



CONSUMER MARKET STUDY TO SUPPORT THE FITNESS CHECK OF EU CONSUMER AND MARKETING LAW

EXECUTIVE SUMMARY

May 2017

Background and purpose of the study

In January 2016, the European Commission launched a Fitness Check of six main consumer and marketing law directives¹ and a parallel evaluation of the Consumer Rights Directive 2011/83/EU. This evaluation seeks to establish the effectiveness, efficiency, coherence, relevance and EU added value of these instruments and whether they are still fit for purpose. The evaluation is evidence-based. The Commission therefore called for a specific external study into consumer awareness, perception and experience with the realisation of consumer rights.

This study was assigned to and implemented by GfK Belgium. It covers four out of 6 Directives undergoing the Fitness Check: the Unfair Contract Terms Directive (UCTD), the Unfair Commercial Practices Directive (UCPD), the Consumer Sales Directive (CSD), and the Price Indication Directive (PID). Some tasks performed within this study also covered the Consumer Rights Directive (CRD). The objective of the study was to provide DG Justice and Consumers with information on:

- the extent to which consumers are aware of their rights and are willing and able to exercise these rights;
- the nature and prevalence of problems that consumers encounter when exercising their rights; and
- the benefits the respective EU legal instruments bring to consumers.

Special attention was also to be paid to the consumers' behaviour in online markets and consumers' cross-border purchases.

Methodology

This project was implemented by means of three main research tasks: an in-depth consumer survey in 28 Member States plus Norway and Iceland (EEA countries), two mystery shopping assignments and four behavioural experiments.

The consumer survey was designed to collect data on consumer experience in a wide range of markets, covering goods as well as services, bought both offline and online in both the respondents' own country and in another EU country. The survey covered only the four above-mentioned Directives undergoing the Fitness Check. It was completed online by a representative sample (in terms of age and gender) of 23,501 respondents from the EU28 countries plus Iceland and

¹ Unfair Contract Terms Directive (UCTD), Unfair Commercial Practices Directive (UCPD), Consumer Sales Directive (CSD), Price Indication Directive (PID), Misleading and Comparative Advertising Directive (MCAD) and Injunctions Directive (ID)

covering goods as well as services, bought both offline and online in both the respondents' own country and in another EU country. The survey covered only the four above-mentioned Directives undergoing the Fitness Check. It was completed online by a representative sample (in terms of age and gender) of 23,501 respondents from the EU28 countries plus Iceland and Norway, using the GfK consumer panels.

The mystery shopping consisted of 2 tasks.

First, the UCPD mystery shopping exercise studied the possibilities for consumer redress in the case of misleading commercial practices in retail trade. This exercise was conducted in Belgium, Bulgaria, Finland, France, Germany, Greece, Ireland, Malta, the Netherlands, Poland, Portugal, and the United Kingdom. It covered 56 completed cases where mystery shoppers purchased products based on misleading commercial practices and subsequently tried to claim remedies, such as refunds, from the traders. The product sectors involved in this mystery shopping exercise were clothing, electronic goods and information and communication technology (ICT) goods.

Second, the CRD mystery shopping exercise investigated the level of compliance of traders with specific rules from the Consumer Rights Directive related to the provision of pre-contractual information, requirements for the conclusion of contracts, the ban on extra fees, the ban on the use of pre-ticked boxes and consumers' right of withdrawal. This mystery shopping was conducted in Bulgaria, Finland, France, Germany, Greece, the Netherlands, Poland and Portugal and covered purchases of ICT goods (i.e., computer mice and memory sticks) and digital content (i.e., antivirus software and music downloads). Mystery shoppers evaluated the traders' compliance with the CRD requirements such as their experience with the exercise of the right of withdrawal.

Lastly, four experiments were conducted online in Bulgaria, Finland, France, Germany, Greece, the Netherlands, Poland and Portugal, to test consumers' use of and reaction to information.

Experiment 1 about the Price Indication Directive tested respondents' choices and willingness to pay for two products (i.e., cookies and laundry detergent) depending on the availability of unit price information. It tested different price-unit relationships (i.e., situations where larger packages had both lower and higher unit price than smaller package sizes). The respondents' awareness of the unit price information, their ability to determine the item with the lowest unit price (unit price comprehension) and the effect on their product choices were assessed.

Experiment 2 was conducted to examine respondents' responses to the use of fair vs. unfair standard contract terms (T&Cs) and whether respondents were influenced by different presentations of the T&Cs. Respondents were presented with the T&Cs for a consumer credit and for an ADSL internet subscription. The presentation of the T&Cs and the fairness of the T&Cs were manipulated between respondents. More specifically, respondents had to make their purchasing decision on the basis of either the traditional (long) version of the T&Cs, a summarized version of T&Cs or a summarized version of T&Cs accompanied with graphical icons; each of these types of T&Cs were either fair or included unfair clauses. The experiment assessed the respondents' intention to buy depending on the type of T&Cs they were presented with as well as the respondents' readership of T&Cs, perceived fairness of the T&Cs and comprehension of the fairness of the T&Cs.

Experiment 3 investigated whether consumers take durability and reparability information into consideration if such information is provided. Respondents were given a decision-making task for three different products (large consumer good: washing machine, medium consumer good: TV and small consumer good: smartphone) with each having 6 product options that varied by brand, price and product characteristics, in particular as regards durability and reparability aspects. The durability information was manipulated between-subjects, i.e. the information was either absent, presented by years or presented by usage units (e.g., washing cycles). The reparability information was also manipulated between subjects, i.e. it was either absent or presented in terms of availability of spare parts or costs of replacing key parts. The effect of the presence of durability and reparability information was measured by assessing respondents' product choice and willingness to pay.

Experiment 4 focused on whether the information required by the Consumer Rights Directive (CRD) is comprehensible and perceived as relevant by consumers. It also measured if consumers consider any of the information requirements in

the Unfair Commercial Practices Directive (UCPD) as redundant at the advertising stage, in view of the fact that the same and more information is also required under the CRD in the pre-contractual stage. In Experiment 4a on the CRD, respondents saw one of three conditions. First, respondents were randomly divided over two products: streaming content and a smartphone. For the streaming content, the presentation of icons was manipulated (i.e., for each CRD information item an icon was present or absent), while the smartphone condition was only presented with icons. For each of the CRD information items represented, respondents were asked if they understood the information (comprehension) and whether they thought the information was important (importance/relevance). Their use of the CRD information in hypothetical scenarios was also tested. In Experiment 4b on the UCPD, the respondents were first presented with an online advertisement containing information required by the UCPD (Article 7(4)). Next, they were presented with the pre-contractual information required by the CRD. Subsequently, respondents were asked to answer questions on any (perceived) redundancy of the information they saw in the advertisement.

Key findings

Relevance of consumer rights: Consumer awareness, attitude and use of consumer rights

Previous research² has shown that consumers are barely aware of their rights. In the consumer survey, consumer rights awareness was measured by asking respondents to answer specific questions concerning the four Directives subject to the Fitness Check (i.e. UCTD, UCPD, CSD and PID). The results show that awareness varies depending on the right in question. The rate of correct replies ranges from 38% for the question about the rights regarding the choice of remedies in case of defective goods, 40% for the question about the non-binding nature of unfair terms and conditions and 47% for the question about the duration of the legal guarantee, to 67% for the question about the rights about the unit price indication, 71% for the question about the rights to have unclear contract terms interpreted in the consumer's favour and 73% for the question about the prohibition of persistent unsolicited marketing (as an example of unfair commercial practices). As regards consumer rights in relation to defective goods, respondents in general had significantly lower awareness about specific national rights going beyond the EU minimum requirements.

Survey respondents attached great **importance** to most consumer rights. When looking at the perceived importance of various decision-making factors, only the price of products or services (87%) was seen as more important than the 'legal guarantee' for goods (85%), clear and fair T&C's (85%), and remedies if something goes wrong (84%). Two thirds of the respondents also perceived unit price indication as important (68%).

As regards the actual benefits, i.e. the practical use of consumer rights, the survey respondents reported **benefiting** most from the rights to a 'legal guarantee' for goods and rights for unit price indication (respectively 72% and 69% of respondents reported they benefit at least 'slightly' from these rights). Relatively fewer respondents considered as beneficial the other investigated rights, i.e. the rights not to be bound by unfair terms and conditions (47%), the rights to complain against misleading and aggressive practices (47%) and the rights to interpret unclear or ambiguous contract terms in consumer's favour (45%'. The number of respondents who indicated they had not drawn any benefit from these rights ranged from 34% to 15% (depending on the right), which shows that these consumer rights continue to be important for a large majority of consumers.

Behavioural experiments provided insights into respondents' use of various information, in particular information required by the relevant directives. Thus, the experimental results show that **unit price indication** was effective as it enabled the respondents to identify the product options that represented the best value for money, especially in situations when larger packages were more expensive per unit than smaller packages.

² Eg, European Commission DG Justice and Consumers. (2015). Consumer Conditions Scoreboard: Consumer at home in the Single Market – 2015 edition. – Retrieved from http://ec.europa.eu/consumers/consumer_evidence/consumer_scoreboards/11_edition/index_en.htm

The experimental findings also indicate that consumers benefit from pre-contractual information required under the **Consumer Rights Directive (CRD)**, as they find this information both easy to understand and important for their purchase decisions. Trying to further improve the ease of understanding the pre-contractual information by using icons did, however, not lead to the desired results. Moreover, majority of respondents found it important to be presented with most information elements about the offer required by the UCPD already at **the advertisement stage**.

Another experiment showed that the provision of specific **durability and reparability information** can lead the consumer towards choosing more durable or more easily repairable products. It also showed the different impacts of different ways of presenting such information. The presentation of durability information always led consumers to choosing more durable product irrespective of whether it was presented in years or by usage units. On the other hand, while information on the availability of spare parts increased choices and willingness-to-pay for more repairable products, information on the average costs of spare parts increased choices of such products significantly less and even had a negative effect on respondents' willingness-to-pay for products with high as well as low costs of spare parts.

The experiment concerning the standard **Terms & Conditions** showed that respondents were more likely to buy from traders that offer fair T&Cs especially where those were presented in a summarized way that was easier to understand. When the T&Cs were presented in the standard (long) format, respondents hardly distinguished between fair and unfair T&Cs in their intention to buy the product. When the T&Cs were summarised, respondents distinguished much more between fair and unfair T&Cs. After having been presented with summarised T&Cs, respondents were less likely to buy from a seller with unfair T&Cs and, depending on the product, were also more likely to buy from a seller with fair T&Cs. In contrast, adding icons to the summary T&Cs seems to have no additional beneficial effects.

Lastly, the relevance of consumer rights was examined by testing **consumer reactions to consumer rights infringements under the CRD**. Two of these infringements were tested by means of mystery shopping: **charging fees for a certain payment method** and **using pre-ticked boxes associated with the purchase of extra options**. These practices had negative effects on mystery shoppers' trust of and satisfaction with the retailer and their perceived willingness to purchase goods from the same retailer in the future.

Consumer perception and experience of traders' compliance with consumer rights

The findings of the consumer survey show that while between 45% and 63% of the respondents (depending on the type of trader) perceived **traders to be compliant with consumer rights** (i.e., they evaluated traders as very or completely compliant) and only between 9% and 11% thought that traders were only slightly compliant or not compliant, a relatively high proportion of respondents still reported having **encountered problems** in the last year. The most common problems were related to misleading or aggressive commercial practices (33%), defective goods (32%), a lack of unit price indication (30%), unclear or ambiguous standard contract terms (28%) and unfair standard contract terms (23%). The CRD mystery shopping provided further insights into **traders' compliance with consumer rights, including the CRD information requirements**. The findings show that in most of the mystery shopping cases, the traders complied with CRD pre-contractual requirements, including information on digital content functionality and interoperability, and with CRD information requirements regarding the conclusion of a distance contract. **A potential problem area is the procedure related to withdrawal from contracts**. Fewer than half of the investigated retailers informed consumers about their right to withdraw (nevertheless, most mystery shoppers found the overall withdrawal procedure satisfactory).

Consumer problem resolution

Findings from both the consumer survey and UCPD mystery shopping provide insights into respondents' efforts to resolve problems. First, **when trying to resolve problems, most respondents dealt directly with the seller or service provider and most problems were also resolved in this way**. Public organisations, such as consumer associations and public authorities, had to be involved for solving problems in much fewer cases. Respondents were also largely satisfied with the way that their complaint was dealt with by the seller, service provider or manufacturer.

Notwithstanding this, a significant share of problems (14%) was reported as unsolved or still pending. Moreover, **more than one-fifth of respondents did nothing to resolve their problem**. Most respondents who did not take action did

not because the sums involved were too small (37%) or because they did not believe they would get a satisfactory solution for the problems they had encountered (28%).

As regards **misleading commercial practices**, the UCPD mystery shopping exercise findings suggest that there is very small chance that traders would voluntarily offer any remedy to consumers who have suffered economic loss due to misleading commercial practices. The exercise of the right to withdrawal, which is regulated under EU consumer law (as opposed to remedies in the case of unfair commercial practices), was relatively more effective, as more of the mystery shoppers received a refund of their purchases.

The effect of national regulatory differences on cross-border trade

As national consumer protection rules in some areas go beyond the minimum EU requirements, regulatory differences may affect cross-border trade. The consumer survey findings show that significantly fewer **respondents are buying products and services from offline and online stores in an EU country other than their own**. When buying in (online and offline) shops in another EU country, respondents considered the 'legal guarantee' for goods, clear and fair terms and conditions and the availability of means to obtain remedy or redress if something goes wrong as the three most important consumer rights-related factors. Only the price of the good mattered more for respondents in these cases. In contrast, other factors such as delivery cost (for foreign offline traders) and time, language differences and after-sales services offered by the seller or manufacturer were all reported as less important.

Policy Options

The current findings highlight the need for the EU to further invest in **raising awareness about consumer rights**.

Information helps consumers to make better or more accurate decisions and presenting information in a user-friendly way may further increase this effect. The results show that the mandatory information requirements under the CRD, PID and UCPD are considered relevant by consumers. In particular, the requirement to indicate the unit price helps them to make better purchasing decisions. A campaign or some guidance could enhance traders' awareness of the information requirements and encourage their more user-friendly presentation, such as T&Cs in a summarised form.

Retailers themselves seem also somewhat unaware about the laws under which they should be operating. This is reflected by the failure of traders to provide information required by the CRD about the withdrawal procedure and about digital content functionality. Policy recommendations to enhance retailer awareness might entail EU information campaigns directed specifically at traders and their organisations (e.g., information campaigns, seminars, leaflets, etc.) and recommendations to Member States to work on awareness standards. As such, the existing trade (commercial) registers can be used to inform them about their consumer law obligations.

Special attention should be given to information related to the **functionality and interoperability of digital content** required by the CRD. Purchases of digital content might be frustrating for the consumer if the digital content cannot be used as intended. For instance, attention could be focused on how businesses could better present such information, such as by developing specific labels for products and websites, for example listing all compatibility requirements of the content with a specific label or colour.

The consumer survey findings also show that **consumer confidence in public authorities and consumer associations is rather low despite the fact that the actual satisfaction with their performance in concrete problem-solving is relatively high**. To strengthen consumer confidence in consumer protection bodies, Member States may need to support these organisations, especially financially. Furthermore, consumer awareness about the role of these organisations should be raised. Since consumers' awareness about consumer rights in itself has a positive effect on confidence in consumer protection bodies, these results further highlight the need to improve consumer awareness of their rights.

Retailers that make use of misleading commercial practices are very unlikely to voluntarily offer any redress to the affected consumers. Remedies in the case of purchases made as a result of misleading commercial practices are not currently regulated by EU law. While consumers could address this issue through national civil law (e.g. a contract could be declared null and void because of fraud) and EU consumer sales rules would be applicable in certain situations (e.g. if the purchased good is not in conformity with the contract), the findings highlight a need for action to ensure that consumers have clear remedies for UCPD breaches that are also well known to traders.

Differences in national regulations potentially affect cross-border commerce. The findings show that consumers may not actually be aware of differences in national consumer laws, but suspect that there might be differences. This in turn affects their willingness to engage in cross-border sales. Two policy recommendations are relevant in this context. First, more information campaigns funded by the European Union to promote and enhance consumer awareness could help close the awareness gap in regard to the harmonisation of consumer rights in Europe. Second, the enforcement of EU consumer protection regulations could be improved by enhancing the cross-border enforcement systems.