the characteristics of the goods, services or digital content, the price, delivery costs, the payment and delivery procedure and information on cancellation rights. For doorstep selling, there was no extended cancellation period for failure to supply such information. The requirement to provide pre-contractual information on digital content is a new requirement in Latvia. Additionally, the ban on "pre-ticked" boxes on websites is also a new requirement. The prohibition of excessive credit/debit card charges for B2C transactions) is also a new requirement in Latvia.
Regulatory choices	In terms of regulatory choices that have to be reported to the EC under Article 29, the only Article that Latvia has made use of is Article 3(4). Latvia does not apply the provisions laid down for off-premises contracts to contracts with a value below EUR 35. It has not used other regulatory choices.

Country	Lithuania
Previous situation and changes compared with previous legislation	The Lithuanian Law on Consumer Protection[109] (10 November 1994, No. I-657) defined consumer rights, spheres of the protection of consumer rights, establishes the institutional framework of consumer protection and the competence of the authorities, regulates relations between consumers and sellers, suppliers of services, and provides an out-of-court dispute resolution procedure and the liability for violations of the legal acts regulating protection of consumer rights. The **Civil Code of the Republic of Lithuania** (*Civilinis kodeksas/ Civil Code*) establishes key provisions related to **consumer contracts**, the rights and obligations of consumers and sellers/service providers, timeshare regulations, provisional list of unfair terms in consumer contracts, and lays down provisions related to distance selling, return and replacement of goods and contracts concluded away from business premises. Lithuania implemented the CRD by amending the Lithuanian Civil Code[110], which came into force on 13.06.2014. Most of the new provisions have been transposed in an additional chapter (XVIII1 chapter) "Consumer Contracts" of the sixth book of the Civil Code (see Article 6.228). In addition, Art 6.359 (the transfer of risk) has been added to the Civil Code. Most of the new provisions have been transposed in one additional chapter (XVIII – chapter 1) "Consumer Contracts" of the sixth book of the Civil Code (in Article 6.228). In addition, Art 6.3591 (the transfer of risk) has been added. Articles 6.2281–6.2282 of the Civil Code define the concept of consumer contract and other definitions and the scope of the application of

[109] 1994 www.litlex.lt/litlex/eng/frames/laws/Documents/159.HTM and 2007 http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=306060

[110] The Law on Amendment of the Civil Code of the Republic of Lithuania of 19.12.2013 No XII-700, available at the Website of the Seimas of the Republic of Lithuania (the data base of the legal acts, 2014-01-07 Nr.2014-00069), www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=463433&p_tr2=2>

Country	Lithuania
	the provisions of the Code (Art 2-3 CRD). Art 6.2283 of the Code stipulates the mandatory nature of the consumer law provisions and provides that the burden of proof for fulfilling the information duties rests on the business (Art 25 CRD). Art 6.2286 of the Civil Code provides the general information requirements for consumer contracts (Art 5 CRD), while Art 6.2287 regulates specific information requirements for distance and off-premises contracts (Art 6 CRD). Art 6.2288–6.2289 of the Code contains the concepts of distance contract and of off-promises contract as well as formal requirements for those (Art 7-8 CRD). Art 6.22810–6.22811 addresses the right of withdrawal from a distance or off-premises contract and contains detailed provisions on the exercise, effects of the right of withdrawal and exceptions from the right of withdrawal (Art 9-16 CRD). Art 6.22812 of the Civil Code applies to e-commerce transactions. The Civil Code was amended to reflect the transposition into national legislation of the CRD's provisions. The wording in the Lithuanian Code differs somewhat from the wording of the Directive itself. The Lithuanian Code states that the consumer will be granted a right to cancel the agreement (for failure by the trader to provide sufficient pre-contractual information) within a reasonable time period and will be able to claim a refund and compensation. However, in case of distance sales, if the trader fails to provide information on the consumer's right to cancel the agreement, then the consumer has a right to cancel the agreement within the period of 12 months following conclusion of the contract. In terms of key changes, the Lithuanian Code extends the previous legislation in Lithuania which provided the consumer with a cooling off period of 7 working days for distance sales and doorstep sales contracts. With regard to refunds, The Lithuanian Code changes the previous position where consumer refunds had to be made within 15 days of the day that the consumer gave notice to cancel to the trader. The requirement that a refund must include delivery costs is a new requirement in Lithuania. Overall, although there are some new requirements (pan on pre-ticked boxes, the extension of the Directive's scope to digital content, rules on delivery to the consumer, which are new requirements, the Lithuanian Code is not significantly different to the previous Lithuanian law. However, there are some differences. For instance, Lithuanian consumers are now entitled to receive comprehensive and accurate information concerning the terms under which goods and services are purchased, their quality, directions for use, a description of the warranties and exchange period, procedures for the termination of the contract for goods or services, and other relevant information that has significance to the consumer. The duty to provide such information to the consumer and its accuracy are the responsibility of the trader supplying the good, service or digital content. If the consumer was not provided with relevant information and/or it was inaccurate or fraudulent, and, as a result, the goods or services were not fit for their intended use, the consumer may refer to the State Food and Veterinary Service or State Non-Food Inspection or to the court for protection of its infringed rights.
Regulatory choices	• Article 3(4) – national provisions transposing the Directive shall not be applied to off-premises contracts for which the payment to be made by the consumer is less than 100 LTL (approximately 29 EUR). • Article 6(7) – before the conclusion of a contract, other than a distance

Country	Lithuania
	contract or an off-premises contract, the trader shall provide the consumer with the information in the State language [of the Republic of Lithuania] (Lithuanian). • Article 7(4) shall not be applied. • Article 8(6) – where a distance contract is to be concluded by telephone, the trader shall confirm the offer to the consumer on a durable medium. The contract shall be concluded only when the consumer has signed the offer or has sent his written consent.
Sources of information	• The Lithuanian Law on Consumer Protection - http://www.litlex.lt/litlex/eng/frames/laws/Documents/159.HTM (legal text in EN) • Implementation of the Consumer Rights Directive: Lithuania - Vytautas Mizaras, Zeitschrift für Europäisches Unternehmens- und Verbraucherrecht, Journal of European Consumer and Market Law (2014) 3:200–201

Country	Luxembourg
Previous situation and changes compared with previous legislation	The Law of 2 April 2014 implements Directive 2011/83/EU of 25 October 2011 on consumer rights and amends the recently inaugurated (2011) Luxembourg Consumer Code. The key differences between the previous national consumer legislation and the provisions of the Directive are summarised as follows: • The most significant consequence of the CRD is that the previous general prohibition of off-premises contracts is abandoned. Pursuant to the new Article L.222-8 of the Consumer Code, any trader may now enter into a contract with a consumer outside a business premises following canvassing or seeking orders. • Increased transparency for consumer contracts (Article 6): The Law increases previous information requirements and establishes new formal requirements. • New formal requirements for off-premises and distance contracts (Articles 7 and 8): post-CRD, traders in Luxembourg must comply with new formal requirements relating to: (i) the provision of the information in the bullet-point above, (ii) the placing of the order and (iii) the confirmation of the concluded contract. • Harmonised withdrawal period (Article 9): The law previously provided for a cooling off period of 7 days for both distance sales and off-premises sales. • New withdrawal rights for ancillary contracts (Article 15): the automatic termination of ancillary contracts if the consumer exercises his right of withdrawal from a distance or an off-premises contract is a new development in Luxembourg law: previously only consumer-credit-related ancillary contracts could be cancelled after withdrawal. • Rules on delivery (Article 18): the thirty-day delivery period previously

Country	Luxembourg
	provided for in Luxembourg for distance contracts is extended to all sales contracts, unless otherwise agreed between the parties. • Elimination of hidden Internet charges (Articles 5 and 6) and the banning of pre-ticked boxes on the internet (Article 22) are new requirements in Luxembourg law.
Regulatory choices	• Article 3(4) – Exemption for off-premises contracts where payment to be made by the consumer is less than €50. • Article 8(6) – Requirement of written confirmation of contracts concluded by telephone. This article applies. Other regulatory choices do not apply.

Country	Malta
Previous situation and changes compared with previous legislation	The Consumer Rights Directive was transposed into the Maltese legislative system through the Consumer Rights Regulations 2013, which came into force on 13 June 2014. Consumer Rights Regulations repeals the Distance Selling Regulations (legal notice 186 of 2011). Although the newly enacted regulations address off-premises contracts, the Doorstep Contracts Act (Chapter 317 of the Laws of Malta) remains unchanged. Consumer protection legislation is relatively new in Malta, as the first Act dealing specifically with consumer protection was the Consumer Affairs Act in 1994. Such legislation was later amended in 2000, in line with the process of accession to the EU, when various EU consumer protection directives were implemented. In this respect, the Maltese Government not only introduced the minimum requirements as defined by the various EU directives, but also opted to go beyond those minimum requirements. In other words, consumer protection in Malta was already advanced before the transposition of the CRD. The main changes compared with previous legislation are summarized as follows: • On information when buying goods or services: the Consumer Rights Regulations strengthen consumer rights when buying goods and services in terms of the level of information consumers should be provided before buying, compared to the old legislation. • Information on digital content: this is a new requirement • Right of withdrawal: in the old legislation (Article 6 of Distance Selling Regulations), the right of cancellation was set to 15 days, starting from the day of receipt of goods, or from the day of conclusion of the contract in case of services. The inclusion of a withdrawal form is also new. • Prohibition of pre-ticked boxes on websites: this is a new requirement. • Protection of costumers against hidden charges and costs while ensuring price transparency: this is a new requirement. • Rules about delivery costs are strengthen: in the old legislation, in case of distance selling, traders were already obliged to inform consumers

Country	Malta
	about "delivery costs, where appropriate" (Article 1(4d)). The new legislation strengthens such need of information. • Rules about the delivery period: If the trader agrees to deliver the good within a specific delivery date and fails to carry out delivery on or before the agreed date, the consumer may terminate the contract. When no specific delivery date is set, trader is obliged to deliver the goods within 30 days from the conclusion of the contract. This is a new requirement. • Ban of surcharges when paying by credit card or other means of payment: this is a new requirement • Telephone hotlines and basic telephone rate for the calls. This is a new requirement • Rules about inertia selling, as set out in the CRD: this is a new requirement in Malta.
Regulatory choices	• Art 3(4) –Malta has made use of this choice but the limit is set at 30 €. • Art 6(7) – Malta has made use of this choice (either Maltese or English should be used). • Art 8(6) –requiring written confirmation of contracts concluded by telephone: Malta has made use of this choice. • Art. 9(3) – prohibiting to collect payment in off-premises contracts during a given period: Malta has made use of this choice; deposit can be collected only 14 days after the conclusion of the contract.
Sources of information	Consumer Rights Regulations 2013: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25850&l=1 Old legislation - Distance Selling Regulations 2001: www.mccaa.org.mt/loadfile/04eea644-6bcd-4db4-b039-77f3a9d648f3 Rebekah Tanti-Dougall (2014) "Implementation of the Consumer Rights Directive: Malta". Journal of European Consumer and Market Law, Issue 3, pp. 187–189 Paul Edgar Micallef (na) The Future of Consumer Law – the perspective from a small island state Mariosa Vella Cardona (2014) Your rights when shopping online, http://www.timesofmalta.com/articles/view/20140102/business-comment/Your-rights-when-shopping-online.501075

Country	Netherlands
Previous situation and changes compared with previous legislation	Certain articles of the Dutch Civil Code were amended in the implementation of the Directive. The amended articles came into effect on 13 June 2014. The key differences between the previous national consumer legislation and the provisions of the Directive are summarised as follows: • Increased transparency for consumer contracts (Articles 6 and 10): The new pre-contractual requirements change previous legislation which stated that the cancellation period was 3 months on top of the cooling off period of 7 days for failure to provide sufficient pre-contractual

Country	Netherlands
	information. • Harmonised withdrawal period (Article 9): Dutch legislation previously provided that the cooling off period for off-premises sales (with a minimum value of EUR 34) was 8 calendar days after receipt of the product. For distance sales, the cooling off period was 7 working days. • Better refund rights (Article 13): The Dutch Code has changed the previous Netherlands position which was that consumer refunds had to be made as soon as possible, and in any case within 30 days of the day that the consumer gave notice to cancel to the trader. • Rules on delivery (Article 18): Dutch legislation already required the trader to deliver the goods within 30 calendar days. However, the notice which is required to put the seller in default need not be in writing under the CRD, where it would have to be under previous NL legislation (Articles 6:81 and 82 Dutch Civil Code). • Passing of risk (Article 20): This CRD article adds to the pre-existing provisions of the Consumer Sales Directive. These provisions have been implemented in Title 7.1 of the Dutch Civil Code, where the provisions of the Consumer Sales Directive had also been implemented. Before CRD transposition, Article 7:11 of the Civil Code provided that in the case of a consumer sales contract where the parties had agreed on transportation of the goods by the seller to the consumer's house, risk would only pass when the consumer obtained the physical possession of the goods. However, the parties could derogate from this provision by an individually negotiated term. The implementation of Article 20 CRD has led to a new formulation of Article 7:11 and, more importantly, deleted the possibility for the parties to derogate from this provision by an individually negotiated term. • Consumer protection for digital products; elimination of hidden Internet charges (Articles 5 and 6), banning pre-ticked boxes (Article 22), elimination of surcharges for use of credit cards and hotlines (Articles 19 and 21) are all new requirements in Dutch law.
Regulatory choices	• Article 3(4) – Exemption for off-premises contracts where payment to be made by the consumer is less than €50. • Article 7(4) – The Netherlands has opted out from specifying less onerous pre-contractual information requirements for off-premises contracts for repairs or maintenance performed immediately for an amount not exceeding EUR 200. • Article 8(6) – NL opted to require written confirmation of contracts concluded by telephone (but with limited application).

Country	Poland
Previous situation and changes	The Directive was implemented in Poland by the Act dated 30 May 2014 on Consumer Rights[111]. With regard to the changes with previous legislation and the new provisions

[111] Sejm of the Republic of Poland (2014): Act dated 30 May 2014 on Consumer Right, available at https://uokik.gov.pl/download.php?plik=17819

Country	Poland
compared with previous legislation	of the Directive, the new legislation sets out the following: • On information requirements (Article 5 & 6 of the CRD): Under the Act, the list of specific information that has to be made available for both distance and other than distance and off-premises is much wider than it was previously (Article 3,8 and 9 and Article 8). In addition, in case of omission of information, the cancellation period prior to the current Act was 3 months which is significantly shorter than the 12 month currently given. • Information on digital content (Art 5 & 6). This is a new requirement in Poland as no reference to digital content can be found in the Act of 2 March 2000 on the protection of certain consumer rights. • The formal requirements for distance and off-premises contracts. The consumer must be made fully aware that the purchase will take place through a button clearly indicating that the good, service or digital content will be purchased. • Fully harmonised 14 days' withdrawal period for distance and off-premises contracts. This is a new requirement as the cooling off period for distance sales and doorstep sales was, prior to the Act, 10 days. The catalogue of exclusions from the right of withdrawal however is much wider compared with the previous act. • Introduction of an EU-wide model withdrawal form. This is a new addition. The model withdrawal form has been attached to the Polish Act.112 • New rules on delivery and passing on the risk. The new Act clarifies the rules, e.g. the trader shall reimburse the price of goods, including delivery charges. On the other hand the obligation for the consumer to cover the costs for returning the goods has been clarified as well. However, the trader must inform the consumer about this obligation to bear the costs of returning the goods. In addition, the time period for passing the risk to the consumer has been extended from 6 month to 1 year. • The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Art 21). This is a new requirement. In the previous Act on the protection of certain consumer rights no information is provided on telephone charges. • Elimination of surcharges for the use of credit cards and other means of payments. This is a new requirement in Poland. • Banning pre-ticked boxes. This is a new requirement in Poland. • Provision on inertia selling. This is a new requirement in Poland.
Regulatory choices	• Poland has made use of the option to exclude contracts from the remit of the Act and set the value under which the legislation does not apply to 50 PLN. [This is around 12€]. • Poland has made use of the option concerning language with links to two different laws which are the Polish Language Act (article 7 and 7a) and the Civil Code. The Civil code has been amended to contain these

[112] Taylor Wessing (2016): Act on Consumer Rights Brochure, available at http://poland.taylorwessing.com/en/consumer-act-brochure

Country	Poland
	language requirements through article 44(9) of the Consumer Rights Act. • Art 8(6) requiring written confirmation of contracts concluded by telephone. Poland has made use of that option which can be found in article 20 of the Consumer Rights Act but only when the professional calls the consumer.
Sources of information	Chodkowski M (2014): Better-informed buyers, harder-working sellers, available at http://www.laszczuk.pl/en/15/publication European Commission (2016): Information on the USE of Regulatory choices under Article 29 CRD, available at http://ec.europa.eu/justice/consumer-marketing/files/overview_regulatory_choices.pdf Schönherr (2015): Poland: Traders' Obligations under the New Consumers Protection Act, available at http://www.schoenherr.eu/publications/publications-detail/poland-traders-obligations-under-the-new-consumers-protection-act/ Wessing Taylor (2016): Act on Consumer Rights Brochure, available at http://poland.taylorwessing.com/en/consumer-act-brochure

Country	Portugal
Previous situation and changes compared with previous legislation	The Consumer Rights Directive was transposed into the Portuguese legislative system by the Law Decree n. 24/2014 (Decreto-Lei n. 24/2014, de 14 de fevereiro). The provisions established in the Decree came into force starting from the 13 June 2014. The Law Decree n. 24/2014 also appointed the Economic and Food Safety Authority - ASAE (Autoridade de Segurança Alimentar e Económica) as the national body in charge of the enforcement of the provisions on the Law decree. It is worth to remark that this is a partial transposition because the Law Decree n. 24/2014 only applies to off-premises and distance contracts. The CRD provisions about on-premises contracts such those in Article 5 are not transposed by the Portuguese legislation. The Law Decree n. 24/2014 was later partially amended by the Law n. 47/2014 (28 July). Before 2014, in Portugal consumer rights were protected by the Law n. 24/1996, 31 July. The key differences between the previous national consumer legislation (Law n. 24/1996) and the new provisions of the Directive as transposed by the Law Decree n. 24/2014 are summarised as follows: • Pre-contractual information: compared to the previous regulatory regime, now traders must provide more information to the consumers, both during the negotiation and the conclusion of the contract. Compulsory information concern aspects such as functionalities and interoperability in case of digital content, or information regarding potential delivery restrictions as well as payment methods in case of e-commerce. • Right of withdrawal: differently to the previous regulatory regime, the right of withdrawal is now regulated in the same way for both distance and off-premises contracts (according to the provisions of the Law n. 24/1996, off-premises contracts and distance contracts were regulated separately). The withdrawal period is established in 14 days and this is

Country	Portugal
	a new requirement in Portugal. • Prohibition of additional charges (that would increase the cost of the good/service), if such charges were not previously agreed between the consumer and the trader. This also includes the ban of pre-ticked boxes. This is a new requirement. • Delivery rules, as defined under article 18 of the Directive "the trader shall deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract". This is a new requirement. • Provisions regarding communication by telephone, as defined by article 21 of the Directive "here the trader operates a telephone line for the purpose of contacting him by telephone in relation to the contract concluded, the consumer, when contacting the trader is not bound to pay more than the basic rate". This is a new requirement • Prohibition of inertia selling, this is a new requirement introduced by the article 28 of the Law Decree n. 24/2014
Regulatory choices	• Article 3(4): Such regulatory choice applies only to subscription of periodical items for a limit of 40€. • Art 6(7) –This option has been used and Portuguese language is required. • Art 7(4) – Portugal decided not to apply it. • Art 8(6) – requiring written confirmation of contracts concluded by telephone: Portugal has made use of this rule, but it does not apply if initial contact was made by the consumer.
Sources of information	Decreto-Lei n. 24/2014, de 14 de fevereiro: https://dre.tretas.org/dre/315492/#text Frade and Almeida (2016): Análise crítica da directiva dos direitos dos consumidores e da sua transposição: https://digitalis.uc.pt/pt-pt/node/106201?hdl=33985 Abreu Advogados (2014) O Novo Regime dos Contratos Celebrados a Distância e Fora do Estabelecimento Comercial A Direção-Geral do Consumidor (2014) A transposição da Diretiva dos Direitos dos Consumidores (Diretiva 2011/83/CE):

Country	Romania
Previous situation and changes compared with previous legislation	The new directive 2011/83/UE is updating and cumulating the provisions of the 2 directives referring to the contracts concluded outside commercial spaces and distance contracts, and introduces provisions to other type of contracts different from the ones mentioned previously. The project settles the information that has to be shared with the consumer in the pre-contractual phase as well as for the contract negotiated outside commercial spaces, distance contracts and other type of contracts than the ones mentioned previously. For distance contracts and for contracts negotiated outside commercial spaces the normative project foresees the information that the trader has to give to the consumer, the conditions that this contract has to fulfil and the "right of withdrawal" for consumers. It is also

Country	Romania
	covering issues regarding delivery, extra taxes, risk transfer, telephone communication and unrequested selling. Among the novelties brought by the draft legislation, mention those relating to: • introducing a 14 day withdrawal right for contracts concluded at distance and outside commercial spaces; • introducing a withdrawal form, harmonized that can be used by consumers in order to simplify the withdrawal process and bring juridical security ; • harmonization of rules referring to the moment when the delivery should be done. Hence, if the parts do not agree with a certain delivery date the trader should deliver the goods as soon as possible, but not later than 30 days from concluding the contract. Moreover, in the case that the trader is not delivering/provides the services in this term, under certain circumstances, the trader receives an extra reasonable time ; • traders are forbidden from charging consumers fees that exceed the cost borne by the trader for the use of a given means of payment; • as for risk transfer it is considered that a consumer has received the physic possession of the good at the moment of their receiving; • for unrequested selling, the consumer is exempted from any payment regarding the goods or unrequested services. The terminology has changed in "withdrawal right" – due to the fact that the withdrawal right is under juridical law protecting the consumer • Also, the "right to ceasing" the contract was introduced instead of "right of termination" of the contract, due to the fact that "termination" involves the failure of one of the parts and this is against the spirit of the European directive.
Regulatory choices	• 3(4) – not applying the CRD to off- premises contracts ≤ 50 € → Romania has applied this art. With limit of 50EUR • Art 6(7) – imposing national language requirements for contractual information → yes, Romanian • Art 6(8) – imposing additional information requirements under e-Commerce /Services Dir. → not used • Art 7(4) – possibility for not applying the light information regime for repair works ≤ 200 € → not used • Art 8(6) – requiring written confirmation of contracts concluded by telephone → applied by Romania • Art. 9(3) – prohibiting to collect payment in off-premises contracts during a given period → not applied
Sources of information	*Sources of information:* http://www.euroavocatura.ro/print2.php?print2=lege&idItem=216 http://www.anpc.gov.ro/anpcftp/legislatie/servicii/Ordonanta%20nr.%20130(r1)%20din%202000.html http://www.anpc.gov.ro/anpcftp/legislatie/Ordonanta%20nr.%2021(r2)%20din%201992.html http://eur-lex.europa.eu/legal-

Country	Romania
	content/RO/TXT/?uri=CELEX%3A31993L0013

Country	Slovakia
Previous situation and changes compared with previous legislation	The Consumer Rights Directive was transposed in Slovakia through Act No. 102/2014 Coll. "On consumer protection in the sale of goods or provision of services under remote agreements or agreements executed outside business premises of the Seller". The Act came into force on 1st May except for the articles 1-3, 6, 8 and 12 which came into force on 13th June 2014. Act No. 102/2014 replaced the Act No. 108/2000 on consumer protection in doorstep selling and distance selling" The main changes in relation to previous legislation are the following: • On information requirements (Article 5 & 6 of the CRD): Act 102 has provided the consumer with a longer cancellation period for failure by the trader to provide sufficient pre-contractual information, which was previously 3 months under Slovakian law • Information on digital content (Art 5 & 6). Digital products, such as computer programs, music or videos are mentioned only in relation to the withdrawal rights[113] in the earlier Act 108/2000 but assumed to be delivered to the consumer in a tangible medium (as opposed to CDR where the digital content can be accessed through downloading, streaming, from a tangible medium or through any other means). • Similar provisions (less extensive ones) were already included in Act No. 108/2000 on consumer protection in doorstep selling and distance selling. • Fully harmonised 14 days' withdrawal period for distance and off-premises contracts. This is a new requirement as the cooling off period for distance sales and doorstep sales was set to be 7 days (Act 108/2000, Paragraph 12(1) but working days only. • Introduction of an EU-wide model withdrawal form. This is a new provision as no model and instructions on withdrawal were included. • New rules on delivery and passing on the risk. Act 102 does not change the previous position in Slovakia, which was that a trader must satisfy an order within 30 days from the day he received the order from the consumer. • The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Art 21). This is a new requirement. • Elimination of surcharges for the use of credit cards and other means of payments. This is a new requirement. • Better refund rights. There are clearer provisions under the new Act. The regulatory measures concerning consumer refund rights were less extensive under previous Slovak legislation. Moreover, Act 102/2014 has changed Slovakian legislation as previously the trader had to provide the consumer with a refund within 15 days since the day that the consumer gave a cancellation notice to the trader. Under the

[113] Paragraph 12 specified that if these products were taken out of their packaging, the consumer could no longer withdraw from the contract.

Country	Slovakia
	current law, this period is set to be 14 days • Banning pre-ticked boxes. This is a new requirement. • Provision on inertia selling. This is a new requirement.
Regulatory choices	• Art 8(6) requiring written confirmation of contracts concluded by telephone. Slovakia has made use of this option included in Section 5(2). • Slovakia has decided not to apply Art 7(4) • Prohibition on the trader from collecting payment from the consumer during a given period after the conclusion of the contract. Slovakia has maintained the existing national legislation. It is included in Act No 10/2014 in Section 12(2): "During a sales action or before the expiry of the withdrawal period, a seller may nor demand or receive performance from the consumer in the form of the payment of all or part of the price for the goods or service offered; the same shall also apply in the case of a deposit on the price of goods or services or a fee connected with the conclusion of a contract or the delivery of the goods or the provision of a service. Nor may the seller encourage the performance by the consumer referred to in the first sentence."
Sources of information	Act 102/2014, available at: http://www.zakonypreludi.sk/zz/2014-102 [accessed July 2016] ECC-net, September 2014, "Table of MS Having Transposed The Directive on Consumer Rights", available at: http://www.europe-consommateurs.eu/fileadmin/user_upload/eu-consommateurs/PDFs/PDF_EN/REPORT-_GUARANTEE/tableau_EN.pdf [accessed July 2016] Act No. 108/2000, available at: http://www.bezpecnynakup.sk/files/Zakon_108_2000_o_zasielkovom_predaji.pdf [accessed July 2016] Eversheds, 2016, "Consumer Rights Directive", available at: http://www.eversheds.com/global/en/what/sectors/consumer/consumer-rights-directive.page [accessed July 2016]

Country	Slovenia
Previous situation and changes compared with previous legislation	In Slovenia the key regulation in the area of consumer rights is the Consumer Protection Act (Official Gazette of RS, No. 98/2004, 126/2007, 86/2009, 78/2011, 38/2014), which regulates consumer rights in relation to legal entities. The Act implements several EU Directives including Directive 84/450 and 97/55 (misleading and comparative advertising), Directive 93/13 (unfair terms and conditions in contracts between consumers and enterprises), Directive 1999/44 (guarantee rules), Directive 85/577 (protecting consumers in respect of contracts negotiated away from business premises), Directive 97/7 (protecting consumers in respect of distance contracts). Changes in the organisation of the public administration led to changes of the authorities responsible in the field of consumer legislation. As a result the adoption of the new Consumer Protection Act on 21 December 2011 abolished the Consumer Protection Office of the Republic of Slovenia, with its functions being assumed by the Ministry of Economic Development and Technology. The Ministry was appointed to act as the single liaison office, and is responsible for implementation of the Regulation at the national level. The Ministry works at national level with the Market Inspectorate, which is responsible for overseeing most laws that protect consumers' interests. The Consumer Protection Act specifies the role of Market Inspectorate as a surveillance authority for market activities. The Consumer Protection Act also contains the transposition of other EU regulations on unfair advertising (including the rules on comparative and misleading advertising), guarantees (including 2-year guarantees and commercial guarantees), and regulations linked to the transposition of the CRD relating to "distance contracts" and contracts negotiated away from business premises. The most relevant changes occurred in the consumer protection as a result of the transposition of the Consumer Rights Directive can be summarised as follows: • With regard to information requirements (i.e. Articles 5 and 6), after the transposition of the CRD into national legislation a trader is required to provide some additional information before the consumer is bound by a (distance or off-premises) contract. • The main rule related to the right of withdrawal (Article 9) has not changed. Before the transposition of the CRD into national legislation a consumer has already had a period of 14 days to withdraw from a distance or off-premises contract. • The omission of information of the right of withdrawal (Article 10) has changed: if the trader does not provide the consumer with the information on the right of withdrawal, the withdrawal period was prolonged from 3 months to 12 months from the end of the initial withdrawal period. • The period in which the trader shall reimburse all payments received from the consumer (Article 13(1)) was shortened from 30 days to "in any event not later than 14 days from the day on which he is informed of the consumer's decision to withdraw from the contract." Before the implementation of the CRD there was no provision that required the trader to reimburse using the same means of payment of the consumer. • With regard to Article 18 (i.e. rules on delivery), a similar provision on the termination of the contract already existed in national legislation (Code of Obligations) before the transposition of the CRD into national

Country	Slovenia
	legislation. However, there was no provision requiring the trader to deliver the goods by transferring the physical possession or control of the goods to the consumer without undue delay, but not later than 30 days from the conclusion of the contract, if not agreed otherwise. • The rules on the passing of risk (Article 20) also changes: the risk of loss of or damage has been shifted from consumer to the trader when delivering goods to the carrier if the carrier was not commissioned by the consumer.
Regulatory choices	• Article 3(4) – National provisions are transposing the Directive are not applied to off-premises contracts where payment to be made by the consumer is less than €20 • Article 6(7) – Slovenia has made use of this regulatory choice, requesting that the requirements for contractual information is provided in the national language. • Article 7(4) – Slovenia decided to make use of this article, thus does not apply the light information regime for repair works ≤ €200 • Article 8(6) – Requiring written confirmation of contracts concluded by telephone. This option has been used in Slovenia.
Sources of information	East Legal Team briefing note available at http://east-legal.com/consumer-protection-in-slovenia/

Country	Spain
Previous situation and changes compared with previous legislation	The Directive was implemented in Spain on 28 March by virtue of Law 3/2014 which entered into force on 13 June 2014. Law 3/2014 amends the revised text of the General Law on the Protection of Consumers and Users and other supplementary laws, approved by Royal Legislative Decree 1/2007 of 16 November. With regard to the changes with previous legislation and the new provisions of the Directive, Law 3/2014 sets the following: • On information requirements (Article 5 & 6 of the CRD): the law sets the same information requirements as in the Directive, with minor changes from those in the earlier legislative RD 1/2007. There is a new addition of contracts for the supply of water, gas and electricity. The new law does not distinguish between premises and distance and off-premises contracts however. It is worth noting that in the cases of omission of information on the right of withdrawal, the new law follows the Directive (in line with Article 10 of the CRD) and extends the withdrawal period to 12 months from the end of the initial withdrawal period. Prior to this law, the period was only extended by 3 months. • Information on digital content (Art 5 & 6). This is a new requirement in Spain. • The formal requirements for distance and off-premises contracts. This is a new requirement in Spain. • Fully harmonised 14 days' withdrawal period for distance and off-premises contracts. Law 3/2014 (Art. 71) has changed Spanish law as the previous cooling off period was 7 working days for distance sales and 7 calendar days for doorstep sales. • Introduction of an EU-wide model withdrawal form. This is a new addition. The consumer is given the choice of using an identical form as the one in the Directive, also annexed to the law. • New rules on delivery and passing on the risk. New requirement in Spain and the same as that of the Directive. • The "basic rate" requirement for consumer telephone lines in relation to contracts already concluded (Art 21). This is a new requirement in Spain. • Elimination of surcharges for the use of credit cards and other means of payments. This is a new requirement (Art. 60b) and the same as that of the Directive. • Better refund rights. Law 3/2014 (Art. 76) has changed the law in Spain as previously consumer refunds needed be made as soon as possible, and in any case within 30 days of the day that the consumer gave notice to cancel to the trader (rather than the newly established limit of 14 days under the CRD) • Banning pre-ticked boxes. This is a new requirement • Provision on inertia selling. This is a new requirement (Art. 66).
Regulatory choices	• Spain has not applied the exemption for contracts under €50 (Article 3(4)). • Spain has introduced language requirements and, at a minimum, information shall be provided in Spanish (Article 98) • Article 6(8) and additional information requirements. This option has

Country	Spain
	not been used. • Art 7(4) – possibility for applying the light information regime for repair works ≤ 200 €. It was decided not to apply this paragraph. • Art 8(6) requiring written confirmation of contracts concluded by telephone. This option has been used in cases where the trader contacts a consumer or user by telephone (Art. 98). Moreover the same article forbids phone calls to be made before 9 am or later than 21 hours or holidays or weekends. The consumer will only be bound once she has signed the offer or sent their agreement in writing on paper, by fax, email or SMS,. A sound recording of the consumer will not serve as evidence of consent. • Art. 9(3) allowing MS to prohibiting to collect payment in off-premises contracts during a given period. This option has not been used.
Sources of information	http://www.elderecho.com/tribuna/mercantil/ley_de_los_consumidores-derechos_de_los_consumidores_11_682555001.html http://ec.europa.eu/justice/consumer-marketing/files/regulatory_choices_es_crd_en.pdf Consumer rights directive Multijurisdictional guide (second edition) http://www.eversheds.com/global/en/what/sectors/consumer/consumer-rights-directive.page Ley 3/2014, de 27 de marzo, por la que se modifica el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias, aprobado por el Real Decreto Legislativo 1/2007, de 16 de noviembre. http://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-3329 REAL DECRETO LEGISLATIVO 1/2007, de 16 de noviembre, por el que se aprueba el texto refundido de la Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias. https://www.boe.es/boe/dias/2007/11/30/pdfs/A49181-49215.pdf

Country	Sweden
Previous situation and changes compared with previous legislation	Sweden had a long tradition of consumer protection prior to its accession to the EU in 1995. The original legislation was the Swedish Consumer Sales Act (SFS 1990:932), the Konsumentköplagen. There have been a number of changes made to the Act to bring it into line with the CRD, as set out in the amended Swedish Consumer Sales Act (SFS 2014:11). The new rules include stricter requirements with regard to contracts that are entered into via a trader's web page. A consumer shall be bound by the agreement only if he has expressly agreed to pay for the goods or services. If an order is made by clicking on a button, it should be clear that the order imposes an obligation to pay. This information should be on the button or immediately adjacent to it. If a consumer does not click on a button, or take a similar action, then they will not be bound by the order. New rules have also been introduced regarding sales of online digital content. The rules concern the conditions relating to the right of refund and how a waiver for the right to a refund shall be made. A written confirmation of purchases sent to customers before delivery of the order shall include an explicit statement that such a right has been waived (if that is the case

Country	Sweden
	when such a waiver has been made by the consumer e.g. by ticking a specific box. New rules were introduced regarding traders' obligations to provide specific information to consumers before any purchase of digital content. Unless otherwise provided for in the contractual agreement, an item of purchase is to be delivered within a "reasonable time" of the purchase (Section 5 of the Consumer Sales Act). The act states that the goods, unless otherwise provided in the agreement, shall be delivered "without delay" and within 30 days of the agreement being entered into. If the business requires a longer delivery time than 30 days, it must be expressly agreed with the consumer. There are some additional rights in Sweden that go beyond the minimum requirements in the CRD. Sweden has chosen to make use of the option in Article 3(4); see Government Bill No 2013/14:15 p. 39, and Chapter 2 Section 1(3) of the Act on distance sales and off-premises contracts (2005:59). Consumers in Sweden have a period of 36 months (compared to 24 months in other Member States) to claim an exchange or refund in cases of faulty goods (under certain circumstances).[114] In addition, consumers have been given the right to rescind a contract if the consumer, prior to the conclusion of the agreement, informed the business that supply of the goods on the stated day is of crucial importance and business fails to deliver on this day, or if the business explained that it does not intend to deliver the goods. A clarification to this end was introduced into Section 13 of the Swedish Consumer Sales Act. Sweden has however chosen not to make use of the options in Articles 6(7), 6(8), 7(4), 8(6) and 9(3). A further issue concerns the leveraging of additional fees for consumers purchasing goods and services with a credit card. Under the CRD, traders may only leverage the fees levied on them by credit card companies. However, in Sweden, such payment charges are not allowed.[115]
Regulatory choices	Sweden has chosen to make use of the option in Article 3(4); see Government Bill No 2013/14:15 p. 39, and Chapter 2 Section 1(3) of the Act on distance sales and off-premises contracts (2005:59). The limit in Sweden for excluding contracts of the remit of the transposing legislation is around €43 (400SEK). Sweden has chosen not to make use of the options in Articles 6(7), 6(8), 7(4), 8(6) och 9(3).
Sources of information	http://www.lexology.com/library/detail.aspx?g=d6328f6d-8183-4409-800e-e77fbfc133ad http://www.konsumenteuropa.se/en/EU-legislation/directives/ EC Consumer Law Compendium: The Consumer Acquis and its transposition in national legislation by Hans Schulte-Nölke, Christian Twigg-Flesner, Martin Ebers

[114] http://www.konsumenteuropa.se/globalassets/rapporter/checklista_for_naringsidkare.pdf
[115] http://www.konsumenteuropa.se/globalassets/rapporter/checklista_for_naringsidkare.pdf

Country	UK
Previous situation and changes compared with previous legislation	The provisions of the CRD were originally implemented through the: • Payment Surcharges Regulations 2012, which took effect in April 2013. • The Consumer Contracts Regulations 2013 (SI 2013 No. 3134), which implement the information and cancellation requirements of the Directive. The Regulations came into force on 13th June 2014 i.e. by the deadline stipulated in the CRD. However, the Consumer Rights Act 2015 ("CRA")[116] subsequently came into force in October 2015. The aim of the CRA 2015 is to create a simple framework of consumer law across all sectors by consolidating and modernising UK legislation to provide protection and rights for consumers into a single act. It also brings into effect certain online rules from the 2013 Regulations into all consumer contracts. Digital content is addressed in the CRD. Digital content supplied to a customer (or supplied for free alongside another service) should be of satisfactory quality according to the expectations of a reasonable person. The main changes compared with previous legislation relating to distance and online selling are that: • Digital content was introduced as a new distinct category of product alongside goods and services that must meet a minimum standard[117]. • Extending the "cooling-off period" for consumers (the "right of withdrawal" to change their mind from 7 to 14 days • Reducing the period for refunding customers from 30 to 14 days • Making it a requirement that "pay" buttons on traders' websites must clearly signpost the customer's obligation to pay rather than simply 'order' • A prohibition on pre-ticked boxes on traders' websites meaning up-selling must be agreed to • A maximum 30-day window for the delivery of goods and services, unless the customer agrees otherwise and • A ban on premium rate helplines: the basic rate must be charged. The CRA also extends consumer rights that were inherent to the physical purchase of goods to digital content and to goods and services bought online. The requirements that goods must be of satisfactory quality, fit for purpose and meet the expectations of the consumer were already implied in the Sale of Goods Act 1979 in relation to trader-to-consumer contracts. This has also been incorporated into the CRA.
Regulatory choices	With regard to those Articles of the CRD where there are regulatory choices, in the UK, Article 3(4) will be applied in part. Chapter IV provisions will apply to off-premises contracts for less than 50 Euros. Under the implementing regulations such transactions will be exempt from the

[116] The Consumer Rights Act in the UK has consolidated eight pieces of separate consumer legislation into a single piece of legislation. Among the pieces of legislation that have been combined are the CRD, the Unfair Terms in Consumer Contracts Regulations 1999, Unfair Contract Terms Act 1977, Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982. It brings greater consistency to consumer protection rules that had previously been spread across a wide range of different Acts and Regulations.

[117] This was designed to address the problem that previously, digital content embedded for sale as a tangible good (e.g. a DVD) was protected whereas consumers were not covered for the purchase of intangible goods (e.g. MP3s purchased via app's).

Country	UK
	information and cancellation requirements of chapters II and III. With regard to Article 6(8), energy providers in the UK operate under a licensing regime subject to the oversight of the Gas and Electricity Markets Authority. Energy providers supplying energy to consumers are subject to enhanced information requirements to ensure the efficient functioning of the energy market.
Sources of information	www.kwm.com/en/uk/knowledge/insights/digital-content-under-the-consumer-rights-act-2015-20151006 http://www.osborneclarke.com/connected-insights/campaigns/how-consumer-rights-directive-being-implemented-across-europe/ - note provides cross-comparative overview http://www.lexology.com/library/detail.aspx?g=a86e26b5-2c03-4264-9cd8-1ce16ca7532e Consumer Rights Act 2015 by Lorraine Conway, House of Commons BRIEFING PAPER Number SN 6588, 1 October 2015, http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06588 Regulatory impact assessment undertaken by BIS in the UK in 2012 , www.gov.uk/government/uploads/system/uploads/attachment_data/file/31357/12-961-supply-of-digital-content-impact.pdf)

Annex 2: Summary statistics online survey

A2.1 Summary statistics of responses by MS

The following tables show the number of responses by MS. Note that Table A2-1 presents the number of complete responses from consumer & trade associations, competent authorities and ECCs by number (as due to the lower number of them presentation as percentages could be misleading). Table A2-2 on the other hand presents the number of responses from consumers and traders as percentages (as the number of responses is considerably larger).

Table A2-1: Completed responses by country of residence (Q 1)

Country	Consumer associations	Trade associations	Competent authorities	ECCs
Austria	1	5	2	1
Belgium	1	4	1	1
Bulgaria	0	0	1	0
Croatia	1	0	1	1
Cyprus	1	0	1	1
Czech Republic	2	0	1	1
Denmark	0	0	1	1
Estonia	1	1	2	0
Finland	1	1	2	1
France	1	1	1	1
Germany	0	4	1	2
Greece	3	0	3	1
Hungary	0	0	1	1
Ireland	1	0	1	1
Italy	1	1	1	1
Latvia	0	0	1	2
Luxembourg	0	0	0	1
Lithuania	2	0	2	1
Malta	1	0	1	1

Country	Consumer associations	Trade associations	Competent authorities	ECCs
Netherlands	1	2	1	1
Poland	0	2	1	2
Portugal	2	0	2	1
Romania	1	0	1	0
Slovakia	1	1	3	1
Slovenia	0	0	0	1
Spain	0	0	6	0
Sweden	1	2	2	1
United Kingdom	1	1	0	2

Table A2-2: Completed responses by country of residence (Q 1)

Country	Consumers Percentage	Traders Percentage
Austria	0%	52%
Belgium	2.0%	8.5%
Bulgaria	5.1%	1.4%
Croatia	0%	0%
Cyprus	13%	0.4%
Czech Republic	4.7%	1.1%
Denmark	1.2%	0%
Estonia	0%	1.1%
Finland	0.4%	0.7%
France	2.7%	2.5%
Germany	3.5%	5.3%
Greece	10%	1.4%
Hungary	0%	0%
Ireland	1.6%	0.4%

Country	Consumers Percentage	Traders Percentage
Italy	3.9%	3.5%
Latvia	7.1%	0%
Luxembourg	0%	0.4%
Lithuania	0%	0%
Malta	0%	0.4%
Netherlands	2.7%	9.5%
Poland	9.0%	2.8%
Portugal	0.8%	1.4%
Romania	7.1%	0.4%
Slovakia	7.1%	1.1%
Slovenia	0.4%	0%
Spain	1.2%	1.4%
Sweden	0.8%	1.4%
United Kingdom	15%	3.2%
Total	100%	100%
Notes: Percentages given to two significant figures.		

A2.2. Summary statistics for consumers

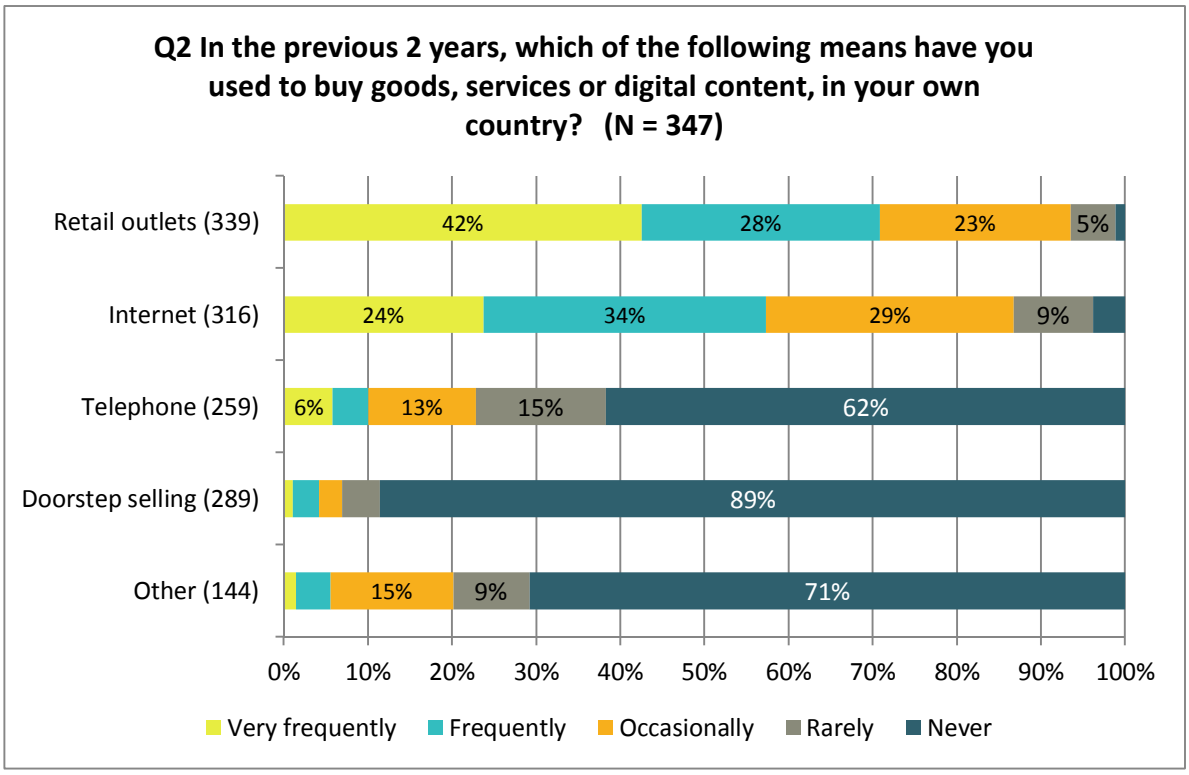
A total of 255 complete responses from consumers were received. 55% of respondents were female and 44% were male. Most of the respondents were within the 25 to 39 age group. 42.5 % of respondents held a college or university degree and 12.5% completed their education at elementary level.

Table A2-3: Consumers' completed responses by age and employment status (Q 25/26)

Age		Employment	
Age group	**%**	**Current status**	**%**
15-17	<1%	Self-employed	10.1%
18-24	6.9%	Employed	70.9%
25-39	57.1%	Full education	4.5%
40-54	17.1%	Unemployed	8.5%
+55	17.6%	-	-

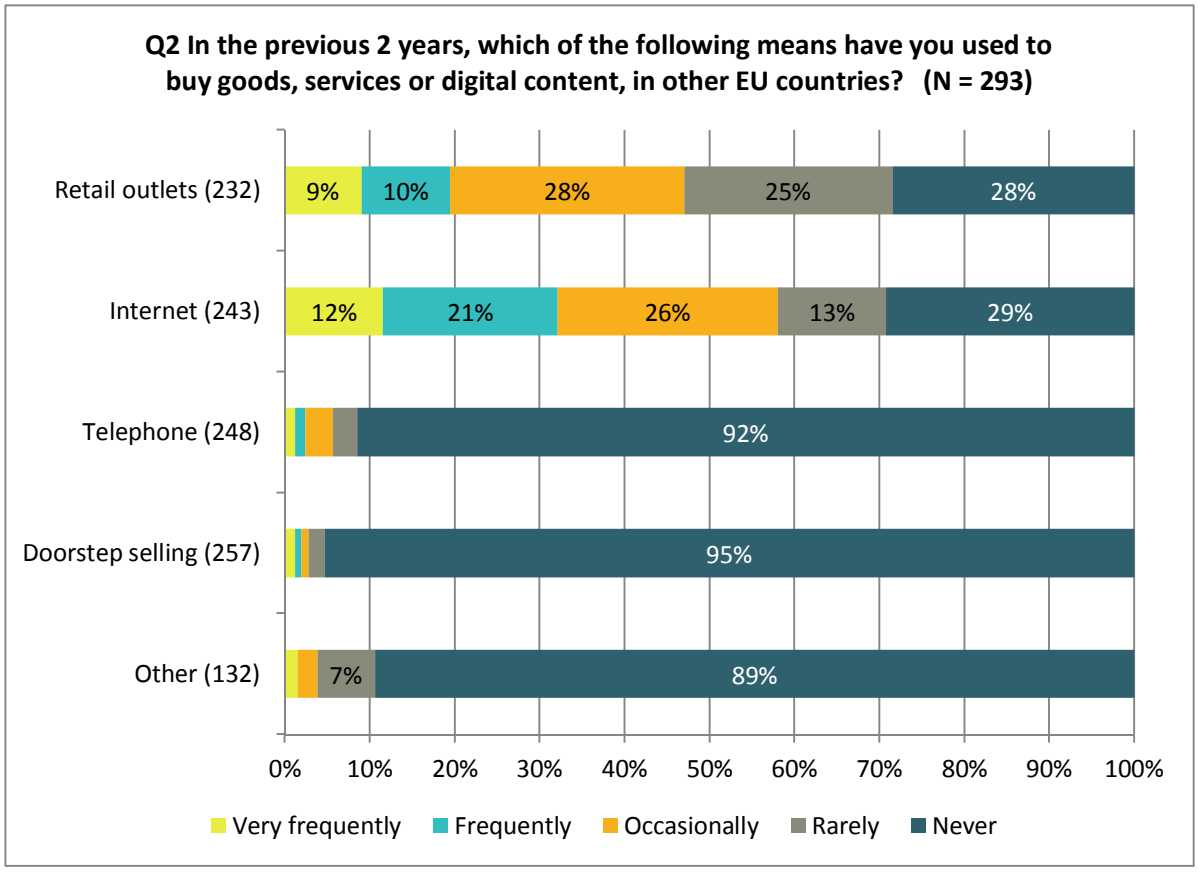
One of the first questions to consumers was the modes of purchase used within the last 2 years. The majority of respondents had used retail outlets in their home country, as well as the internet (this was also undertaken cross-border). Doorstep selling was not popular among respondents with nearly 90% stating that they had never purchased goods or services in this way. Retail outlets and the internet are the preferred methods to buy by consumers and the latter is more prominent for cross-border purchases.

Figure A2-1: Consumers: In the previous 2 years, which have you used to buy goods, services or digital content in your home country? (Q 2)



NB: % of less than 5% are not given to facilitate reading the chart

Figure A2-2: Consumers: In the previous 2 years, which have you used to buy goods, services or digital content from another EU country? (Q 2)



NB: % of less than 5% are not given to facilitate reading the chart

A2.3 Summary statistics of responses for traders

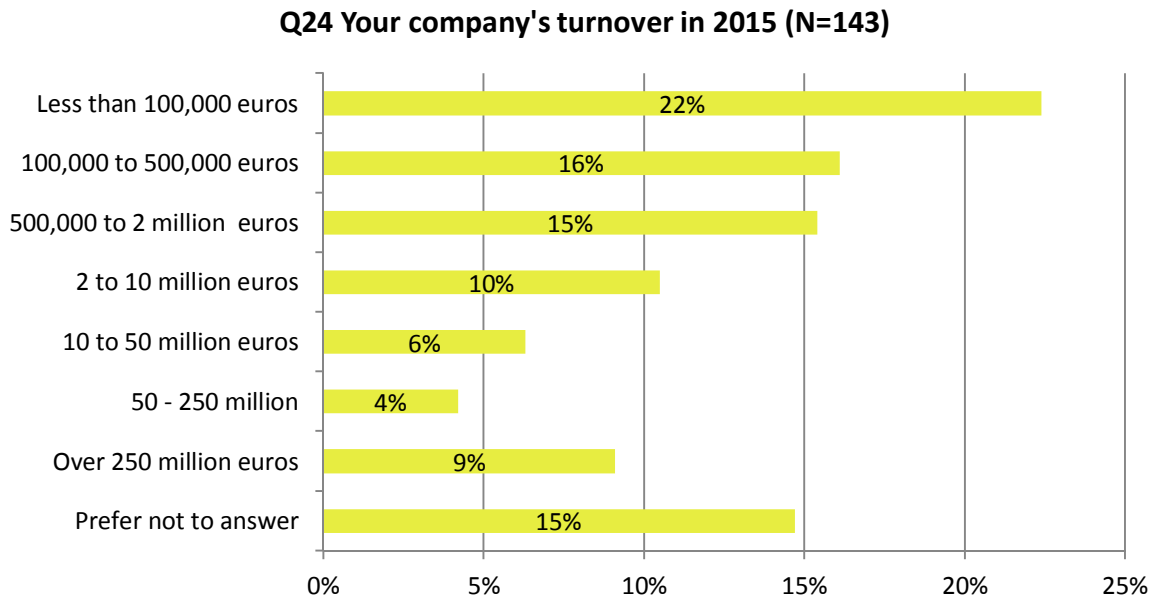
A total of 157 complete responses were received from traders. Table A2-4 shows an indication of the breakdown of responses by company size. Most of the companies responding to the survey were SMEs (58.8% of the total).

Table A2-4: Trader completed responses by size (Q 2)

Number of employees	Percentage
Self-employed	20.1%
SMEs <250 employees	58.8%
>250 employees	19.4%
N/a	1.8%

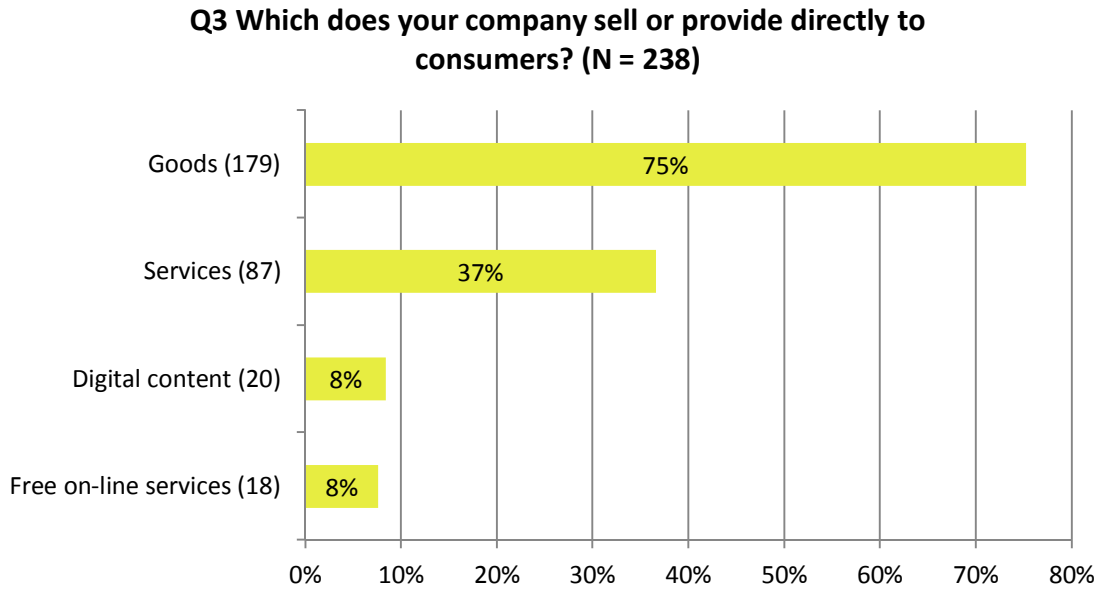
Figure A2-3 shows the turnover of the companies responding to the online survey.

Figure A2-3: Traders, company's turnover in 2015 (Q 24)



In terms of the type of sales, 75% of traders sell goods and 37% sell services. Traders selling digital content represented 8% of the companies responding and the same percentage applied to free-online services.

Figure A2-4: Traders focus of activities (Q 3)



51.6% of all traders reported selling cross-border, with the remainder selling in domestic markets only. The vast majority of traders responding are engaged in distance selling by e-commerce both domestically and cross-border.

Figure A2-5: Traders: channels used to sell directly to consumers domestically (Q 8)

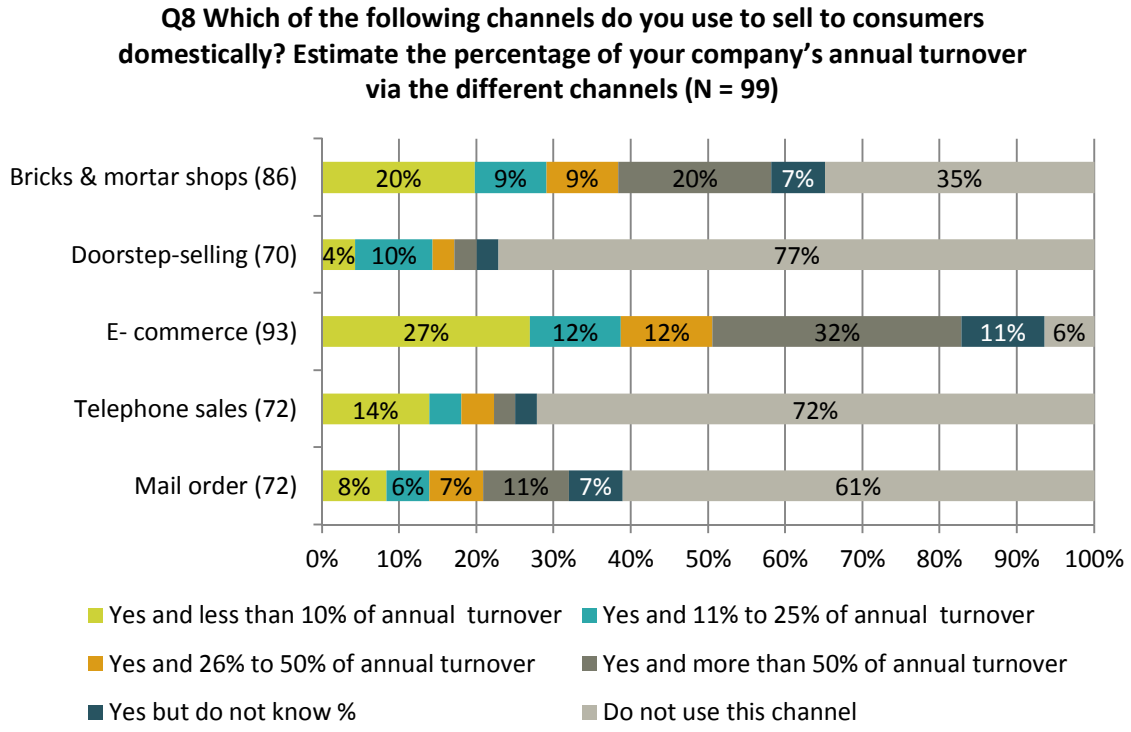
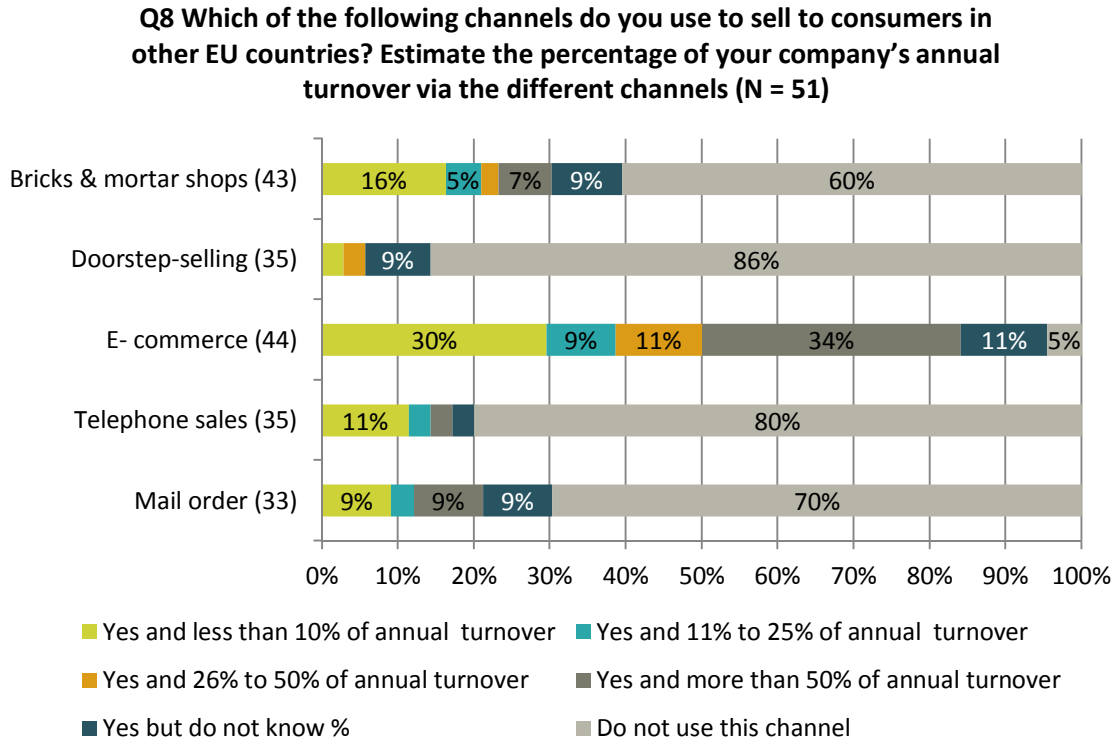


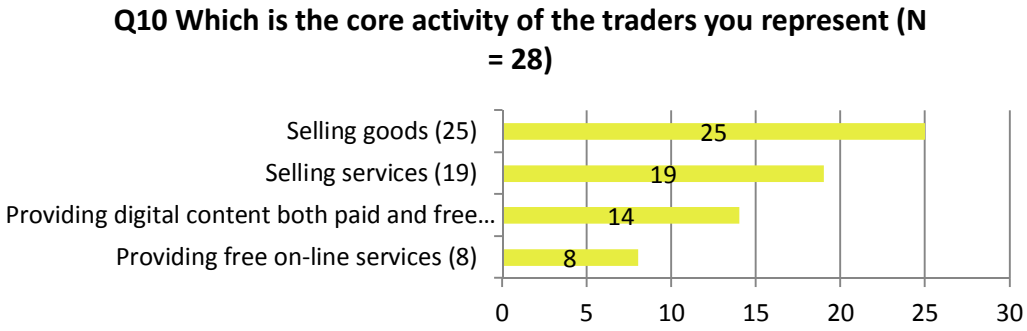
Figure A2-6: Traders, channels used to sell directly to consumers in other EU countries? (Q 8)



A2.4 Summary statistics for trade associations

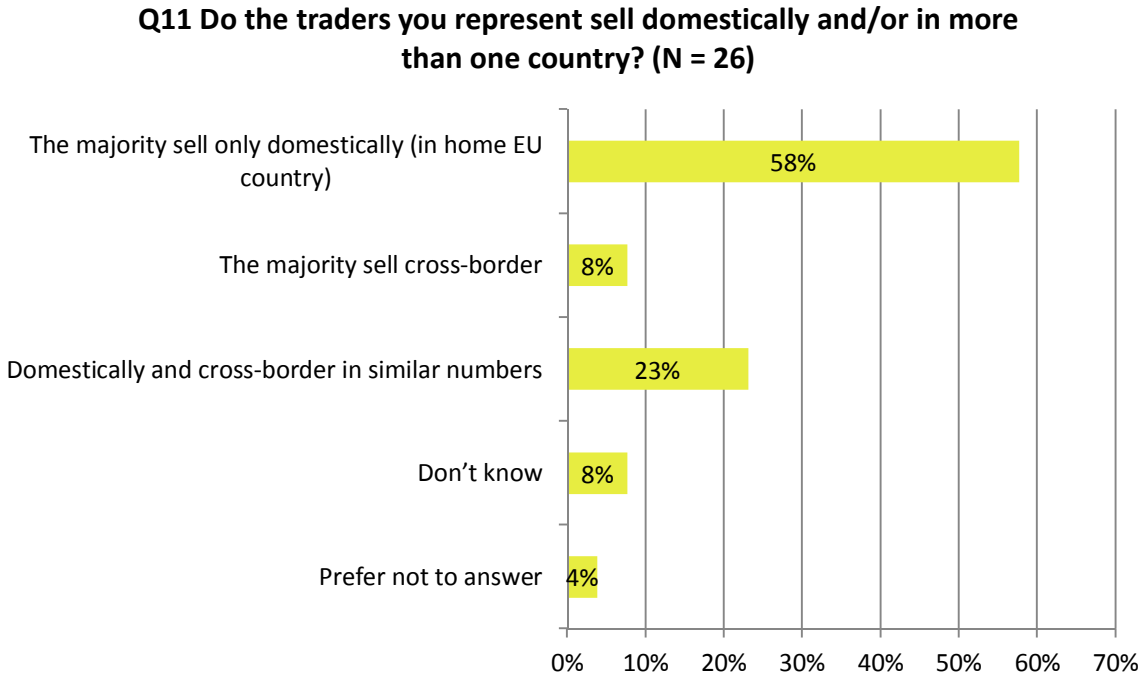
Representing the interests of traders, national trade associations were also canvassed about the implementation of the CRD in their countries. There were a total of 23 complete responses from trade associations. Concerning the type of activities represented by the associations, 89% of the trade associations represented traders selling goods and 68% represented traders offering services.

Figure A2-7: Trader associations' core activity of the traders represented (Q 10)



More than half of the trade associations responding represented the interest of traders selling mostly in domestic markets. 23% of the trade associations represent both traders selling domestically and cross-border.

Figure A2-8: Do the traders you represent sell domestically and/or in more than one country? (Q11)



Annex 3: National legal cases

DLA Piper – update to European Consumer Compendium.

82 cases identified using a search facility on database relating to the Consumer Rights Directive. In some cases, the CRD is the main piece of legislation referred to whereas in other legal cases, the cases refer to other Directives, and the CRD is also cited, for instance as a general reference relating to pre-information requirements. In addition, in Section 3.6.4 (analysis of CRD legal cases), there are a number of further legal cases especially for Germany and the Netherlands, identified by members of our research team.

Austria - 14 July 2015

2 R 195/15i, 14 July 2015, Regional Court Feldkirch

After taking into account the objectives of the Consumer Rights Directive, the exclusion of the withdrawal rights in respect of customized goods (§ 18 Sec 1 Cif 3 FAGG, implementation of Article 16) has to be reduced to permitting a withdrawal, if, at the time of declaring withdrawal, the entrepreneur has not yet begun to produce the goods and therefore will not suffer any economic disadvantage, which could justify an exclusion of the consumers withdrawal rights.

Austria - 09 October 2014

G 164/2014, 09 October 2014, Constitutional Tribunal

A direct action requesting the abrogation of provisions concerning the withdrawal rights of consumers by the plaintiff was rejected from the Constitutional Court, because the scope of the appeal was not wide enough.

Belgium - 29 January 2015

29 January 2015, Canton court of Bruges

(1) The burden of proof regarding an infringement of article 5 Directive 2011/83 (implemented into Belgian law by article VI.2 of the Code of Economic Law) is incumbent on the plaintiff. Conversely, the burden of proof for the damages suffered as a result of the infringement against the rules on information requirements for contracts other than distance or off-premises contracts lies on the defendant. (2) The lack of information provided by a trader regarding the price for ancillary costs constitutes a breach of article 5 Directive 2011/83 (implemented into Belgian law by article VI.2 of the Code of Economic law).

Bulgaria - Bulsatcom EAD v. Bulgarian Consumer Protection Commission

Penal administrative case No 194/2016, 10 October 2016, Gabrovo Administrative Court

(i) The provision of information regarding the specific prices of certain services only in the section 'FAQ' on the website of the trader is not sufficient to support the conclusion that the trader has provided this information in a clear and comprehensive manner. (ii) The fact that the violation found by the inspectors was not related to a specific contract does not exclude the liability of the trader for non-providing to consumers the information required by the law.

Bulgaria - Bulgarian Telecommunication Company AD v. Bulgarian Consumer Protection Commission

адм.д. 10521/2015, 22 June 2016, Supreme Administrative Court

A commercial practice is considered unfair if it is established that the overall presentation of information in a commercial guarantee statement misleads or is likely to deceive the average consumer. It is sufficient the manner of its presentation to be able to mislead the average consumer on making a commercial decision to use the service.

Bulgaria - Bulgarian Telecommunication Company AD v. Bulgarian Consumer Protection Commission

Administrative case 5799/2013, 11 December 2013, Supreme Administrative Court

The period of fourteen days to withdraw from the conclusion of the distance contract for services implies not only a right for the consumer, but also an obligation for the trader. In order for the consumer to exercise his right within the statutory deadline, the trader is the one who must deliver the terms of the contract on paper or on another durable medium in such a period as not to deprive the consumer of his right. No one can derive rights from their own misconduct.

Croatia - OT-OPTIMA TELEKOM d.d. v. Croatian Regulatory Authority for Network Industri…

Usl-5133/13-10, 13 January 2016, Administrative Court in Zagreb

The contract concluded between a consumer and a trader by using a means of distance communication is valid if all legal requirements provided in the Consumer Protection Act are met, including the confirmation of the contract using a means of distance communication in writing, or in another, durable medium.

Czech Republic - Contractual penalty in consumer agreements entered into after the date of effectiveness of the new Civil Code (I.J., s.r.o. (a legal person, a limited liability … v. Mr M.B. (a natural person))

19 C 215/2014, 07 October 2014, The District Court in Zlín

Unlike the previous legislation (prior 1 January 2014), the new Civil Code does not require a written contractual penalty. However, pursuant to the case of the Constitutional Court of the Czech Republic (see file no. I. ÚS 3512/11), in consumer agreements, provisions governing a contractual penalty cannot may not be a part of the general terms and conditions. The only way is to have the provision about the contractual penalty directly in the agreement itself (i.e. in the document to which the consumer attaches his /her signature) . Furthermore, pursuant to the new legislation, where the contractual penalty in not provided in the above-mentioned manner, such penalty shall not automatically become void (as it was pursuant to the legislation effective prior 1 January 2014), but the court shall not consider such a penalty to be valid if the consumer does not explicitly invoke the provision. In other words, such a penalty shall be deemed, unless provided otherwise, voidable. Moreover, where an authorised electronic signature was not attached to a data message, such a document (the general terms and conditions) containing a provision about the contractual penalty cannot be deemed as personally undersigned by a customer. As stated above, such a provision shall be deemed voidable, unless expressly invoked by the customer.

Czech Republic - Agreement on promotion of advertising space (assessing the balance of right s and obligations of parties to the consumer agreement) (1) Mr

Hynek Pýcha, 2) Občanského sdružení Společná… v. 1) District Court in Rakovník, 2) Regional Court i…)

II.ÚS 1810/13, 13 May 2014, The Constitutional Court of the Czech Republic

Due to the unwantedly inconsistent case law of lower courts in factually and legally similar disputes as well as with regards to the obvious contradiction between factual findings and legal conclusions, the Constitutional Court did not rejected the petition as manifestly ill-founded and as a petty case. Since a party to the agreement on promotion of advertising space was a consumer, lower courts should have dealt with his objections that a company (being the other party to the agreement) and its business strategy is based on starting (and winning) legal disputes with its clients and repeatedly filing actions against its clients in each of the periods of effectiveness of the agreement which had increased the costs of the proceedings and keeping the dispute below the threshold for the petty case. Lower court have to address the customer's objection that the agreement on promotion of advertising space contains provisions creating (to the detriment of the consumer) a significant imbalance in rights and obligations of the parties. Should the lower court fail to address those objections, it will breach the consumer's right to a fair trial, because these objection (able to affect the legal assessment of the case by the court) may prevent an unacceptable imbalance in rights and obligations of the parties to a consumer agreement, whether it is a petty case or not.

Czech Republic - 23 April 2014

Cpjn 203/2013, 23 April 2014, The Supreme Court of the Czech Republic

A contractual provision about the loan management fee in a loan agreement is not unclear only because it does not contain a clear and full list of activities for which is the fee agreed and paid by the customer. The provision about the loan management fee in the loan agreement is not subject to the prohibition of provisions in consumer agreements that, contrary to the requirement of good faith, constitute a significant imbalance in rights and obligations of the parties to the consumer agreement to the detriment of the consumer.

Czech Republic - Bank fees (judgment III. ÚS 3725/13) (S.K. (a natural person, anonymous) v. the District Court for Prague 4)

III. ÚS 3725/13, 10 April 2014, The Constitutional Court of the Czech Republic

The consumer-seller relationship is not directly regulated by a specific part of constitutional law, on the other hand, it is not isolated from nor independent from the constitutionally guaranteed fundamental rights and freedoms. Therefore, in such a legally regulated relationship, to maintain and secure the fundamental rights and freedoms is deemed to be a duty of the state (see Article 1 (1) of the Czech Constitution), consisting of creating the conditions either for concluding consumer contracts safely and for dealing with disputes arising therefrom. However, unilateral protective measures and other interference from the state may not replace nor be contrary to the fundamental private law principle of autonomy of will and the principle of freedom of establishment.

Czech Republic - Use of the general terms and conditions in consumer agreements. (Mr Martin Skopec (a natural person) v. District Court in České Budějovice)

I. ÚS 3512/11, 11 November 2013, The Constitutional Court of the Czech Republic

In consumer agreements, the provision governing a contractual penalty cannot may not be a part of the general terms an condition. The only way is to have the provision about the contractual penalty directly in the agreement itself (i.e. in the document to which the consumer attaches his /her signature).

Denmark - 14 April 2016

Case 15/12327, 14 April 2016, The Consumer Ombudsman

(1) Companies that market their products in Danish must provide all information required by the law in Danish. However, if the products are marketed entirely in English, it is possible to fulfill the duty to inform by providing the required information in English.

Denmark - 20 March 2015

Case 14/06430, 20 March 2015, Consumer Ombudsman

(1) Customised beds were not exempt from the right of withdrawal as long as it would not be impossible to sell them to other customers.

Denmark - 05 September 2014

Case 14/08509 , 05 September 2014, Consumer Ombudsmand

(1) A company cannot refuse to receive worthless goods when the consumer has a right to withdrawal. (2) The company is under no obligation to return the worthless good to the consumer.

Estonia - Eesti Tarbijateühistute Keskühistu (currently "Coo… v. Tarbijakaitseamet (Consumer Protection Board of Es…

3-15-2296, 27 January 2016, Tallinn Administrative Court

(1)The first paragraph of Article 21 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights is to be interpreted as meaning that, where a trader offers a short number for the purpose of consumers contacting the trader by telephone in relation to contracts concluded with the trader, a consumer contacting the trader by telephone must not incur higher charges than those that the consumer would incur for calling a standard (geographic) fixed or mobile number. (2) The first paragraph of Article 21 of Directive 2011/83/EU precludes such national legislation where the telecommunications service provider does not pass on to the trader a part of the charges that he receives from the consumer for contacting the trader on the short number where those charges exceed those which the consumer would incur for calling a standard (geographic) fixed or mobile number. (3) Offering consumers short numbers where charges for such numbers exceed those which the consumer would incur for calling a standard (geographic) fixed or mobile number is prohibited even if alternative numbers have been offered where the charges for the alternative numbers do not exceed those which the consumer would incur for calling a standard (geographic) fixed or mobile number.

Estonia - T K v. R P

2-10-27805, 16 March 2012, Tallinn Circuit Court

(1) Posting several separate advertisements for the sale of goods on a website by a natural person can be considered as activities related to trade, business or profession. Hence, a sale contract concluded as a result should be regarded a consumer contract.

(2) Ancillary sale activities can also constitute activities related to trade, business or profession.

Estonia - Janek Kaupmees, Reiven Roos v. OSAÜHING CAPITAL KINNISVARA

3-2-1-156-11, 08 February 2012, The Supreme Court of Estonia

(1) The law does dot stipulate that the price needs to be reduced within a specific period of time, i.e a term for price reduction does not follow from the law. The reduction of price can, however, be impermissible due to non-compliance with the principle of good faith. That can be the case when the seller has a justified expectation that the price will not be reduced, because such a right has not been used for a long time by the buyer. (2) The law does not stipulate that before reducing the price the seller has to be given an additional term for performing the obligation. Such an obligation might, however, arise from the principle of good faith, especially if the contrary would cause disproportionate costs to the seller. (3) The reduction of price can be void if the period of limitation for the claim of performance (above all the claim for a removal of defect) on which the reduction of price is based has passed.

Finland - Kuluttajariitalautakunnan ratkaisu (PH v. M Oy (Ltd))

4865/36/2014, 20 October 2016, The Consumer Disputes Board

The consumer had the right to return goods purchased through distance sales when the product packaging had been opened but the goods had not been taken into use.

Finland - Kuluttajariitalautakunnan ratkaisu (B v. P Oy (Ltd))

1102/33/2015, 16 November 2015, The Consumer Disputes Board

A consumer is not required to pay damages when withdrawing from a distance sales contract. The exception provided for auctions only applies to distance sales which can also be attended in person but does not cover sales which can only be attended online.

Finland - MAO:605/14 (Consumer Ombudsman v. DNA Oy (Ltd))

2013/455, 29 August 2014, Market Court

The marketing of consumer goods must provide the consumer with essential information about the terms of contract so that the consumer can reach a reasoned decision concerning the purchase of goods. Marketing must not be misleading. More specifically, if the duration of the consumer contract is more than one month, the total price of the whole contract as well as its duration must be provided to the consumer in a clear and understandable way. Providing only a monthly price is insufficient.

Greece - 06 October 2016

no of protocol 30412, 06 October 2016, Ombudsman of the Consumer

In case a consumer exercises his right of withdrawal from a distance sales contract, the supplier is not allowed to issue a coupon with the value of the returned goods instead of refunding the full amount that the consumer has paid to purchase the goods. The issuance of such a coupon (instead of refunding the payment) is contrary to the obligations of the supplier further to the exercise of the right of withdrawal by the consumer.

Greece - 04 October 2016

no of protocol 29962, 04 October 2016, Ombudsman of the Consumer

The consumer should in principle be able to open the packaging in order to examine the goods, in the event similar goods usually appear without packaging at the stores.

Italy - Norwegian Air Shuttle - Commissioni su carta di credito (Autorità Garante della Concorrenza e del Mercato (... v. Norwegian Air Shuttle ASA)

PS9235 - Decision No. 26183, 28 September 2016, Italian Competition Authority

The misleading representation of the real cost at the beginning of the online booking procedure by means of the derecognition of unpredictable extra costs, subsequently automatically charged, constitutes an unfair commercial practice since it is an infringement of Article 19 of Directive 2011/83/EU on consumer rights.

Italy - Vodafone - Servizio Exclusive (ADUC - Associazione per i Diritti degli Utenti v. Vodafone Italia S.p.A.)

PS10186 - Decision No. 25904, 09 March 2016, Italian Competition Authority

The automatic activation of an additional service without customers' explicit opt-in consent and the related automatic charge of the cost and the refusal to reimburse customers constitute an unfair commercial practice since it is an infringement of Article 22 of Directive 2011/83/EU on consumer rights.

Italy - Amazon - Market place - Garanzia legale (Autorità Garante della Concorrenza e del Mercato (... v. Amazon EU Sàrl, Amazon Services Europe Sàrl, Amazo...)

PS9353 - Decision No. 25911, 09 March 2016, Italian Competition Authority

Providing poor and imprecise information and/or in a way for what such information are difficult to be found and understood by consumers constitutes an unfair commercial practice since it is an infringement of Articles 6 and 8, Paragraph 2 of Directive 2011/83/EU on consumer rights.

Italy - H3G - Sweep garanzia legale / commerciale (Autorità Garante della Concorrenza e del Mercato (... v. H3G S.p.A. and TMM S.r.l.)

PS10042 - Decision No. 25759, 02 December 2015, Italian Competition Authority

In the context of distance contracts, the lack of clear mandatory pre-contractual information as well as of a complete memo on the scope and types of the exercise of the legal guarantee of conformity for goods constitutes an unfair commercial practice since it is an infringement of Articles 6 and 8, Paragraph 1 of Directive 2011/83/EU on consumer rights.

Italy - GDF Suez - Attivazioni non richieste (Centro di Ricerca e Tutela dei Consumatori e degli... v. GDF Suez Energie S.p.A.)

Case PS9578 - Decision No. 25707, 11 November 2015, Italian Competition Authority

The conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies and the related unjustified request for payment for the provision of such unsolicited supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the withdrawal right constitute an aggressive and unfair commercial

practice since it is an infringement of Articles 8, Paragraphs 6-7 and 9 of Directive 2011/83/EU on consumer rights, as well as of the provisions which set out the prohibition to carry out unfair commercial practices since such conduct had to be considered as deceptive, aggressive and characterized by misleading omissions and undue influence put in place by the defendant.

Italy - Green Network - Attivazioni non richieste (Centro di Ricerca e Tutela dei Consumatori e degli… v. Green Network Luce & Gas S.r.l)

Case PS9834 - Decision No. 25708, 11 November 2015, Italian Competition Authority

The conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies and the related unjustified request for payment for the provision of such unsolicited supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the withdrawal right constitute an aggressive and unfair commercial practice since it is an infringement of Articles 6, Paragraph 1, lit. h); 8, Paragraph 6; 9, Paragraph 2 of Directive 2011/83/EU on consumer rights.

Italy - Bee Twin - Attivazioni non richieste (FederConsumatori Nazionali, FederConsumatori Arezz… v. Bee Twin S.p.A.)

Case PS9406 - Decision No. 25696, 04 November 2015, Italian Competition Authority

The conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies and the related unjustified request for payment for the provision of such unsolicited supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the withdrawal right constitute an aggressive and unfair commercial practice since it is an infringement of Articles 8, Paragraph 6; 9 of Directive 2011/83/EU on consumer rights, as well as of the provisions which set out the prohibition to carry out unfair commercial practices since such conduct had to be considered as deceptive, aggressive and characterized by misleading omissions and undue influence put in place by the defendant.

Italy - PC ITALIA - Sweep garanzia legale/commerciale (Autorità Garante della Concorrenza e del Mercato (… v. Punto Informatica S.r.l. and Punto Informatica S.a…)

PS10035 - Decision No. 25702, 04 November 2015, Italian Competition Authority

In the context of distance contracts, the lack of terms concerning the withdrawal right, the legal guarantee as well as the prevision of a clear procedure for the sending of potential complaints constitutes an infringement of Articles 6, Paragraph 1, lit. g), h), l); 9, Paragraph 1 and 11, Paragraph 1 of Directive 2011/83/EU on consumer rights.

Italy - Enel Energia - Attivazioni non richieste (Federconsumatori, Codacons, Tutela Noi Consumatori… v. Enel Energia S.p.A.)

Case PS9769 - Decision No. 25697, 04 November 2015, Italian Competition Authority

The conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies and the related unjustified request for payment for the provision of such unsolicited supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the right to reconsider the offer and the non-proper evaluation of the consumers' complaints constitute an aggressive and unfair commercial practice since it is

an infringement of Articles 6, Paragraph 1, letter h) and 8, Paragraph 6 of Directive 2011/83/EU on consumer rights, as well as of the provisions which set out the prohibition to carry out unfair commercial practices since such conduct had to be considered as deceptive, aggressive and characterized by misleading omissions and undue influence put in place by the defendant.

Italy - Acea Energia - Attivazioni non richieste (Adiconsum Toscana v. Acea Energia S.p.A.)

Case PS9815 - Decision No. 25698, 04 November 2015, Italian Competition Authority

The automatic activation of an additional service without customers' explicit opt-in consent and the related automatic charge of the cost and the refusal to reimburse customers constitutes an aggressive and unfair commercial practice since it is an infringement of Articles 6, Paragraph 1, lit h); 8, Paragraphs 6-7 and 9 of Directive 2011/83/EU on consumer rights, as well as of the provisions which set out the prohibition to carry out unfair commercial practices since such conduct had to be considered as deceptive, aggressive and characterized by misleading omissions and undue influence put in place by the defendant.

Italy - Eni- Attivazione non richiesta (Adiconsum sede di Trapani, Codacons sedi di Croton… v. Eni S.p.A.)

Case PS10000 - Decision No. 25701, 04 November 2015, Italian Competition Authority

The conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the withdrawal right constitute an aggressive and unfair commercial practice since it is an infringement of Articles 8, Paragraphs 6-7 and 9 of Directive 2011/83/EU on consumer rights, as well as of the provisions which set out the prohibition to carry out unfair commercial practices since such conduct had to be considered as deceptive, aggressive and characterized by misleading omissions and undue influence put in place by the defendant.

Italy - Hera - Attivazioni non richieste (Federconsumatori Toscana, Federconsumatori sede di… v. Hera Comm S.r.l.)

Case PS9999 - Decision No. 25700, 04 November 2015, Italian Competition Authority

The conclusion of supply contracts without the explicit consumer's consent, the automatic activation of non-requested supplies, the lack of information provided in offering and concluding such contractual offer, as well as the opposition of obstacles to the exercise of the withdrawal right constitute an aggressive and unfair commercial practice since it is an infringement of Articles 8, Paragraphs 6-7 and 9 of Directive 2011/83/EU on consumer rights, as well as of the provisions which set out the prohibition to carry out unfair commercial practices since such conduct had to be considered as deceptive, aggressive and characterized by misleading omissions and undue influence put in place by the defendant.

Italy - Sky - Procedure di teleselling (Centro di ricerca e tutela dei consumatori e degli… v. Sky Italia S.r.l.)

PS9981 - Decision No. 25634, 30 September 2015, Italian Competition Authority

In the context of distance contracts, anticipated by a telephone conversation, the automatic conclusion of the agreement without the confirmation of such offer by the

trader and without the signing or explicit consent by the consumer (where agreed, even embedded in a durable medium) constitutes an unfair commercial practice since it is an infringement of Article 8, Paragraphs 6-7 of Directive 2011/83/EU on consumer rights.

Italy - Wind - Distribuzione con addebito automatico elenchi telefonici (Autorità Garante della Concorrenza e del Mercato (… v. Wind Telecomunicazioni S.p.A.)

PS9579 - Decision No. 25331, 03 March 2015, Italian Competition Authority

The automatic activation of an additional service without customers' explicit prior consent and the related automatic charge of the cost constitutes an unfair commercial practice since it is an infringement of Article 22 of Directive 2011/83/EU on consumer rights.

Latvia - 02 May 2016

Case No.13-pk, 02 May 2016, Consumer Rights Protection Centre

(1) The place of trade cannot be regarded as the business premises of the trader, if it cannot be identified as a regular trading place and if the goods are not available to any consumer but only to specific persons. (2) Off-premises contracts oblige the trader to inform the consumers on the right of withdrawal by providing a withdrawal form. (3) The failure to inform on the right of withdrawal violates consumer rights and subjects the trader to liability. (4) The right of withdrawal must not be restricted by imposing the duty upon the consumer to personally return the purchased goods.

Latvia - 21 January 2016

Case No.2-pk, 21 January 2016, Consumer Rights Protection Centre

(1) Information on the characteristics of goods traded by distance contract is not sufficient if it does not include all the relevant details on the respective goods, even if the trader uses a disclaimer that information is available on the website of the manufacturer. (2) The exercise of the right of withdrawal may not be made subject to the condition that the goods have not lost their quality upon return. (3) A general statement that the goods are subject to guarantees is not sufficient reminder of guarantee, but instead the specific goods must be accompanied by specific conditions of the guarantee. (4) A durable medium containing information on distance agreement is either print, data storage, file sent to e-mail (that cannot be modified), but not a website containing such information, if the information cannot be saved.

Latvia - 02 December 2015

Case No.3-pk, 02 December 2015, Consumer Rights Protection Centre

(1) Distance contracts require providing sufficient characteristics of the goods traded in the official language of the state. (2) Requirement to provide conditions of the contract includes the duty to provide the terms of payment and delivery. (3) The reminder of guarantee of the goods is an indispensable aspect of distance contract. (4) The withdrawal form is illegitimate, if it contains restrictions exceeding those permitted by law, such as the requirement to return the goods within shorter period than laid down by the law, the requirement to return the goods in full packaging, and the exemption of the right to return goods if they are intended for current consumption. (5) Not ensuring the possibility of saving the distance contract rules available on the trader’s website via durable medium violates consumer rights associated with distance contracts.

Latvia - 09 October 2014

Case No. E03-PTU-K142-31, 09 October 2014, Consumer Rights Protection Centre

(1) Contract concluded via phone constitutes distance contract. (2) Distance contracts entail the right of withdrawal, which includes default termination of the ancillary contracts. (3) Requiring the conclusion of ancillary contract which imposes costs upon the consumer after promising costs-free distance contract is prohibited. (4) The right of withdrawal has not been ensured if the withdrawal form is not provided and if the withdrawal is made conditional upon the moment when the trader retrieves the goods from the consumers, and if contacting the trader is impossible.

Latvia - 16 May 2014

Case No. 8-pk, 16 May 2014, Consumer Rights Protection Centre

(1) A disclaimer, which provides that the trader bears no liability for incorrect description of the goods, constitutes unfair and invalid condition of distance contract. (2) Trader is liable if the information on the goods traded by means of distance contracts is inaccurate, and cannot relieve itself from this liability by a disclaimer.

Latvia - 20 March 2014

Case No. E03-PTU-K223-11, 20 March 2014, Consumer Rights Protection Centre

(1) The information on the trader and on the right of withdrawal is indispensable in case of distance contracts since it affects the consumer's decision to purchase the goods. (2) The main characteristics of the goods must be provided in a way to allow the consumer to identify and compare the goods pursuant to facts, instead of value-descriptions, which may mislead the consumer.

Latvia - 07 March 2014

Case No. 3-pk, 07 March 2014, Consumer Rights Protection Centre

Restricting the right of withdrawal from off-premises contracts by allowing the trader to dismiss a request of withdrawal if the returned goods are damaged or to impose costs of repairing the goods upon the consumer is prohibited.

Latvia - SIA "Pigu Latvia" (220.lv) v. Consumer Rights Protection Centre

Case No A 420647510, 02 October 2012, Regional Court of Administrative Cases

(1) The nature of distance agreement is determined by the means of concluding the contract, and is not affected by the place of receiving the goods or by the possibility of inspecting the goods in presence. (2) The possibility to withdraw from the distance agreement after the inspection of the goods is not an effective protection otf the right of withdrawal. (3) The rules aimed at circumventing the consumers' rights to withdrawal are invalid.

Lithuania - M.B. and T.B. v. UAB "Baltic Clipper"

3K-3-358-248/2016, 07 July 2016, Supreme Court of Lithuania

(1) The agreement concluded between the trader and the consumer for sale-purchase of flight tickets shall be considered as a consumer agreement. (2) The trader of flight tickets has a duty not only to inform consumers about visas which are needed to be obtained before travelling, but also to provide this information adequately and sufficiently.

Lithuania - V.N. v. UAB "LoMinda"

e3K-3-332-687/2016, 27 June 2016, Supreme Court of Lithuania

Traders should inform the consumers on associated risks of damage to their items in writing.

Lithuania - UAB "Torpol Baltija" v. Z.P.

3K-3-698-686/2015, 28 December 2015, Supreme Court of Lithuania

(1) The consumer can legally withdraw from the consumer sales agreement within 11 days from the conclusion of such an agreement, despite the fact that national law establishes 7 days term. (2) Provisions of Directive 2011/83 are applied in the event when the sales agreement between the trader and the consumer was concluded at the time when Directive 2011/83 was adopted, but not yet implemented in the national law.

Lithuania - L.S. v. AB DnB bankas

3K-7-168-687/2015, 15 May 2015, Supreme Court of Lithuania

The regulations of Directive 2011/83/EU and provisions of the Civil Code of Lithuania implementing those regulations do not apply to the relationship between the bank and a non-professional investor arising from investment agreements.

Malta - Mercieca noe vs Camilleri noe (Manuel Mercieca noe v. Piu Camileri noe)

12/2014, 29 July 2015, Court of Appeal (Civil, inferior)

(1) Consumer legislation applies when one party is a consumer and the other a trader; the Consumer Rights Regulations expressly exclude contracts of sale of property from the remit of the law.

Poland - (...) Bank (...) S.A. with registered office in G. v. K. R. i S. R.

I C 662/14, 02 March 2016, District Court Warsaw-Praga in Warsaw

Granting of a special protection to consumers in respect of contracts concluded with banks, is justified by the requirement to protect the consumer's interest. Unfair conditions in the agreement are not binding on consumer. However, the remaining part of the agreement continues to be in in force, if it is lawful after the exclusion of unfair provisions. This thesis is justified on the basis of EU directives i.e.: Directive 2011/83/EU of 25 October 2011 on consumer rights.

Poland - U. Towarzystwa Ubezpieczeń v. President of the Office of Competition and Consume...

III SZP 2/15, 09 September 2015, Supreme Court

(1) The injured party, a natural person who does not conduct any business activity and who is claiming under the insurer's strict liability resulting from the compulsory insurance of civil liability of vehicle owners, is not a consumer in the meaning of Article 24 in conjunction with. 4(12) of the Act on Competition and Consumer Protection of 16 February 2007 in conjunction with Article 22/1 of the Civil Code.

Poland - K. G. v. Towarzystwu Ubezpieczeń S.A.

I CSK 216/14, 07 April 2015, Supreme Court

(1) The individual content and conclusion of agreements with consumers is a principle of consumer protection. Nevertheless, this does not mean that a consumer has a privileged position and is exempt from the obligation of due diligence in assessing the content of an agreement that he/she intends to conclude.

Portugal - A. v. O, LDA.

9807-12.5TBOER.L1-8, 04 June 2015, Lisbon Court of Appeal

Contracts shall be null and void if they do not include clear and comprehensive pre-contractual information.

Portugal - A v. B, Lda.

14/2014-JPSXL, 10 June 2014, Justice of Peace

Off-premises contracts are governed by Directive 2011/83/EU, of 25 October.

Portugal - CC v. AA

1092/10.0TBLSD-G.P1.S1, 29 May 2014, Supreme Court of Justice

A person that concludes a promissory contract for the sale of a good shall be deemed as a 'consumer', in accordance with Article 2 of Directive 2011/83/EU, of 25 October, should the good be intended for his own personal use.

Romania - 27 June 2016

Decision no. 2373/A/2016, 27 June 2016, Bucharest Tribunal

(1) The court found that the commission which drafted the minutes ascertaining the damage of the goods was not properly constituted, due to the fact that the plaintiff was not included. (2) The minutes does not mention the date when it was drafted and, therefore, it cannot be established if it refers to the goods returned to the consumer.

Romania - 26 May 2016

Decision no. 236/2016, 26 May 2016, Galați Tribunal

The goods were taken under signature by a representative of the defendant, and that, at that time, no objections were made regarding their condition. Therefore, the defendant is responsible for receiving the goods without performing an immediate verification of their integrity.

Romania - 17 May 2016

Decision no. 534/2016, 17 May 2016, Timis Tribunal

The consumer has to prove that a contract is concluded off-premises, being irrelevant the wording of the agreement.

Romania - 13 April 2016

Decision no. 375/2016, 13 April 2016, Sibiu Tribunal

The seller has to bear the delivery costs and to pay legal interest to the principal amount, calculated from the date of receipt of the returned product until the date of the refund.

Slovakia - The Inspectorate of the Slovak Trade Inspection in… v. POOLMAN s.r.o.

SK/0163/99/2016, 06 September 2016, Central Inspectorate of the Slovak Trade Inspection in Bratislava

(1) The condition of the e-shop stating that when there is a consumer claim with respect to the purchased goods, the consumer is obliged to deliver such goods in the original packaging, does impose an obligation on a consumer without a legal reason. (2) The condition of the e-shop stating that the delivery periods vary depending on the type of the goods is contrary to the provisions of consumer law as the seller, when concluding a distance contract, is obliged to clearly and comprehensively announce the delivery conditions and the period in which the seller is obliged to deliver the goods to the consumer. (3) The condition of the e-shop stating that the prices stated on the website of the defendant may be changed without a prior notice and the applicable price will be announced in the stage of verifying the order is contrary to the provisions of the Civil Code as the condition gives right to the seller to increase the price of the goods without giving a right to the consumer to withdraw from the contract, if the price is substantially increased in comparison with the price agreed at the time of conludign the contract. Further, such condition is also contrary to the provisions of consumer law as the seller before concluding a distance contract and before the consumer sends the order is obliged to clearly and comprehensively announce the price of goods together with all applicable taxes to the consumer. (4) The conditions of the e-shop stating that the amount of expenses for delivery will be announced in the stage of verifying the order is contrary to the provisions of consumer law as the seller, when concluding a distance contract, is obliged to clearly and comprehensively announce the amount of expenses for the delivery, postage charges and other applicable expenses and fees. (5) The conditions of the e-shop which states that the consumer is entitled to withdraw from the contract without stating a reason in the period of 7 working days from the day the consumer took over the goods is contrary to the provisions of consumer law as the consumer has a right to withdraw from the distance contract without stating a reason in the period of 14 days from the day of taking over the goods. (6) The condition of the e-shop stating that the consumer (buyer) announces, before filling in or notifying the order, that he/she has been made aware of these terms and conditions as well as the claim procedure and is agreeing to such terms and conditions and the claim procedure is not contrary to the provisions of the Act on Consumer Protection as it does not affect any of the stated consumer rights but merely amend the way of approval of the consumer with the terms and conditions without constraining or limiting the extent and quality of consumer rights.

Slovakia - ZEPTER SLOVAKIA, spol s.r.o. v. A.R.

16Co/314/2015, 12 May 2016, Regional Court Banská Bystrica

(1) The condition in the off-premises contract for sale which states that the consumer has a right to withdraw from the contract in the period of 7 working days from the day of taking over the object of the contract of sale is not contrary to the provisions of the consumer law as the subject of the contract for sale was never handed over and therefore the right of the consumer to withdraw from the contract never arose. This is also in line with the Directive 2011/83/EU which states that the right of the consumer to withdraw from the off-premises contract arises by the moment of delivery of the goods to the buyer (consumer). (2) The provision in the off-premises contract for sale which states that the goods shall be delivered within 28 days as of the last paid instalment constitutes an unfair contractual condition as § 588 of the Civil Code states that the seller is obliged to hand over the subject of the sales contract and the buyer is obliged to take over the subject and pay the agreed price. Thus, there is firstly the obligation of the seller to hand over the goods and only after such performance the obligation of the buyer to pay the price arises. (3) The sales contract is invalid if it does not contain the method of payment of the purchase price.

Slovakia - The Inspectorate of the Slovak Trade Inspection in… v. Mgr. Jozef Mindala -FitForm.sk

SK/0747/99/2015, 10 March 2016, Central Inspectorate of the Slovak Trade Inspection in Bratislava

(1) Such obligation represents an obligation imposed on the consumer without legal basis. Act No. 102/2014 Coll. stipulates that the consumer is obliged to send the purchased goods back to the seller or hand the purchased goods back to the seller or to the person authorised by the seller, within the period of 14 days from the day of withdrawal from the contract. Furthermore, the 14 days period is deemed to be satisfied if the consumer hands over the purchased goods for transportation on the last day of the period. The consumer is not obliged to deliver the goods together with the withdrawal from the distance contract. (2) Such condition represents an obligation imposed on the consumer without legal basis. The consumer is entitled to try out the goods in order to assess them. The consumer is also not obliged to keep the original packaging of the product. (3) The seller is obliged to return back all payments received from the consumer in the period of 14 days from the delivery of the notice of withdrawal from the contract.

Slovakia - The Inspectorate of the Slovak Trade Inspection in… v. Euro W-Trading s.r.o.

SK/0037/99/2016, 03 February 2016, Central Inspectorate of the Slovak Trade Inspection in Bratislava

(1) The provision of the terms and conditions of the seller stating that "the purchaser confirms by sending the order to the seller that the seller has complied with the information obligation pursuant to § 3 (1) of the Act No. 102/2014 Coll. on the protection of consumers in sale of goods or provision of services under distance contracts or contracts executed outside the business premises of the seller, as amended", is not in compliance with § 3 (1) of the Act No. 102/2014 Coll. on the protection of consumers in sale of goods or provision of services under distance contracts or contracts executed outside the business premises of the seller, as amended, as such clause transfers the burden of proof with respect to the obligation of informing the consumer on the consumer instead of the seller.

Slovakia - The Inspectorate of the Slovak Trade Inspection in… v. Ing. Ján Opavský - ODORA

SK/0509/99/2015, 25 January 2016, Central Inspectorate of the Slovak Trade Inspection in Bratislava

(1) The clause in the terms and conditions of the e-shop stating that "in case the customer cancels the order after the payment of the price but before the delivery of the service and if the period for delivery did not lapse the seller shall have the right to calculate the expenses connected with the order" is in contrary to Act No. 102/2014 Coll. on the protection of consumers in sale of goods or provision of services under distance contracts or contracts executed outside the business premises of the seller, as amended, as the consumer shall have the right to withdraw from the contract within 14 days as of the takeover of the goods and also to cancel the order prior to the start of the period for withdrawal.

Slovakia - The Inspectorate of the Slovak Trade Inspection in… v. MP BONUSKO s.r.o.

SK/0677/99/2015, 14 January 2016, Central Inspectorate of the Slovak Trade Inspection in Bratislava

(1) The obligation to draw up a protocol on the extent and nature of the damaged goods immediately when taking over the purchased goods shall represent an obligation imposed on the consumer without any legal basis. Such condition can only be made in a form of recommendation to the consumer as no legal act imposes such obligation on the consumer. (2) The consumer is not obliged to state the reason for the withdrawal from the contract. According to the Act No. 102/2014 Coll. the consumer has a right to withdraw from the contract without stating the reason for such withdrawal. (3) The clause in the terms and conditions stating that by sending the order the buyer (consumer) expresses his consent with the terms and conditions of the seller creates an unbalance in the rights and obligations of the parties to the contract as the consumer only has an option to become familiar with the terms and conditions of the seller, however the consumer has no option to influence the content of such terms and conditions.

Slovenia - unknown v. The trade inspection of the republic of Slovenia

, 18 May 2016, Supreme court (Administrative department)

(1) The consumer has a right to withdraw from a contract already prior to the delivery of ordered goods. (2) The withdrawal period expires 14 days after consumer acquired physical possession of the goods.

Slovenia - unknown v. unknown

, 17 May 2016, Higher court in Ljubljana (Civil department)

(1)The service provider is only entitled to increase the costs of a contractually agreed price, if it becomes evident that higher costs than considered in the calculation would incur or that it would take a greater amount of work to execute the order, yet only if he informs the consumer as soon as he determines that higher costs will arise. (2) For the decision on the amount of costs for the repair of the vehicle, which shall be paid by the consumer, it is important to verify the scope of repair works agreed in the “framework agreement on the price". (3) The service provider would only be entitled to the payment, if he had informed the consumer about the additional work.

Slovenia - unknown v. Information commissioner

, 26 March 2014, Administrative court

(1) Processing personal data is only permitted, if one of the statutory legal grounds is given.

Spain - BBVA, S.A v. LOGIFRUIT S.L.

TS (Sala de lo Civil, Sección 1ª) Sentencia no. 533/2015 de 3 diciembre, 03 December 2015, Supreme Court

The written confirmation of a distance contract does not result in the same being concluded. It only proves the existence of the contract and the consent granted. A distance contract is only deemed to be concluded when both offer and offer's acceptance take place.

Spain - AUSBANC v. BANCO BILBAO VIZCAYA ARGENTARIA, S.A, CAJA DE AHOR...

TS (Sala de lo Civil) Sentencia no. 241/2013 de 9 mayo, 09 May 2013, Supreme Court

Registration in the Registry of Associations does not have constitutive effects; the association's legal capacity is brought by the articles of incorporation. This means that it is not necessary to be registered at the moment with this registry for being entitled to bring legal action in court.

Spain - Ms Maite v. ASESORIA DE COBRO Y GESTION SL

AP de Valencia (Sección 7ª) Sentencia no. 444/2012 de 27 julio, 27 July 2012, Provincial Court of Valencia

The lack of compliance with the prior information and provision of a form regarding the right of withdrawal entitles the consumer for claiming for the contract to be declared null but it does not automatically entail that the contract is null. This means that the contract will be deemed to have been terminated when the action succeeds and its effects are not deemed to have disappeared (as if it had been null and void ab initio).

Spain - FINANCIERA EL CORTE INGLÉS EFC S.A v. Mr Francisco

AP de Barcelona (Sección 17ª) Sentencia no. 640/2011 de 21 diciembre, 21 December 2011, Provincial Court of Barcelona

Distance contract, duty to communicate the right of withdrawal and to deliver a document of withdrawal. In order to comply with the communication obligation, it is sufficient to place a clear and comprehensible clause in a catalogue; however, this does not suffice to comply with the obligation to deliver the document of withdrawal. A form to exercise the already mentioned right must be supplied to the consumer.

Spain - Mr Baltasar v. Telefónica Móviles España S.A.U.

AP de Murcia (Sección 5ª) Sentencia no. 298/2009 de 15 septiembre, 15 September 2009, Provincial Court of Murcia

The law only grants the right of withdrawal in distance, off-premises and travel package contracts. Therefore, in contracts concluded in the seller's premises, if the seller establishes a shorter term to exercise a contractual right of withdrawal, such term shall be the applicable one and not the legal term of 14 calendar days. Furthermore, as long as the right of withdrawal is granted by the contract and not by the law (limited to the already mentioned cases), there is no obligation for the seller to inform the consumer of the same prior to concluding the contract.

Sweden - The Consumer Ombudsman (KO) v. Malmö Dansakademi AB

MD 2016:13, 15 August 2016, The Swedish Market Court

(1) Dancing courses are not covered by an exception from the right of withdrawal, as a service relating to leisure activities. (2) Omission to provide full information regarding the consumer's right of withdrawal constitutes misleading omission as it is likely to cause the consumer to take a transactional decision he or she would not have taken otherwise.

Sweden - The Consumer Ombudsman (KO) v. Swedish Online Services SOS AB (previously First D…

MD 2015:2, 09 March 2015, The Swedish Market Court

(1) The invitation to purchase one week's online dating for the price of SEK 1 without stating that the agreement term is longer than one week, and without stating that the invitation to purchase amounts to a higher final price than SEK 1, constitutes misleading omission as it is likely to cause the consumer to take a transactional decision he/she would not have taken otherwise. (2) Omission to include full information about the consumer's right of withdrawal on the trader's website constitutes misleading omission as it is likely to cause the consumer to take a transactional decision he or she would not have taken otherwise. (3) Omission to publish the trader's correct address, or any email address on the trader's website constitute misleading omission as it is likely to cause the consumer to take a transactional decision he or she would not have taken otherwise.

Sweden - Ekstrand & Son Aktiebolag v. A.S. (private individual)

NJA 2013 s. 524, 13 June 2013, The Supreme Court

When a defect could have occurred both before and after the delivery, the seller shall be responsible to show the defect did not exist prior to the delivery.

The Netherlands - Plaintiff v. Defendant

ECLI:NL:RBOVE:2016:3230, 23 August 2016, District Court Overijssel

The unrequested forwarding of goods to a consumer - under the condition that goods must be sent back in order to prevent a purchase agreement - does not result in binding purchase agreement if and when the consumer does not do so. Consumer does not have any obligation to send back and seller is not entitled to any payment.

The Netherlands - 11 August 2016

ECLI:NL:RBMNE:2016:4541 , 11 August 2016, District Court Midden-Nederland

By clearly stating the termination period during a telephone call and in a letter included in a package, defendant cannot state that she was not aware of the termination period. She, therefore, entered into a subscription agreement because she did not terminate the subscription within the termination period.

The Netherlands - 13 May 2016

ECLI:NL:RBOBR:2016:2425, 13 May 2016, District Court Oost Brabant

Contracts of Essent entered into by consumers in shops of MediaMarkt and Gamma cannot be scaled under distance contracts or contracts entered into the sales area. This means consumers cannot terminate their contract on the basis of a cooling-off period. The stands used by Essent are a fixed construction and therefore can be seen as a sales area.

The Netherlands - 27 November 2015

ECLI:NL:RBROT:2015:8739 , 27 November 2015, District Court Rotterdam

By not providing complete and correct information about the termination period for an alarm system contract, Verisure cannot demand payment from defendant as no legally binding contract was created.

The Netherlands - Plaintiff v. Defendant

ECLI:NL:RBMNE:2015:2116, 01 April 2015, District Court Midden-Nederland

A general term or condition in an electronical environment is unreasonably onerous when this particular condition obliges the consumer to pay the full amount of the ordered goods upfront.

MS	Level of Court		
DE	Bundesgerichtshof (Federal Supreme Court)		
DE	Bundesgerichtshof (Federal Supreme Court)		
DE	Amtsgericht (District Court)		
DE	Bundesgerichtshofs (Federal Court)		
DE	Landesgericht (regional Court)		
DE	Oberlandesgericht (higher regional court)		
DE	Oberlandesgericht (higher regional court)		
DE	Oberlandesgericht (higher regional court)		
LT	Administrative court		

MS	Level of Court		
NL	Rechtbank (tribunal)		
NL	Rechtbank (tribunal)		
NL	Rechtbank (tribunal)		
SE	Marknadsdomstolen (Swedish Patent and Market Court)		

Annex 4: Consultation synopsis report (Task 8)

A4.1 Approach

Consultation carried out as part of the study to assess the relevance, efficiency, effectiveness, coherence and European added value of the Consumer Rights Directive (CRD) consisted of three separate activities:

- Online surveys
- Interviews
- Open public consultation (OPC).

Each of these activities enabled different types of data to be collected. 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 not a high as expected. Interviews 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. The OPC enabled a wider variety of opinions to be collected at the broader level of EU consumer and marketing law. Both the surveys and interviews were carried out by the consultants, while the OPC was carried out by the European Commission (EC).

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 such as Twitter and Facebook, in order to reach individual consumers and traders. Posts were also displayed on the European Commission website, social media sites such as Twitter, LinkedIn and Facebook, as well as on online forums.

National authorities, trade associations, traders, consumer associations, consumers and ECCs were all consulted during the aforementioned consultation activities, and numbers of responses received from different stakeholders during the three consultation activities are summarised in the sections that follow. The aim of this Section is to provide a broad overview of consultation activities carried out as part of this study, along with key results, while a detailed analysis of the results is provided throughout the report and structured in accordance with the five evaluation criteria (efficiency, effectiveness, coherence, relevance, and EU added value). The number of responses in summarised in the next table.

Online survey	• 255 complete responses from consumers; Greece, Cyprus and the UK where the MS with the largest number of completes; • 24 national consumer associations; • 157 complete responses were received from traders; • 25 complete responses from trade associations; and • 24 completed responses from enforcement authorities and 16 from ministries.

	• 28 ECCs responses
Interviews	64 interviews in total in 18 MS: • 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
OPC	In addition to the 436 survey responses to the OPC, 56 position papers were provided to the study team and subsequently reviewed.

A4.2 Main findings of the consultation activities

The following sections summarise the main results of all three of the consultation activities. These results are described in relation to their relevance to the five evaluation criteria; effectiveness, efficiency, relevance, coherence and EU added value.

A4.2.1 Effectiveness

Survey

In response to the survey, most consumers indicated that the level of protection afforded by the CRD was either 'moderate' or 'high' when buying goods domestically, and similarly when buying goods or services cross-border. Over 60% of consumer associations answering the same question indicated that the CRD was either quite effective or very effective when purchasing goods domestically, although their opinion was not as positive regarding the purchasing of digital content. Survey responses from consumers and consumer associations therefore suggested that the CRD is generally considered to be effective.

Through the surveys, national authorities indicated that they felt the provisions on pre-contractual information requirements for distance and off-premises contracts, and for the RoW to be either 'positive' or 'very positive' for consumers.

The survey aimed at traders questioned their reasons for not selling to consumers in other EU countries (i.e. aimed to obtain data on how effective the CRD is in enabling traders to sell cross-border). Almost half of the respondents responded that they have no interest in selling cross-border, and only 17% of all respondents indicated that differences in national consumer legislation prevented them from selling cross-border. It was therefore concluded from this data that any differences in consumer legislation remaining after the implementation of the CRD are not considered to be a significant barrier to cross-border trade. Differences in consumer legislation were the main reason supporting the full harmonisation behind the CRD.

Similarly to consumers, consumer associations and national authorities, ECCs indicated in their responses to the survey that RoW is considered to be one of the most effective provisions of the CRD. The ban on pre-ticked boxes was also indicated to be one of the more effective contributions of the CRD in ECC survey responses. However, unlike the consumers and national authorities, ECCs indicated that the pre-contractual information provisions are not considered to be very effective due to frequent non-compliance and lack of enforcement. It was underlined in survey responses that there is room for improvement with regard to the effectiveness of the pre-contractual information requirements.

Interviews

Information obtained from traders and trade associations, consumer associations and national authorities during the interviews confirmed that, generally speaking, the implementation of harmonised rules across the MS was effective in ensuring an even playing field, particularly with the introduction of the 14 day RoW.

Two national authorities explicitly indicated that the number of CRD related complaints received has risen since the introduction of the CRD, and it was suggested that this indicates consumers are becoming more aware of their rights.

Most of the consumers and their representatives however highlighted issues because of lack of compliance and enforcement. Traders and their representatives were keen to highlight aspects related to the returns of used items and the financial risks to companies from this.

During the interviews, two national authorities stated that the CRD should provide a tool for evaluating how much of a refund a customer should receive in cases where they have used the product more than is required to simply test it.

One ECC underlined the need for a more reliable means of identifying traders as they may often use a shorthand for their trading name (e.g. initials), which can make it difficult to locate them.

Interview responses also indicated that the national authorities perceive the exemptions from RoW and withdrawal from digital content contracts to be less positive.

Open public consultation

In response to the OPC, national authorities indicated that they view simplification and streamlining of existing legislation to be potentially beneficial for consumers, however it was stressed that any streamlining should be carefully considered and not compromise consumer protection. It was also stated by consumer organisations that wrong or sufficient information affects the decision of consumers and for this reason the information requirements set out under the CRD are extremely important.[118]

A4.2.2 Efficiency

Surveys

In response to the survey, national authorities, traders and trade associations all indicated that costs have increased for traders under the CRD; some indicate that these

[118] Civic (2016): Study to support the Fitness Check of EU Consumer Law, on behalf of the European Commission, p. 210

costs are relatively low, while others report them as being high. Costs were frequently referred to in the context of pre-contractual information requirements and the RoW.

With regard to the pre-contractual information requirements, the survey results show that these are particularly burdensome for traders in the case of distance and/or off-premises contracts. Traders provided some examples of instances where costs have occurred when the possibility to elaborate was provided (e.g. a text box for providing clarification to a response). It was for example stated by a trader that once a good has been sold to a consumer it cannot be sold as 'new', which immediately diminishes the value of the good, even if the consumer has not used the product more than is required to test it.

It was furthermore stated that, although consumers are liable for the diminished value of goods resulting from handling the goods more than is necessary 'to establish the nature, characteristics, and functioning of the goods' (Article 14.2), in practise it can be difficult to calculate the diminished value of a good, and can result in undue costs being incurred by either the trader or the consumer. It was furthermore indicated in response to the survey that time is required for companies to check their returns have been received in re-saleable condition, as well as bearing the cost for the delivery (to the customer) of an item that was returned.

It was also indicated by traders in response to the survey that the level of cost depends on the sector in which the trader is working. For example, it was stated that costs are particularly high for clothes sellers as the likelihood of the consumer returning the good is relatively high. Industry is trying to work methods to avoid the return of used goods.

However, it is equally important to note that, according to data received from a national authority in response to the survey, 64% of consumers enquiring about their rights indicate that they intend to take action, suggesting that those consumers who are aware of the Directive, and consequently of their rights, view it as a beneficial tool. And when questioned about costs incurred, on the whole national authorities responding to the survey indicated that relatively low costs were incurred by their departments in the transposition although moderate to large costs were identified by a larger number of competent authorities in relation to enforcement.

Generally speaking, survey responses indicated that the CRD is more suited to large retailers than SMEs, with costs incurred being more burdensome for them from having to adapt their websites for instance to provide pre-contractual information – although generally the responses from SMEs do not vary significantly from larger companies.

Interviews

During the interviews it was possible to obtain more details on specific examples of the types of costs incurred (mostly by traders), although it was not unfortunately possible to obtain a sufficient number of quantitative estimates.

National authorities and trade associations, similarly to survey responses, highlighted information requirements as being the biggest burden for both consumers and traders. It was furthermore elaborated that not all of the information requirements necessarily enhance consumer protection, as consumers do not always read the information provided. It was also underlined that it is particularly difficult for traders to comply with these requirements when the information is to be viewed on mobile phones. As a result, the use of hyperlinks was suggested as a potential option to provide further pre-contractual information on request.

It was also emphasised that costs can be particularly high for traders when selling cross-border, as the cost of returning faulty goods, which the trader has to bear, can be high.

Difficulties were also said to occur when the consumer has moved to another MS since initially purchasing the product and then subsequently request a replacement or refund for a faulty good – it is not clear in such cases whether the trader is still to bear the cost for returning the faulty good.

One national authority stated that there is a lack of clarity with regard to the meaning of 'durable medium' in reference to Article 7 which sets out obligations for traders to provide information on a durable medium for off-premises contracts. This lack of clarity is said to result in additional costs for traders who provide a paper version of the information or who have created a website for these purposes, or in cases where it is decided that the information has not been provided on a 'durable medium' (e.g. when it is decided that a website does not count as a 'durable medium'). Some clarification may therefore be required in this required to improve efficiency.

It was also commented that some market surveillance authorities had to bear costs to adapt to the new legal regime, although no specific examples were provided.

Open public consultation

Traders and trade associations indicated in response to the OPC the there is a need to simplify the information requirements specified in the CRD, as did national authorities.[119]

Traders and trade associations also highlighted a need for the CRD to clarify that the consumer should inform the trader of the decision to withdraw from the contract via the designated withdrawal form/tool, and only if no such form or tool exists can the consumer choose their own way of returning the good[120].

Results from the OPC similarly indicated, in a general manner, that costs were incurred by traders as a result of the CRD.

A4.2.3 Relevance

Surveys

The vast majority of consumer associations responding to the survey agreed that the objectives of the CRD are still relevant to consumer needs. Data received from traders and trade associations in response to the survey suggested that they consider the CRD to be relevant to the needs of 'consumers and/or traders'; 55% of trade associations responded that it is 'very relevant'.

Survey results indicate that consumers regard displaying the total price for product or service to be the most important aspect of the CRD. While areas for improvement highlighted by consumer associations in response to the survey included simplification of pre-contractual information requirements.

In response to the survey, ECCs highlighted 'free trials' and 'digital content' as being the two main gaps in the consumer protection provided by the CRD. The framework applicable to the share economy and online platforms is also a reason for legal uncertainty and further action has been called upon the Commission to clarify this.

Interviews

[119] Ibid. p.211
[120] Ibid. p.209

During the interviews, national authorities underlined that they believe free online services should be covered by the Directive. This is due to the fact that those using free online services are effectively paying for the services with their data, which has commercial value.

Open public consultation

No information was obtained in relation to the relevance of the CRD, via the OPC.

A4.2.4 Coherence

Surveys

The surveys did not highlight any main issues with the coherence of the CRD and other legislation.

Interviews

During the interviews it was stated by national authorities that there are several directives relating to consumer law with similar (although slightly different) requirements, which can be burdensome for traders to comply with – it was stated that such requirements should be consolidated.

Open public consultation

Papers provided under the OPC underlined that several requirements were covered by more than one Directive (e.g. information requirements). And two submissions in response to the OPC indicated that price indication rules are covered by the PID, UCPD and sector specific legislation, which often leads to confusion. It was therefore recommended that legislation should be streamlined and consolidated in this regard.[121]

A4.2.5 EU added value

Surveys

National authority responses to the survey highlighted the resulting uniformity and harmonisation of consumer rights across Europe as the main beneficial contribution of the CRD. It was furthermore stated by national authorities in response to the survey that this uniformity has increased cross-border sales, broadened the market, enhanced legal certainty, and resulted in compliance cost reductions.

Interviews

However, a small number of national competent authorities did also state during interviews that arrangements or rules for consumer protection already existed or would have been implemented at a national level without the CRD.

Some consumer associations stated during interview that the information required by the pre-contractual information requirements is often not read by consumers, and that the amount of information available can be overwhelming for some.

Open public consultation

No information was obtained during the OPC on the EU added value of the CRD.

[121] Ibid p.185

A4.3 Inconsistencies and agreement between results from the different consultation activities

Results from all consultation activities were generally in agreement for the different stakeholder groups. All stakeholder groups raised areas of the CRD requiring improvement according to their different needs, and the different consultation activities allowed varying levels of detail to be obtained.

Although the OPC did provide some useful data, there was not a sufficient quantity in relation to the CRD specifically, due to the OPC covering several pieces of legislation. In this regard, the survey compensated by generating a large quantity of data specifically in relation to the CRD, and interviews enabled responses to be explored further and for more specific examples to be provided in order to deepen understanding of the issues and arrive at a balanced view.

The main points of agreement were the following:

- the level of harmonisation afforded throughout Europe by the CRD has improved the level of protection for all consumers, and has generally increased the specificity of national legislation.

- pre-contractual information requirements are considered to be an issue by both traders and consumers. Information obtained during the survey and interviews underlined that businesses generally view these requirements as burdensome, while information received from the OPC indicated that some consumer associations have pointed out that the level of information can be overwhelming for some consumers. In this way the information obtained from the different consultation activities is in agreement and suggests that there is potential for streamlining the information requirements where it does not impact upon the level of consumer protection afforded.

- the full range of stakeholders generally believe the CRD to be relevant to the needs of consumers, however all stakeholders highlighted areas requiring improvement.

Perhaps one issue where stakeholders have shown disagreement is the impacts of regulatory choices and the level of harmonisation achieved by the CRD. Although, most respondents agreed that differences in consumer legislation remaining after the implementation of the CRD are not a significant barrier to cross-border trade and the CRD has achieved a significant level of harmonisation, some stakeholders mentioned that the regulatory choices work against the principles of harmonisation. Indeed, 71% of traders who indicated in response to the survey that they trade cross-border and finding difficulties in so doing[122] quoted national legislation as a main difficulty to selling in other EU countries. Nearly half of the traders responding to the survey however are just not interested in selling cross-border.

[122] For those that do trade cross-border (114 traders responding), 47% mentioned that there are some minor or significant difficulties. Of those that mentioned that there are some minor or significant difficulties, 71% agreed that differences in national legislation were one of the main difficulties when selling in other EU countries (32 traders indicated this as a difficulty).

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