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Study for the Fitness Check of EU consumer and marketing law

Final report Part 4 – Additional evidence collected

Prepared by Civic Consulting
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CIVIC CONSULTING

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Study for the Fitness Check of EU consumer and marketing law

Final report Part 4 – Additional evidence collected

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1. Results of the survey of qualified entities

As part of the consultation task in this study, we conducted a targeted evidence collection survey to collect quantitative data regarding the use of the injunctions procedure directly from qualified entities. In this section, we present results of the survey of qualified entities regarding the use of the injunction procedure, obstacles to the effective use of the injunction procedure, cooperation with qualified entities in other Member States, and possible future measures.

1.1. Methodology

1.1.1. Development of the survey questionnaire

The survey questionnaire was developed on the basis of the specific questions of the TOR, as well as in-depth dialogue with the Commission and the results of the exploratory research conducted in the inception phase. The survey questionnaire was developed with the aim to complement the information provided in the country reports and includes questions on the use of the injunctions procedure, obstacles to the effective use of the injunctions procedure, cooperation with qualified entities in other Member States, and possible future measures. The final survey questionnaire is presented in Annex III below.

1.1.2. Identification of target qualified entities

As a first step, we compiled a list of qualified entities in all 28 Member States on the basis of the 2016 Notification from the Commission concerning Article 4(3) of the Injunctions Directive, which lists the entities recognised by national authorities as being qualified to bring an action for an injunction under Article 2 of this Directive. This first list was then updated throughout the exercise based on complementary research, which included internet research for new contact information, phone calls to qualified entities asking for contact details of the relevant person within the organisation, and emails to ECCG members, who are often members of organisations that are qualified entities, asking for their support in finding the right contact persons.

1.1.3. Implementation of the survey

Shortly after the approval of the questionnaire, we proceeded with the implementation of the survey via the online platform *Qualtrics* and launched the survey on 15 June 2016. We first invited participants by email, and then undertook a number of follow-up actions in order to safeguard an appropriate response rate. First, several follow-up emails were sent to qualified entities who had not participated in the survey. Subsequently, follow-up phone calls were conducted to check whether the survey invitation had reached the right contact person at the qualified entities and whether they needed further assistance or time to complete the survey. At the request of some responding qualified entities, the deadline for the survey was extended until 16 September 2016.

In addition to the follow-up actions undertaken, we addressed the following issues brought forward by qualified entities in response to the survey invitation:

- Several qualified entities informed us that the Injunctions Directive had never been used by the organisation to take action – either nationally or in cross border cases. These entities were invited to complete the survey even if they did not carry out injunctions;

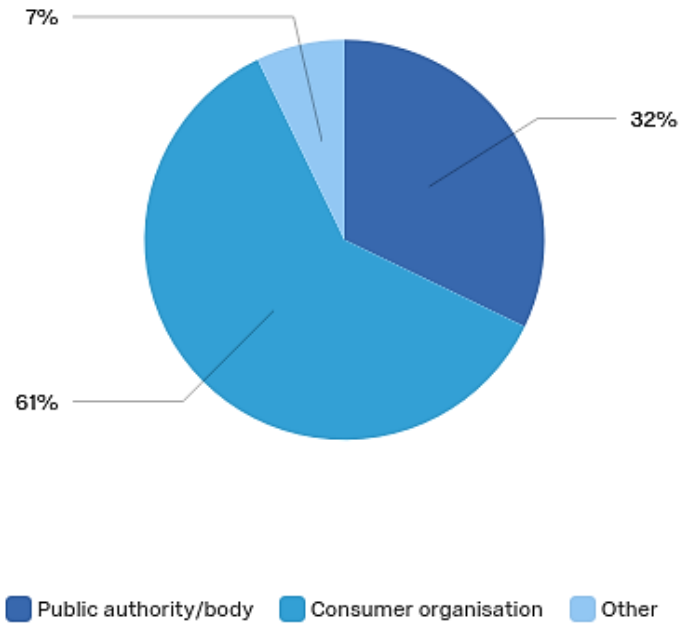
- Several other organisations indicated that they could not provide data either due to limited resources or that they did not collect the type of detailed statistics required by the survey. In these cases we encouraged the entities to complete the survey at least partially;
- Several qualified entities confused the survey of qualified entities with the public online consultation. We clarified the differences between the methodological tools and stressed the importance and added value of this data collection exercise.

1.2. Survey results

1.2.1. Surveyed qualified entities

The figure below displays the breakdown of qualified entities that participated in the survey. Of these entities, 61% were consumer organisations. The remainder consisted of public authorities/bodies (32%) and 'other' entities, such as business associations (7%).

Figure 1: Types of qualified entities



Source: Civic Consulting, Survey of qualified entities. Question: '*Type of qualified entity*.'

In total, 29 qualified entities completed the questionnaire from the following 21 EU Member States: Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Additionally, the table below presents the number of qualified entities that responded from each Member State, as well as the total number of qualified entities per Member State.

Table 1: Number of responding qualified entities and total number of qualified entities per Member State

Member State	Number of responding qualified entities	Total number of qualified entities
Austria	2	8
Belgium	0	3
Bulgaria	2	10
Croatia	1	8
Cyprus	2	3
Czech Republic	2	6
Denmark	1	2
Estonia	0	2
Finland	1	9
France	1	17
Germany	1	78
Greece	1	75
Hungary	0	8
Ireland	1	1
Italy	0	19
Latvia	1	1
Lithuania	1	1
Luxembourg	1	2
Malta	4	8
Netherlands	1	1
Poland	0	5
Portugal	0	5
Romania	0	1
Slovakia	1	15
Slovenia	1	13
Spain	1	28
Sweden	1	1
United Kingdom	2	12
Total	*29*	*342*

Sources: Survey of qualified entities; Notification from the Commission concerning Article 4(3) of Directive 2009/22/EC. Question: *'Country'*

As indicated in the table above, the total number of qualified entities in Germany (78) and Greece (75) is much higher than in the other countries. These include a large number of regional organisations, as well as organisations focused on very specific matters such as renters' organisations ('Mietervereine'). Conversely, some Member States have only recognised one entity as being qualified to bring actions for an injunction under Article 4(2) of Directive 2009/22/EC. In most of these countries (i.e.

in Ireland, Latvia, Lithuania, the Netherlands and Sweden), the qualified entity responded to the survey.

1.2.2. Injunction actions initiated by qualified entities

The table below lists the number of responding qualified entities that initiated injunction actions since June 2011, as well as the total number of injunction actions initiated per year.

Table 2: Injunction actions initiated since June 2011

Year	Number of qualified entities that initiated injunction actions	Total injunction actions initiated
6/2011 - 12/2011	5	775
2012 (full year)	8	1 177
2013 (full year)	9	962
2014 (full year)	9	1 103
2015 (full year)	7	995
1/2016 - 5/2016	5	536
Total 5 year period	12	5 763

Source: Civic Consulting, Survey of qualified entities. Question: '*What is the total number of injunction actions initiated by your organisation since June 2011?*'

In the five year period since June 2011, 12 responding qualified entities initiated a total of 5 763 injunction actions.[1] Note that this total does not correspond to the sum of the yearly totals—some respondents did not provide yearly answers, and instead only provided answers for the total five year period. Three responding qualified entities did not provide data, and 14 indicated that they did not initiate any injunction actions since June 2011. Reasons due to which entities did not initiate any injunction actions included initiating declaratory actions instead of injunctions,[2] initiating prohibition orders instead of injunctions,[3] and insufficient financing.[4]

The responding qualified entities were also asked to provide the breakdown of injunction actions initiated by their organisations with respect to actions regarding national infringements and actions regarding infringements originating in another country. Since June 2011, responding qualified entities initiated a total of 2 421 injunctions regarding national infringements, 217 injunctions regarding infringements originating in another EU country, and 53 injunctions regarding infringements in a non-EU country (see the table below). Note that the sum of these injunctions does not correspond to the total sum of injunctions in the table above, as they refer to different questions in the survey.

[1] In the total five-year period, Germany brought the highest number of injunction actions (4 579) of all Member States that responded to the survey.

[2] As indicated by a Danish public authority/body.

[3] As indicated by an Irish public authority/body.

[4] As indicated by a Cypriot consumer organisation.

Table 3: Injunction actions initiated since June 2011 – national infringements vs. infringements originating in another country

Infringement	Total injunction actions initiated	Percentage of total
National infringements	2 421	90%
Infringements originating in another EU country	217	8%
Infringements originating in a non-EU country	53	2%
Total	*2 691*	*100%*

Source: Civic Consulting, Survey of qualified entities. Question: '*Please indicate the number of injunction actions initiated by your organisation since June 2011, differentiating between actions regarding national infringements and actions regarding infringements originating in another country.*'

On the basis of the qualified entities' responses to the survey question on the number of injunction actions initiated by their organisations with respect to actions regarding national infringements and actions regarding infringements originating in another country (presented in the table above), we grouped respondents into the following two groups: responding qualified entities that initiated injunction actions (13 respondents); and responding qualified entities that did not initiate any injunction actions (16 respondents). Their assessments of effectiveness, importance, usefulness, benefit and impact are presented separately in the next sections.

Additionally, the table below displays the Member State-level breakdown of injunction actions initiated since June 2011 that concerned national infringements.

Table 4: Injunction actions initiated since June 2011 – national infringements (by Member State)

Member State	Total injunction actions initiated
Austria	140
Bulgaria	16
Croatia	1
Czech Republic	32
Germany	1 257
Latvia	784
Lithuania	27
Luxembourg	4
Malta	6
Netherlands	54
Slovakia	100
Total	*2 421*

Source: Civic Consulting, Survey of qualified entities. Question: '*Please indicate the number of injunction actions initiated by your organisation since June 2011, differentiating between actions regarding national infringements and actions regarding infringements originating in another country.*'

As shown in the table above, injunction bodies in Germany initiated the most injunctions (1 257) concerning national infringements out of all responding qualified entities, while injunction bodies in Croatia initiated the fewest (one injunction).

Responding qualified entities were also asked to indicate how they brought their injunction actions regarding infringements originating in other EU countries. Since June 2011, responding qualified entities have brought 1 359 such actions within their own jurisdictions,[5] 1 action in another EU country,[6] and 4 actions in another country via cooperation with another qualified entity from another EU country (see the table below).[7]

Table 5: Injunction actions initiated since June 2011 – means by which actions were brought

Infringement	Total injunction actions	Percentage of total
Infringements originating in another EU country brought by own organisation within own jurisdiction	1 359	99.6%
Infringements originating in another EU country brought by own organisation in another EU country	1	0.1%
Infringements originating in another EU country in which entity cooperated with another qualified entity from another EU country	4	0.3%
Total	*1 364*	*100%*

Source: Civic Consulting, Survey of qualified entities. Question: '*Please provide details concerning the injunction actions that your organisation initiated regarding infringements originating in another EU country since June 2011, indicating how you brought the action (in your jurisdiction or another EU country jurisdiction).*'

Additionally, the table below displays the Member State-level breakdown of injunction actions initiated by qualified entities concerning infringements originating in other EU countries, but which were brought by their own organisations within their own jurisdictions.

[5] 10 of these cross-border actions were initiated by a public authority in Latvia, who commented that these cases are brought on the basis of Regulation No. 2006/2004.

[6] This cross-border action was initiated by a private association in Austria, who commented with respect to this action that they wished to execute a title, but were unsuccessful.

[7] While table 3 lists 217 cross-border injunctions, table 5 lists 1 364 in total. This discrepancy resulted from the fact that these answers were provided through different questions and that answering each survey question was not mandatory.

Table 6: Injunction actions initiated since June 2011 – cross-border infringements initiated within qualified entities' own jurisdictions (by Member State)

Member State	Total injunction actions initiated
Austria	9
Germany	1 285
Latvia	784
Luxembourg	1
Netherlands	54
Total	*2 133*

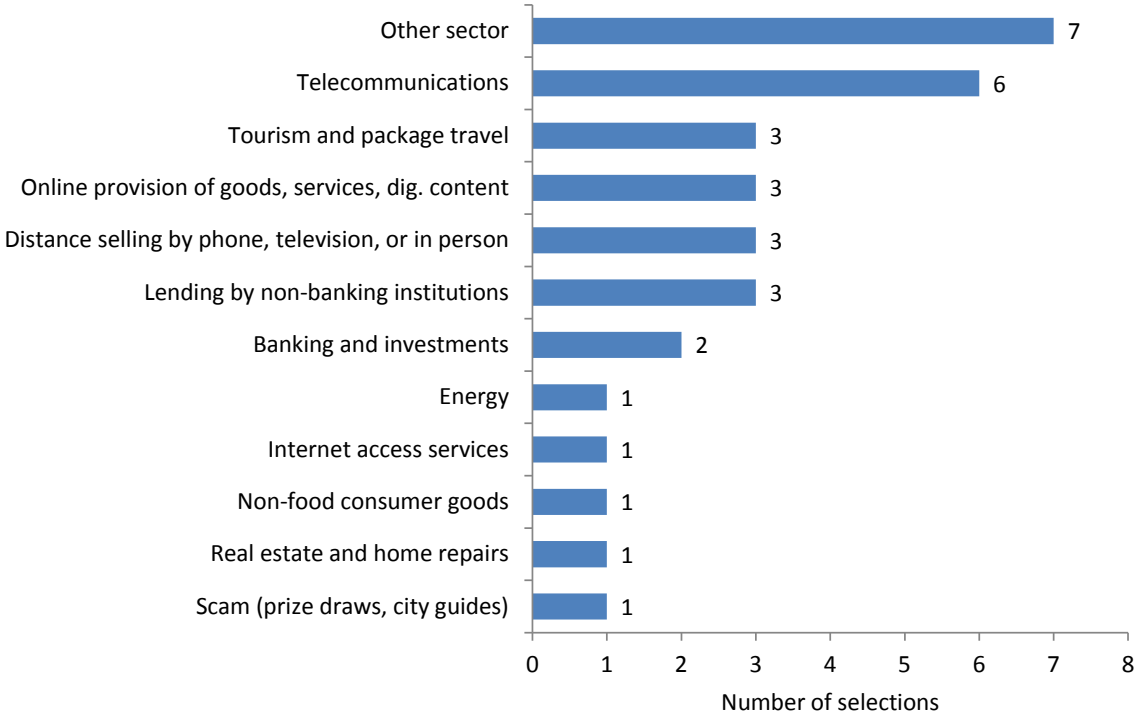
Source: Civic Consulting, Survey of qualified entities. Question: '*Please provide details concerning the injunction actions that your organisation initiated regarding infringements originating in another EU country since June 2011, indicating how you brought the action (in your jurisdiction or another EU country jurisdiction).*'

As shown in the table above, injunction bodies in Germany initiated the most injunctions (1 285) within their own jurisdiction concerning cross-border infringements.[8] Injunction bodies in Luxembourg initiated the fewest injunctions of this nature (only one).

Responding qualified entities were then asked to elaborate upon the three economic sectors that were most affected by the injunction actions initiated by their organisation. The figure below presents the sectors that participants indicated. Seven responding qualified entities listed 'other' sectors such as dry-cleaning and medicinal products as one of the most affected; another six listed the telecommunications sector as one of the most affected sectors. Tourism and package travel, online provision of goods, services and digital content, distance selling by phone, television, or in person and lending by non-bank institutions each were selected three times. Sectors that were never selected as being among the three most affected by injunctions included insurance, car sales/rental/parking, passenger transport, food and restaurant services, postal services, and timeshare.

[8] With one German respondent commenting that German courts are responsible if German consumers are affected.

Figure 2: Economic sectors most affected by injunction actions

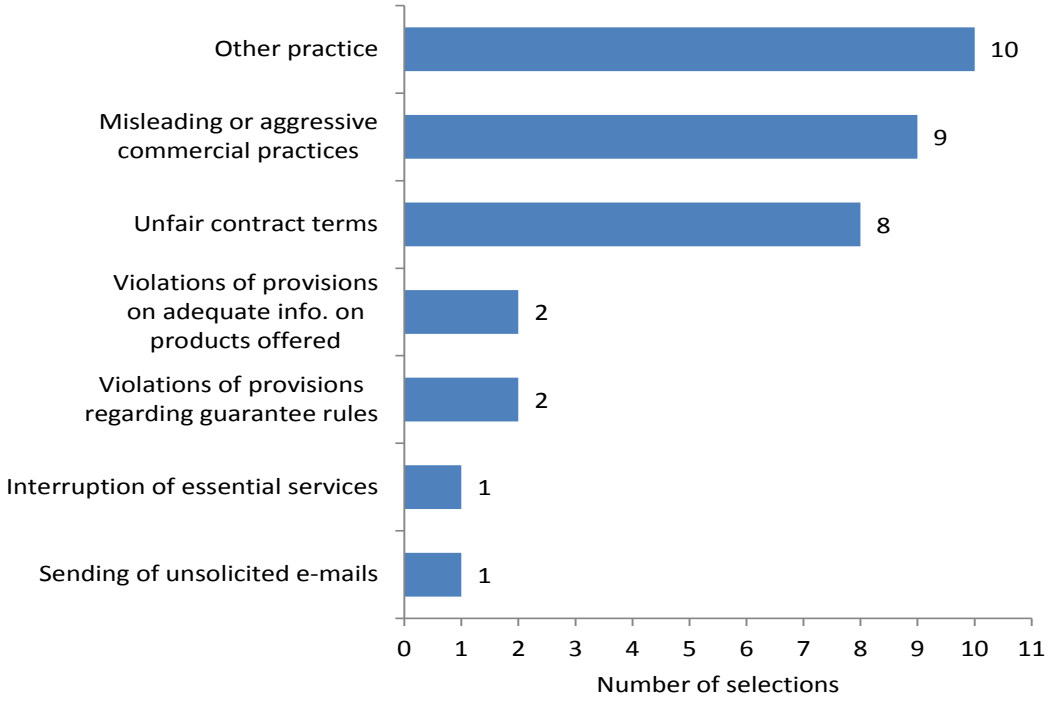


Source: Civic Consulting, Survey of qualified entities. Question: '*What are the three economic sectors most affected by the injunction actions initiated by your organisation since June 2011 (in order of importance)?*'

Responding qualified entities were also asked to specify the three types of unlawful practices that were most frequently challenged by the injunction actions their organisations initiated. As shown in the figure below, 10 responding qualified entities named 'other' practices such as non-delivery of goods as one of the most frequently challenged, nine listed 'misleading or aggressive commercial practices', and eight listed 'unfair contract terms'. 'Violations of provisions regarding price indication regulations' were never listed as one of the most frequently challenged unlawful practices. However, as indicated by one consumer organisation in a comment, the unlawful practices that are the most frequently challenged by injunction actions are not necessarily indicative of the unlawful practices that *occur the most frequently in practice*. In the case of this respondent, many cases regarding unlawful practices are handled out of court, e.g. via consultations with business representatives.[9]

[9] This Dutch qualified entity's full comment was: "The answer to this question (which unlawful practices are most frequently challenged by injunction actions) is not an answer to the question which unlawful practices occur most frequently in practice in the Netherlands. Conclusions on the last cannot be drawn on our answer to this question. In this context we think it is important to explain more on the function of the Dutch system and (legal) traditions. According to Dutch law (article 3:305a of our Civil Code, provisions on collective action), we have no "locus standi" / a claim is not admissible in court, when we do not have made a sufficient attempt to achieve the objective of the action through consultations with the defendant. As already said, most cases are settled to our satisfaction out of court in practice. Besides that, in the Netherlands we have a good relationship with business representatives in the area of ADR and (un)fair contract terms. Consultations with trade organizations in this area have been quite successful. Starting point is that complaint boards are set up, only after successful consultations on standard contract terms, which have to used by all members of the trade organization in a specific sector. In this way more than 50 sectors of industry were screened in the use of unfair contract terms. Almost all consultations were successful. Consultations are facilitated by the Social and Economic Council in the Netherlands...We achieve a lot (most of the time litigation is not necessary) in an efficient we and this is why we put much effort in it."

Figure 3: Unlawful practices most frequently challenged by injunction actions



Source: Civic Consulting, Survey of qualified entities. Question: '*What are the three types of unlawful practices most frequently challenged by the injunction actions initiated by your organisation since June 2011 (in order of frequency)?*'

In the next question, responding qualified entities were asked about the number of injunction actions initiated by their organisation in which a settlement with the alleged perpetrator of the infringement was reached. In total, 2 509 disputes were settled directly between the responding qualified entities and traders, while for 331 injunction actions, settlements were reached with the help of a third party (see the table below).

Table 7: Injunction actions settled directly vs. with the help of third parties

Means of reaching settlement	Total injunction actions
Settlement was reached directly between the qualified entities and traders	2 509*
Settlement was reached with the help of a third party, e.g. a court or an out-of-court dispute resolution body	331

Source: Civic Consulting, Survey of qualified entities. Question: '*Please indicate the number of injunction actions initiated by your organisation in which a settlement with the alleged perpetrator of the infringement was reached since June 2011.*' Note: (*) One responding qualified entity indicated that their organisation had sent 7 500 warning letters to traders (as a first step prior to initiating injunction actions) in response to various alleged infringements. These letters were successful in resolving the dispute directly between the qualified entities and traders. However, the letters are *not* considered settlements, as injunction actions never needed to be initiated in the first place.

Several qualified entities clarified that injunction cases would always start with a formal warning/cease-and-desist letter sent to traders that were found to infringe the law.[10] In these written warnings, the qualified entity requests that the trader stops a certain unfair practice or changes its terms and conditions and signs a legally binding

[10] These include qualified entities in Latvia and in Germany.

cease and desist declaration. When the qualified entity receives back the signed declaration, the case is normally settled out of court. One qualified entity indicated that on average at least 25% of the cases can be settled by declarations to cease and desist.[11]

One responding qualified entity explained in a comment that it only takes to the court cases that are considered possible to win, which results in a high share of actions settled with the help of a third party, e.g. a court or an out-of-court dispute resolution body, of those brought to court by this qualified entity.[12]

As a follow-up, responding qualified entities were asked to provide comments on the most effective injunction action their organisation initiated since June 2011. Examples of responses included an action against a telecommunications operator that applied unfair contract terms regarding the notification period requirements preceding the automatic continuation of the contract length, as well as an action against online shops that failed to reimburse consumers for returned products. The majority (77%) of these 'most effective' injunction actions concerned national infringements, rather than infringements originating in other countries. 55% of these 'most effective' actions did not end in a settlement.

Respondents were also asked the same set of questions regarding the second-most effective injunction action their organisation initiated since June 2011—the answers for these questions were of the same nature as those concerning the first-most effective injunction action.

The table below presents the details regarding the injunction actions initiated by responding qualified entities that they consider as being the most or second most effective given the consumer protection objective.

[11] This qualified entity is in Germany.

[12] This qualified entity is in Slovakia.

Table 8: Injunction actions initiated by responding qualified entities that they consider as being the most or second-most effective

Country	Type of entity	Brief description of case	Cross-border element	Settlement reached
Bulgaria	Consumer organisation	A telecommunications operator providing TV services applied unfair contract terms regarding the notification period prior to the automatic renewal of contracts	No	Yes
Bulgaria	Consumer organisation	A non-banking financial institution included unfair contract terms with respect to promissory notes	No	No answer provided
Germany	Consumer organisation	A telecommunications firm provided its terms and conditions only in English, which were not comprehensible to a majority of German consumers	Yes	No
Latvia	Public authority/body	Customers of a distance-selling company who purchased mattresses were made to sign documents that contained credit agreements upon delivery of their purchase, though they were not informed they were signing credit agreements; the creditworthiness of these customers also was not assessed	No	Yes
Lithuania	Public authority/body	Consumers did not receive products they ordered or reimbursements for products returned from various online stores	No	Yes
Luxembourg	Consumer organisation	Violations of various provisions regarding guarantee rules for consumer goods	No	No
Malta	Public authority/body	Telecommunications operators used the word 'unlimited' to describe offers for SMS, minutes and data, when in reality there was a limit imposed by the operators	No	No
Slovakia	Consumer organisation	Unfair terms and commercial practices for non-bank institutions and telecommunications operators	No	No

Source: Civic Consulting, Survey of qualified entities. Question: '*Please provide details regarding the injunction action initiated by your organisation since June 2011 that you consider as the most effective given the consumer protection objective.*'

1.2.3. Injunction actions initiated by qualified entities

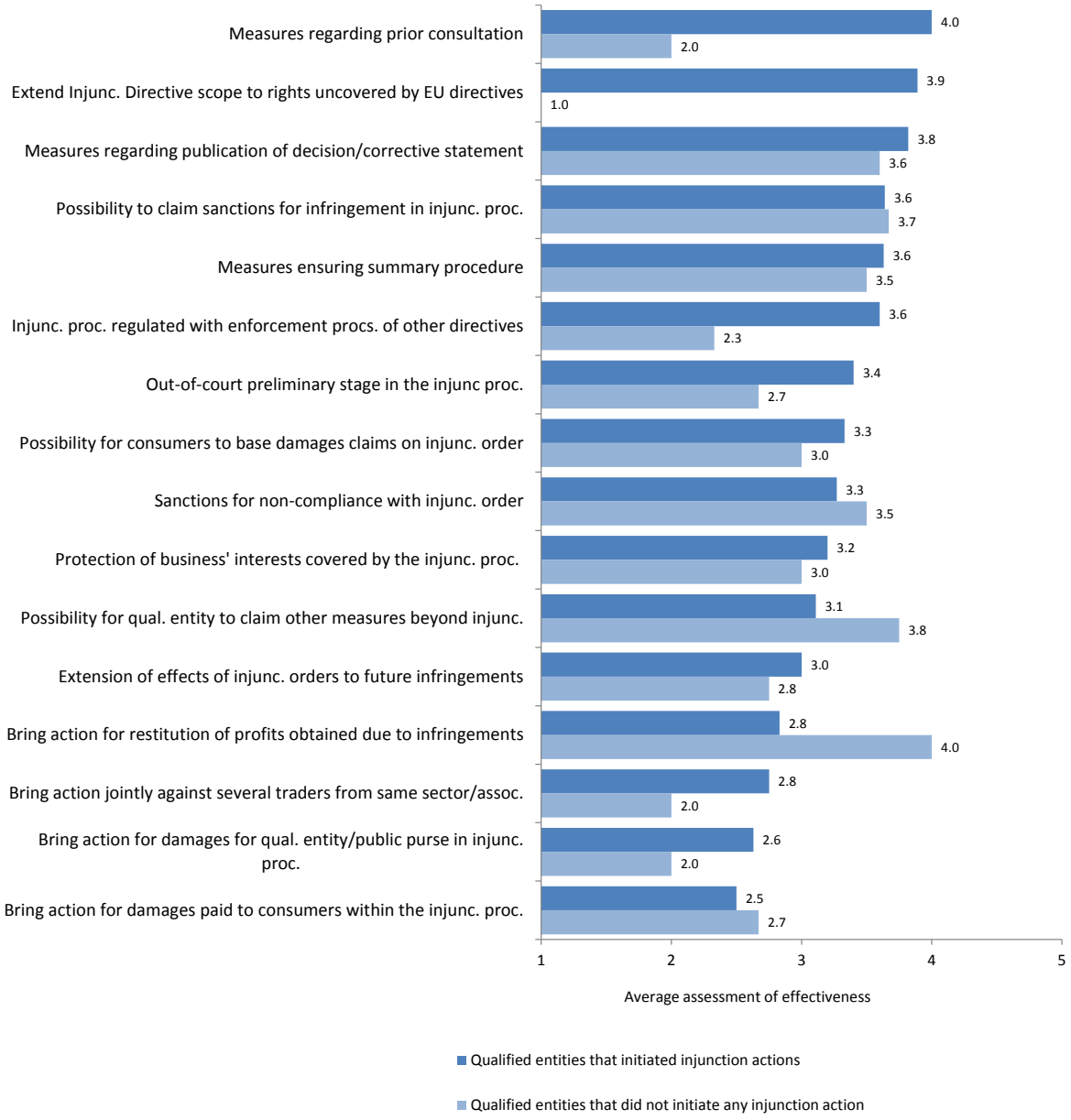
Responding qualified entities were next asked to assess the effectiveness of various measures taken in the national law, including both measures taken in the national implementation of the Injunctions Directive and other measures that may exist in the national legal order of their country, on a scale of one to five (from 'not at all effective' to 'very effective' where only the endpoints of the scale were labelled).

As shown in the figure below, among qualified entities that initiated injunction actions, 'measures regarding prior consultation (Art. 5 of the ID)' were viewed, on average, to be the most effective among responding qualified entities (average score of 4.0 out of 5) while they were perceived as one of the least effective measures by qualified entities that did not initiate injunction actions (average score of 2.0 out of 5). Major differences in the assessment of effectiveness can also be observed between the two

groups of respondents, especially regarding the following measures: 'Extension of the scope of application of the Injunctions Directive to the rights not covered by the EU Directives listed in Annex I to the Injunctions Directive' (score of 3.9 among qualified entities that initiated injunction actions vs. 1.0 among qualified entities that did not initiate injunction actions), 'Injunction procedure is regulated together with the enforcement procedures foreseen by other EU consumer directives (Unfair Contract Terms Directive and/or Unfair Commercial Practices Directive and/or Consumer Rights Directive) within a single legal act, possibly as a single procedure' (score of 3.6 vs. 2.3), and 'Possibility to bring an action for the restitution of profits obtained as a result of infringements, including an order that those profits are paid to the public purse or to another beneficiary within the injunction procedure' (score of 2.8 vs. 4.0).

Within the whole sample of responding qualified entities, 'measures regarding the publication of the decision/a corrective statement' were viewed, on average, to be the most effective among responding qualified entities (average score of 3.8 out of 5), while the 'possibility to bring an injunction action jointly against several traders from the same economic sector or their associations' and 'the possibility to bring an action for the restitution of profits obtained as a result of infringements, including an order that those profits are paid to the public purse or to another beneficiary within the injunction procedure' were perceived as the least effective by responding qualified entities (average score of 2.5 out of 5).

Figure 4: Effectiveness of measures taken within the national legal framework



Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1-5, please assess the effectiveness of the following measures, if they exist in the national legal order of your country.*' Note: respondents were shown a scale from 1 (Not at all effective) to 5 (Very effective) where only the endpoints of the scale were labelled.

One consumer organisation indicated that the out-of-court preliminary stage in the injunction procedure functions 'not at all effectively' (1 out of 5), and commented that ADR functioned well prior to the implementation of the ADR/ODR legislation , but the implementation actually added administrative burden and complicated the procedure.[13] Another public body/authority stated that the 'possibility to claim for sanctions for the infringement within the injunction procedure' functions very effectively (5 out of 5), as the authorities can now impose fines depending on the

[13] This consumer organisation is in Slovakia.

nature of the infringement.[14] Finally, another consumer organisation offered a more neutral opinion (3 out of 5) in terms of the 'possibility for a qualified entity to claim other measures beyond the injunction', stating that the ability to claim other such measures is positive, while the exclusion of collective redress instruments seeking monetary compensation from such measures is rather negative.[15]

1.2.4. Obstacles to the effective use of the injunctions procedure and cooperation

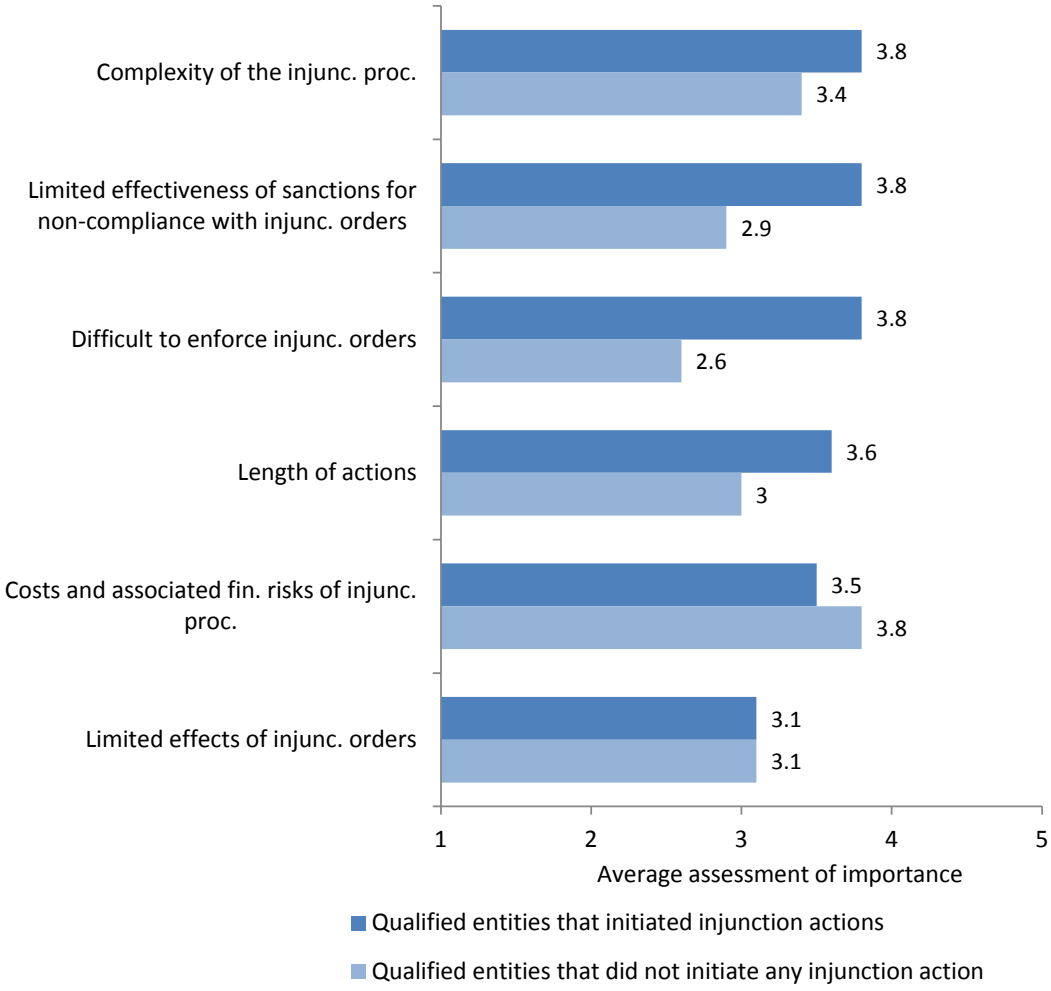
Responding qualified entities were asked to rank a number of potential obstacles to the effective use of the injunctions procedure with respect to national infringements on a scale of one to five ('not at all important obstacle' to 'very important obstacle').

Of the six potential obstacles listed, qualified entities that initiated injunction actions on average viewed the following as the most important obstacles to the effective use of the injunctions procedure with respect to national infringements (with a score of 3.8 out of 5 for each): 'complexity of the injunction procedure', 'limited effectiveness of the sanctions for non-compliance with the injunction orders', and 'difficulties with the enforcement of the injunction orders' (see the figure below). Qualified entities that did not initiate any injunction actions assessed these obstacles on average as less important (with scores of 3.4, 2.9 and 2.6 out of 5 respectively). In contrast, they viewed 'costs and the associated financial risks of the injunction procedure' (3.4 out of 5) as the most important obstacle to the effective use of the injunctions procedure with respect to national infringements.

[14] This public body/authority is in Latvia.

[15] This consumer organisation is in the Netherlands.

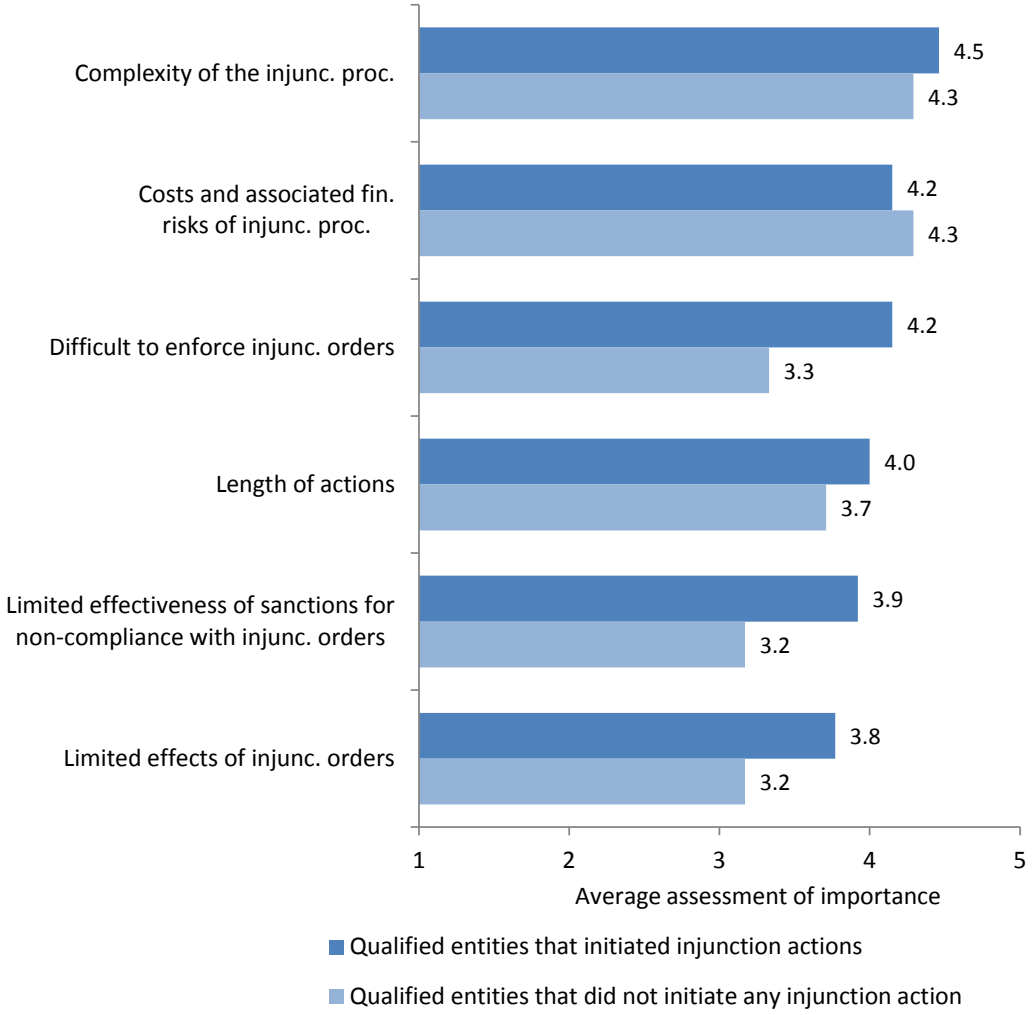
Figure 5: Importance of potential obstacles to the effective use of the injunctions procedure related to national infringements



Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, please indicate the importance of the following potential obstacles to the effective use of the injunctions procedure related to national infringements.*'
Note: respondents were shown a scale from 1 (Not at all important) to 5 (Very important) where only the endpoints of the scale were labelled.

Responding qualified entities were also asked to assess the same set of obstacles with respect to infringements originating in another EU country. As shown in the figure below, the obstacle that was found, on average, to be of the most importance in terms of preventing the effective use of the injunctions procedure was the 'complexity of the injunction procedure.' This applies to both groups of responding qualified entities.

Figure 6: Importance of potential obstacles to the effective use of the injunctions procedure related to cross border infringements



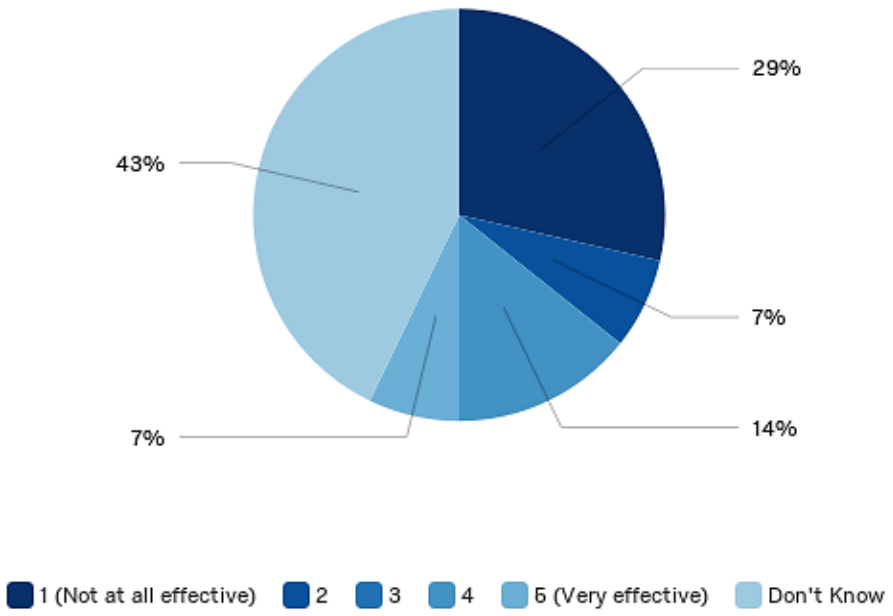
Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, please indicate the importance of the following potential obstacles to the effective use of the injunctions procedure related to infringements originating in another EU country*.' Note: respondents were shown a scale from 1 (Not at all important) to 5 (Very important) where only the endpoints of the scale were labelled.

The figure below presents responding qualified entities' assessment of the effectiveness of the provisions of the Injunctions Directive enabling qualified entities from one EU country to seek an injunction in a different EU country where the infringement originated. 29% of responding qualified entities indicated they found these provisions to be 'not at all effective' (25% of qualified entities that initiated injunction actions and 33% of qualified entities that did not initiate any injunction actions), while 43% of respondents responded with 'don't know'. Some entities also provided comments with respect to this question: one consumer organisation who indicated that these provisions function 'not at all effectively' (1 out of 5) stated that it should be possible for qualified entities to initiate litigation in their own country, rather than in the country where the infringement originated'.[16] Another consumer

[16] This consumer organisation is in the Netherlands.

organisation that found these provisions to be 'not at all effective' commented that these provisions require them to involve the national competition authority.[17]

Figure 7: Effectiveness of the provisions of the Injunctions Directive enabling qualified entities to seek an injunction in a different EU country



Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, how do you assess the effectiveness of the provisions of the Injunctions Directive enabling the qualified entities from one EU country to seek injunction in another EU country where the infringement originated (Article 4)?*' Note: respondents were shown a scale from 1 (Not at all effective) to 5 (Very effective) where only the endpoints of the scale were labelled.

Of the qualified entities surveyed, 88% were aware of the legal possibility to bring injunction actions in another EU country. However, 68% of responding qualified entities were not aware of the procedural modalities of the injunction procedures in other EU countries—this lack of awareness was cited by one public authority/body as a key obstacle to the effective use of the injunctions procedure, as well as an obstacle to cross-border cooperation. Consequently, close to two-thirds of responding qualified entities (62%) were unable to assess the practicability of procedural modalities of the injunction procedure in other EU countries.

The majority of responding qualified entities also have not cooperated on specific injunction actions with qualified entities from other EU countries. Specifically, 81% of responding qualified entities have not cooperated with consumer organisations in other EU countries on injunction actions, while 82% of participants have not cooperated with independent public bodies in other EU countries on such actions.

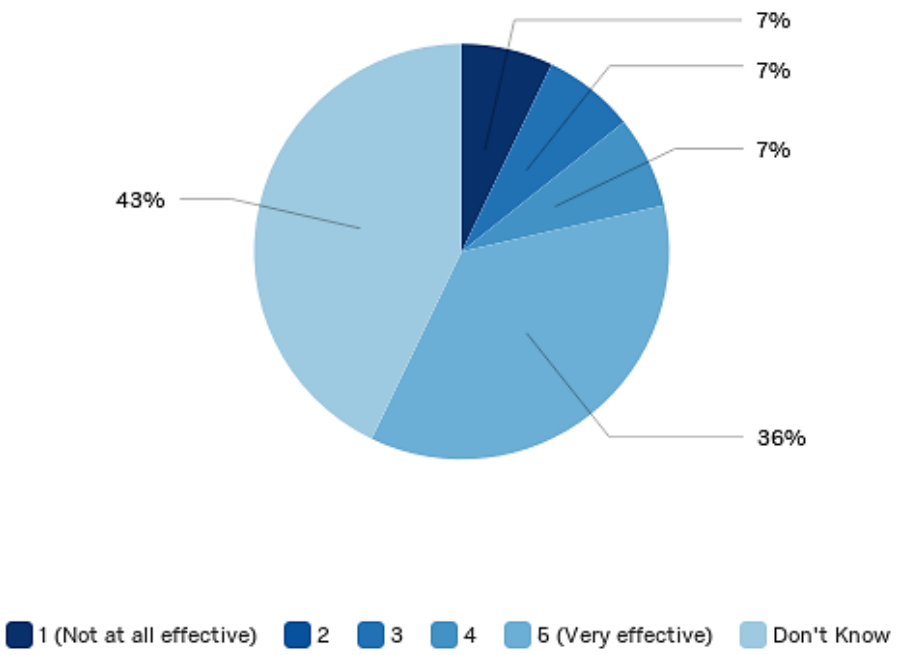
Additionally, the majority (64%) of responding qualified entities have not informed qualified entities from other countries if an infringement affected consumers from their country since June 2011. Of the 27% of entities who have done so, one consumer

[17] This consumer organisation is in the United Kingdom.

organisation stated that they do so frequently within the framework of the CLEF and COJEF I and II projects.[18]

Responding qualified entities were also asked if their organisations had participated in measures financed by the European Commission to encourage a better use of the injunctions procedure in a cross-border context (specifically, the Consumer Justice Enforcement Forum and the Consumer Law Enforcement Forum). Under half of all respondents (40%) have participated in these forums. In terms of the effectiveness of these measures, 36% of responding qualified entities viewed them to be 'very effective', stating, for example, that these forums facilitate the exchange of best practices and relevant information, which is particularly helpful for smaller consumer organisations.

Figure 8: Effectiveness of measures financed by the European Commission to encourage better use of the injunctions procedure in a cross border context



Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, how do you assess the effectiveness of the above measures financed by the European Commission?*' Note: respondents were shown a scale from 1 (Not at all effective) to 5 (Very effective) where only the endpoints of the scale were labelled.

1.2.5. Possible future measures

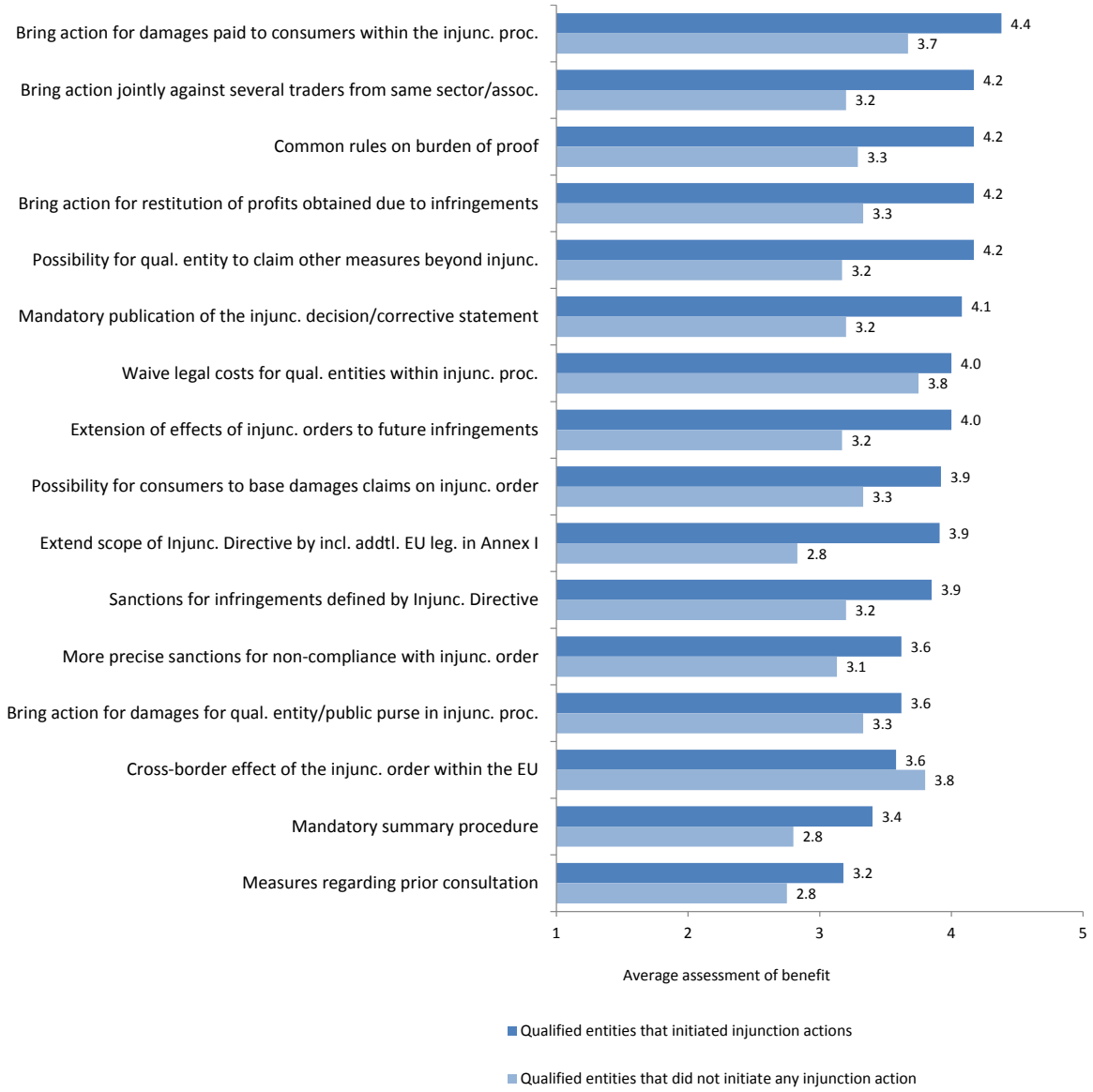
Responding qualified entities were asked to assess the extent to which various measures to harmonise the injunction procedure across the EU under the Injunctions Directive would be beneficial on a scale of one to five ('not at all beneficial' to 'very beneficial'). As shown in the figure below, the harmonisation measure that responding qualified entities viewed, on average, as the most beneficial was the 'possibility to bring an action for damages or redress to be paid to the consumers concerned within the injunction procedure' (4.2 out of 5 – 4.4 for qualified entities that initiated injunction actions and 3.7 for qualified entities that did not initiate any injunction actions). The measure that responding qualified entities perceived as the least beneficial consisted of 'measures regarding prior consultation' (3.1 out of 5 – 3.2 for

[18] This consumer organisation is in Germany.

qualified entities that initiated injunction actions and 2.8 for qualified entities that did not initiate any injunction actions).

The largest differences assessments can be observed between the two groups of respondents regarding the following measures: 'Extension of the scope of the Injunctions Directive by including additional EU legislation into Annex I' (score of 3.9 among qualified entities that initiated injunction actions vs. 2.8 among qualified entities that did not initiate injunction actions), 'Possibility to bring an injunction action jointly against several traders from the same economic sector or their associations' (score of 4.2 vs. 3.2), and 'Possibility for a qualified entity to claim other measures beyond the injunction' (score of 4.2 vs. 3.2).

Figure 9: Extent to which further harmonisation of the injunction procedure would be beneficial



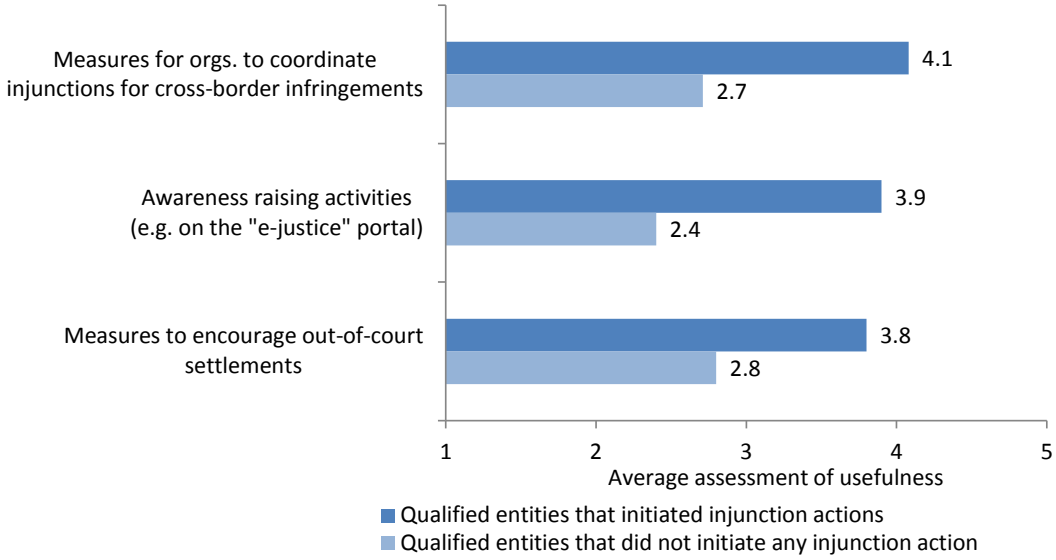
Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, please assess the extent to which further harmonisation of the injunction procedure across the EU and under the Injunctions Directive would be beneficial.*' Note: respondents were shown a scale from 1 (Not at all beneficial) to 5 (Very beneficial) where only the endpoints of the scale were labelled.

Respondents were also asked to list relevant experiences and best practices with respect to the measures listed above. Regarding the 'possibility to bring an action for damages or redress to be paid to the consumers concerned within the injunction procedure', one respondent stated that consumers would ideally be a part of the suit. The same respondent also stated with respect to the 'possibility for a qualified entity to claim other measures beyond the injunction', that any 'other measures' would need to be defined by an exhaustive list.

Finally, qualified entities were asked to assess the usefulness of various measures to increase the use of injunction procedures by consumer organisations on a scale of one to five ('not at all useful' to 'very useful'). As shown in the figure below, the measure viewed, on average, as the most useful by the total sample was 'further measures addressed to qualified entities which are consumer organisations, so that they

coordinate their injunction actions regarding infringements having a cross-border dimension' (3.6 out of 5). Overall, the second most useful measure consisted of 'measures to encourage out-of-court settlements aiming at stopping infringements to improve the enforcement of EU legislation protecting the collective interests of consumers' (3.4 out of 5), although qualified entities that initiated injunction actions considered 'awareness raising activities (for example on the "e-justice" portal)' to be the second most useful measure. The assessments of the three items are however very similar within each group.

Figure 10: Extent to which further measures to increase the use of the injunction procedures and strengthen cooperation would be useful



Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, please assess the extent to which further measures to increase the use of injunction procedures by consumer organisations and to strengthen the cooperation between consumer organisations from different EU countries would be useful.*' Note: respondents were shown a scale from 1 (Not at all useful) to 5 (Very useful) where only the endpoints of the scale were labelled.

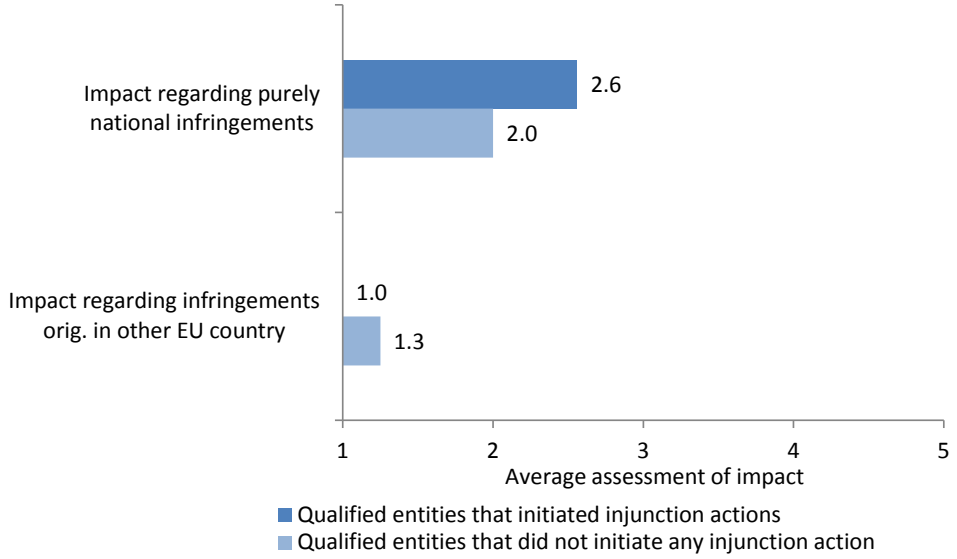
1.2.6. Reduction in detriment via injunctions

The final questions of the survey focused on the extent to which the injunction procedure impacts consumers in the Member States. Qualified entities were asked to assess the impact of the injunction procedure on consumers in their countries in terms of the reduction in the number of infringements to consumer protection rules in the past five years on a scale of one to five ('no reduction at all' to 'very significant reduction'), with respect to both national infringements and infringements originating in another EU country.

On average, responding qualified entities rated the impact of the injunction procedure on reducing national infringements as 2.4 out of 5; the average assessment of the impact of the injunction procedure on reducing infringements originating in other EU countries was lower, at 1.2 out of 5 with qualified entities that did not initiate any injunction actions rating it at a minimum of 1.0 (see figure below).

On average, responding qualified entities that initiated injunctions rated the impact of the injunction procedure on reducing national infringements as 2.6 out of 5 (compared to 2.0 out of 5 for qualified entities that did not initiate any injunction action) and the impact of the injunction procedure on reducing infringements originating in other EU countries at 1.0 out of 5, i.e. no reduction at all (compared to 1.3 out of 5 for qualified entities that did not initiate any injunction action).

Figure 11: Impact of the injunction procedure on reducing the number of infringements to consumer protection rules



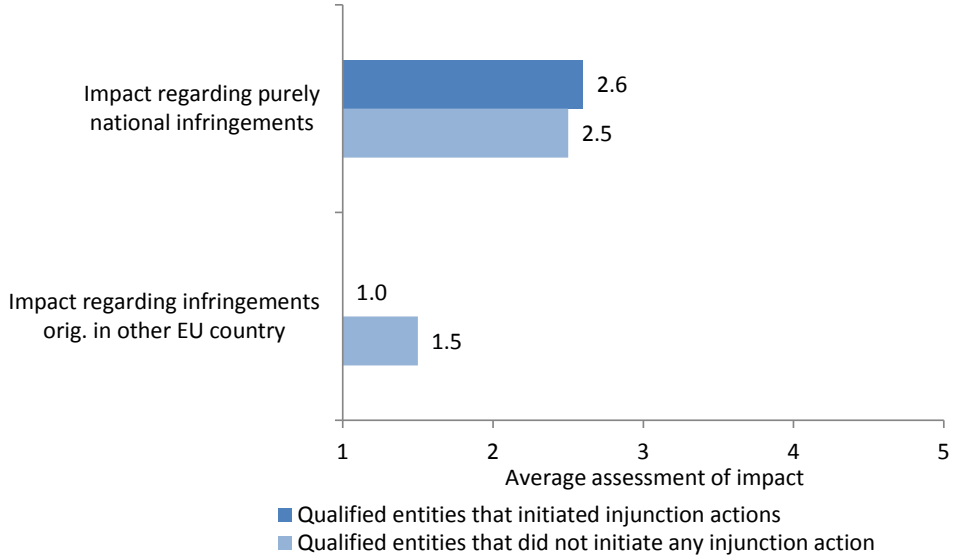
Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, please assess the impact of the injunction procedure on consumers in your country in terms of reduction in the number of infringements to consumer protection rules in the last five years.*' Note: respondents were shown a scale from 1 (No reduction at all) to 5 (Very significant reduction) where only the endpoints of the scale were labelled.

Qualified entities were then asked to assess the impact of the injunction procedure in terms of the reduction in consumers' detriment in the past five years on a scale of one to five ('no reduction at all' to 'very significant reduction'), once again with respect to both national infringements and infringements originating in another EU country.

On average, responding qualified entities rated the impact of the injunction procedure on reducing detriment with respect to national infringements as 2.6 out of 5, while the average assessment of the impact of the injunction procedure on reducing detriment with respect to infringements originating in other EU countries was 1.3 out of 5 with qualified entities that did not initiate any injunction actions again rating it at a minimum of 1.0 (see figure below).[19]

[19] Respondents were shown a scale from 1 (No reduction at all) to 5 (Very significant reduction) where only the endpoints of the scale were labelled. The score should be interpreted as a rating and not as a robust quantitative measure of the reduction of detriment.

Figure 12: Impact of the injunction procedure on reducing consumer detriment



Source: Civic Consulting, Survey of qualified entities. Question: '*On a scale of 1 to 5, please assess the impact of the injunction procedure on consumers in your country in terms of reduction in consumers' detriment in the last five years.*' Note: respondents were shown a scale from 1 (No reduction at all) to 5 (Very significant reduction) where only the endpoints of the scale were labelled.

In conclusion, qualified entities were asked to provide a monetary estimation of the average reduction in detriment through the injunction actions their organisations brought regarding national infringements since June 2011. 44% of respondents answered with 'no or negligible reduction in detriment',[20] while the other half (56%) answered with 'don't know'.

The responses were the same with respect to the reduction in detriment via injunction actions regarding infringements originating in another EU country: 44% of respondents answered with 'no or negligible reduction in detriment', and the remaining 56% answered with 'don't know'.[21]

[20] Of the qualified entities who responded with 'no or negligible reduction in detriment', 38% (corresponding to consumer organisations from Bulgaria, the Netherlands and the Czech Republic) did indeed initiate injunction actions.

[21] Of the qualified entities who responded with 'no or negligible reduction in detriment', 57% (corresponding to consumer organisations from Bulgaria, the Netherlands and the Czech Republic) did indeed initiate injunction actions.

2. Results of the sectoral business interviews

A core aspect of this evaluation is the analysis of costs and benefits of the EU legislative framework subject to the Fitness Check for businesses. We conducted case study interviews with companies in all Member States with the aim of better understanding their experience with legislation regarding advertising, marketing, standard contract terms and price indication, and to collect data concerning the related costs and benefits. In this section we present complete results of the sectoral business interviews as reported by interviewed businesses.

2.1. Methodology

2.1.1. Scope of the exercise

While the directives subject to the Fitness Check apply to almost all business-to-consumer transactions (or business-to-business transactions, in the case of the Misleading and Comparative Advertising Directive), this does not imply that the costs and benefits are uniform in nature and magnitude across economic sectors. Hence, it was decided in the inception phase to carry out approximately 10 business interviews per Member State (in total 282 interviews) in five selected sectors, listed below:

- Large household appliances (durable goods);
- Electronic and ICT products (durable goods);
- Gas and electricity services (utility/network service);
- Telecommunication services (utility/network service); and
- Pre-packaged food and detergents (fast-moving retail goods).

Target companies were companies that sell products or services to consumers in the selected sectors, including both traders that engage in domestic transactions and traders that are involved in cross-border transactions. The original focus of the exercise on small and micro companies was broadened in light of the selected sectors (e.g. telecommunications). While slightly more than two thirds of case study interviews focused on micro, small and medium-sized enterprises, the remainder focused on large businesses with 250 or more employees.

Overall, we conducted 282 business interviews throughout the EU, i.e. an average of 10 business interviews per Member State, which was the target set for this exercise. The detailed characteristics of the sample of companies interviewed are presented below in Section 2.2.5.

2.1.2. Interview questionnaire

2.1.2.1. Development of the interview questionnaire

We developed the interview questionnaire taking into account the exploratory research conducted in the inception phase. We tested the questionnaire during test interviews with businesses that provided feedback mostly in relation to the structure of the questionnaire and the wording of the questions. Based on the test interviews it was decided that compliance costs incurred by businesses would be differentiated as follows: costs related to *checking compliance* with and adapting advertising/marketing and standard contract terms to the national legislation and costs related to *adjusting business practices* as a result. Furthermore, the test interviews revealed the need to focus on practical aspects that are easily understandable from a business perspective. Indeed, businesses indicated that it was essential that the interviewee be able to

understand and answer the questions without directly knowing the underlying EU rules, as is often the case, especially for smaller companies.

In light of the feedback received during the test interviews, the interview questionnaire was refined and approved by the Commission. The final version of the business interview questionnaire is presented in Annex I below.

2.1.2.2. Structure of the business interviews

The interviews explored the costs of adjusting business practices to legislation regarding advertising, marketing, standard contract terms and price indication, as well as the related benefits of the legislation, using targeted questions. The questionnaire is presented in Annex I.

We first explored the costs incurred by businesses to ensure that their advertisements/marketing practices and standard contract terms comply with legislation. We distinguished between two types of costs for businesses:

- The one-off costs incurred when entering another EU country's market for the first time to sell the company's products/services;[22]
- The costs incurred on a regular basis for checking that the company's advertising/marketing and standard contract terms still comply with national legislation, and adjusting business practices (if needed).

While all interviewees were asked about their regular costs, only businesses that sell in other EU countries were asked about the one-off costs when entering another EU country's market for the first time. For both types of costs indicated above, we asked businesses to distinguish between costs related to *checking compliance* with and adapting advertising/marketing and standard contract terms to the national legislation and costs related to *adjusting business practices* as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms). Businesses were asked to express their costs in working days, both for professional staff and for administrative or sales staff, with one working day equal to 8 hours of staff time, and also to specify whether they incurred any other costs (e.g. costs for legal advice).[23]

Finally, with the aim of differentiating between the relative weights of the different directives covered by this study in these costs,[24] we asked businesses which share of

[22] Businesses that sell in other EU countries were asked about the costs related to checking compliance and adapting advertising/marketing and standard contract terms to the national legislation when entering another EU country's market and adjusting businesses practices if needed, which does not include costs of drawing up contracts for the new country entered or translation costs.

[23] Overhead costs are calculated in separate steps and costs related to external services are included in the 'other costs' items. Further distinction of cost categories was not feasible due to the need to limit complexity for interviewees, as emphasized in the test interviews. Other approaches to assess compliance costs for businesses applied in other studies include asking businesses to estimate their costs by providing an absolute estimate or range (e.g. in the 2011 SME Panel Survey on the Impacts of European Contract Law referred to in the 2015 Impact Assessment for the Digital Contracts Proposals: 'Traders involved in B2C trade were asked to estimate the savings on costs for entering one Member State's market that would result from the application of uniform contract law rules across the EU') and asking businesses to estimate their costs by providing a share of their turnover (e.g. in the 2016 Public consultation for the Fitness Check of EU consumer and marketing law: 'What is your most accurate estimate of the direct costs of compliance with consumer and marketing rules for your company/group of companies, e.g. costs of providing legal guarantee for goods, complying with consumer information requirements? (% of annual turnover)'.

[24] The directives covered are the Unfair Contract Terms Directive, the Unfair Commercial Practices Directive, the Price Indication Directive, and the Misleading and Comparative Advertising Directive.

their costs related to *standard contract terms* in consumer contracts, to *advertising and marketing targeted at consumers*, and to *advertising and marketing targeted at businesses*. It should be emphasised that the interviews explored the costs for checking compliance with and adjusting business practices to the national legislation in the other EU country's market regarding both *advertising/marketing* and *standard contract terms* and therefore covered the combined effects of national legislation and the underlying EU directives affecting this area (most notably the directives covered by this evaluation, but also sectoral legislation).

For businesses in the sector for pre-packaged food and detergents, the interview then explored the costs incurred for unit price indication at the point of sale, also expressed in working days for professional staff and for administrative or sales staff, and other costs (e.g. for electronic price labels).

Lastly, businesses were asked about the benefits from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU.

2.1.3. Implementation of the business interviews

2.1.3.1. Identification of potential target companies

In the five selected sectors, we first consulted our business database to identify companies and retrieve contact information. We also identified companies that are members of business organisations, both by retrieving names from the websites of relevant business associations and by directly asking business associations. Lastly, the identification of companies was complemented by structured internet research. Overall, we identified over 2 800 target companies in the five target sectors across the EU.

2.1.3.2. Conducting the interviews

We launched the exercise on 20 June 2016. Our team of researchers (fluent in the languages of the respective countries) were briefed in detail before conducting the case study interviews in order to ensure a good level of background knowledge on the topic and understanding of their role. First, researchers contacted the listed target companies in each country, with the aim of being put in contact with the relevant person in the company, generally from management or the legal department. Researchers used screening questions to confirm that the companies were relevant for the case study interviews. Companies who agreed to participate in the exercise were then offered the choice to either answer questions directly on the phone, or to receive the interview questionnaire first by email. When companies indicated that they preferred to provide information in writing, the researchers offered to set up a follow-up phone call to check the questionnaire and answer any questions the company might have. Any additional information collected during these follow-up phone calls was documented in the questionnaires.

In countries and/or sectors where the response rate was low, researchers identified additional target companies through further internet research and through support of national business associations. However, in some countries and markets where there are only a few providers, e.g. Cyprus, Malta or Luxembourg for gas and electricity services,[25] the number of potential target companies was very limited. It was also generally difficult to reach the relevant staff at the target companies, and to obtain positive responses regarding their participation. At the request of several companies,

[25] According to Eurostat data 2014, Annual detailed enterprise statistics for industry.

due to the summer period, the deadline for participation was extended. The fieldwork was finalised in September 2016.

2.1.3.3. Quality assurance

To safeguard high quality interviews and increase consistency of results across countries we organised multiple 'question and answer' sessions with the research team throughout the research process and provided collective and individual feedback to team members whenever necessary. In addition, all completed interview questionnaires were checked for completeness and consistency to make sure answers across and within questions were consistent and plausible. Where the quality review identified gaps or where clarifications were needed, the researchers returned to the interviewees and followed up where necessary. In particular, this process ensured that where there was a need for clarification regarding the plausibility of quantitative inputs, the values were either justified by the interviewee, corrected, or discarded if necessary. As a result, none of the completed interviews were considered to be outliers or excluded from the analysis on the basis of implausibility.

2.1.4. Data limitations

While the approach employed allows for costs to be explored in a variety of sectors, it also results in lower sample sizes when looking at a given sector. On average, two interviews per sector were conducted in each Member State, and not all respondents were able or willing to provide complete responses, especially with regards to quantitative information required for the assessment of costs. The approach therefore does not allow for possible variation across countries within sectors to be assessed and estimates are in some cases based on a limited number of observations.

As detailed below in the section on the implementation of the business interviews, while the scope of the exercise was wide and a large number of companies in all Member States were targeted, it proved difficult to recruit participants (for various reasons such as lack of interest of companies, difficulties in reaching the right contact person, the level of detail at which information was requested, or limited number of businesses active in some of the sectors in some countries). As a result, there may be some self-selection bias in the sample of respondents. However, the diversity of the respondents' profiles and variety of responses indicate that respondents do not belong to a typical/uniform category of businesses, judged on basis of the information collected.

Lastly, although the interview questions were specific and the interviewers made sure that the respondent understood the scope of the exercise, non-sampling errors related to companies underreporting or over reporting their costs cannot be excluded. Any bias in this regard is estimated to be limited, considering the thorough quality assurance check conducted as part of this exercise as well as the number of follow up exchanges with interviewees.

2.2. Results of the business interviews

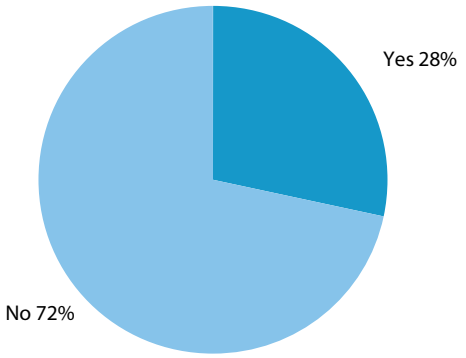
2.2.1. One-off costs incurred by businesses when entering another EU country's market

We first present results regarding one-off costs incurred by businesses when entering another EU country's market for the first time. By definition, these costs only accrue to businesses that sell their products and/or services in other EU Member States.

2.2.1.1. Experience with selling cross-border

The figure below shows the proportion of interviewed businesses that sell their products and/or services in other EU Member States.

Figure 13: Sales to consumers in other EU countries



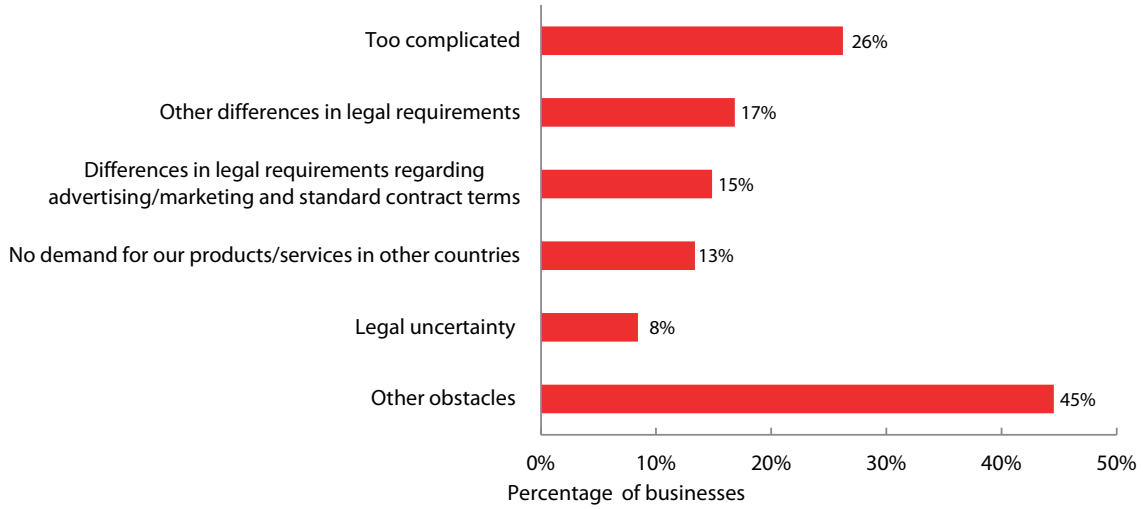
Source: Civic Consulting. Question: 'Do you also sell products/services in other EU countries?' N = 282.

As shown in the figure, approximately 28% of interviewed businesses sell their products and/or services in other EU Member States.[26]

The 72% of interviewed businesses that do not sell products/services in other EU countries were asked to elaborate upon why they do not do so. The figure below presents the reasons indicated by interviewed businesses for not selling products/services in other EU countries.

[26] This is in line with the results of the 2014 edition of the Flash Eurobarometer series on 'Retailers' attitudes towards cross-border trade and consumer protection', which found that 28% of surveyed retailers sell to consumers in at least one other EU country (Flash Eurobarometer 396).

Figure 14: Reasons for not selling products/services in other EU countries



Source: Civic Consulting. Question: 'Why you do not sell your products/services in other EU countries?'. Note: multiple answers were possible. N = 202

As shown in the figure above, roughly a quarter (26%) of the businesses that do not sell their products/services in other EU countries indicated that it is 'too complicated'. Other reasons cited by businesses for not selling products/services in other EU countries include differences in legal requirements regarding advertising/marketing and standard contract terms (15%) and other differences in legal requirements (17%). More than four in ten (45%) businesses also cited 'other obstacles', by which most businesses meant that it was not part of their current strategy to sell their products/services in other EU countries.

2.2.1.2. One-off costs to ensure that advertising and marketing practices and standard contract terms comply with legislation when entering another EU country's market

The following section presents the cost data collected from the 68 interviewed businesses in the selected sectors that indicated that they sell their products and/or services in other EU Member States. These businesses were asked to provide data in terms of working days invested, both for professional staff and administrative or sales staff, and for other costs incurred when they have entered another EU country's market. Interviewed businesses were asked to provide values for these three cost items in separate questions; the base size therefore differs by question. In fact, of the businesses that indicated selling their products/services in other EU countries in the five selected sectors, almost three quarters provided quantitative data in terms of working days.[27] Two fifths indicated having incurred other costs when entering another EU country's market; however, less than half of them were able to provide quantitative estimates for these other costs.[28]

[27] In total, 51 businesses provided quantitative data in terms of working days for professional staff and 48 businesses provided quantitative data in terms of working days for administrative or sales staff.

[28] In total, 28 interviewed businesses indicated having incurred other costs; 13 businesses provided quantitative estimates of their other costs for *checking* compliance and *adapting* advertising/marketing and standard contract terms to the national legislation when entering another EU country's market; and 10 businesses provided quantitative estimates of their other costs for *adjusting* business practices when entering another EU country's market.

In cases where interviewed businesses had entered several other EU countries' markets, they were asked to provide average amounts *per country* entered.

The results are presented below by sector and by company size.[29] Due to limited sample sizes, results cannot be provided by size class in each sector. The results show (non-weighted) figures as reported by the interviewed businesses that were asked about the compliance costs they incurred per EU country entered. In the tables below we provide the median value, which is less sensitive to extreme values than the average. To illustrate the distribution of answers, the first quartile, the third quartile, the minimum value and the maximum value are presented in Annex II for each item in the table below. The results presented below are directly based on interview results.

The first table (below) presents interview results regarding the one-off costs incurred by businesses for *checking compliance and adapting advertising/marketing and standard contract terms to the national legislation* when entering another EU country's market, expressed in terms of working days for professional staff, working days for administrative or sales staff, and Euros for other costs.

[29] Robust results at the country level could not be provided as, overall, two interviews per sector were conducted on average in each Member State. As indicated above in the methodology section, possible variation across countries can therefore not be assessed.

Table 9: One-off costs for checking compliance and adapting advertising/marketing and standard contract terms to the national legislation when entering another EU country's market – median, by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per country entered)	Administrative or sales staff time (number of working days per country entered)	Other costs, e.g. for legal advice (EUR per country entered)
By sector	Large household appliances	1.8	2.0	n.a.
	Electronic and ICT products	1.5	2.0	500
	Gas and electricity services	5.0	3.5	4 000
	Telecommunication services	1.0	13.0	n.a.
	Pre-packaged food and detergents	2.0	1.0	2 550
By company size	Micro	1.0	0.0	n.a.
	Small	1.0	1.0	500
	Medium-sized	4.0	7.0	n.a.
	Large	5.0	4.5	3 000
	Micro and small enterprises	1.0	1.0	300
	Medium-sized and large enterprises	4.5	5.0	3 000

Source: Civic Consulting based on business interviews. Questions: 'Please estimate the staff time in working days you have invested per country for checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation: working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'When you have entered another EU country's market, have you incurred other costs for checking compliance with and adjusting your business practices to the legal requirements of the other Member State regarding advertising/marketing and standard contract terms (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider translation costs. If yes, please indicate the other costs that you spent on average per country. If no costs accrued, indicate '0'. Costs for checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation.' Note: The median is the value separating the higher half of the sample from the lower half, and is presented above for categories where at least three values were provided. From left to right, number of businesses that provided quantitative data: large household appliances: N=6; 5; -; electronic and ICT products: N=16; 16; 4; gas and electricity services: N=6; 6; 3; telecommunication services: N=5; 6; -; pre-packaged food and detergents: N=18; 16; 3; micro: N=9; 9; -; small: N=20; 19; 3; medium-sized: N=9; 7; -; large: N=13; 14; 7.

As indicated in the table above, results show that to check compliance and adapt advertising/marketing and standard contract terms to the national legislation when entering another EU country's market, the median number of *working days of professional staff* spent by businesses that sell their products/services in other EU countries is between 1.0 in the telecommunication services sector and 5.0 in the gas and electricity sector. Furthermore, the median number of *working days of administrative or sales staff* spent on this by businesses that sell their products/services in other EU countries is between 1.0 in the pre-packaged food and detergents sector and 13.0 in the telecommunication services sector, in which it is higher by far.

In addition, 41% of the interviewed businesses that sell their products/services in other EU countries in the five selected sectors indicated that they incurred other costs checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation when entering another EU country's market. The median other costs incurred for checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation, in most cases by seeking external legal advice, amount to between EUR 500 in the electronic and ICT products sector and EUR 4 000 in the gas and electricity services sector, and between EUR 300 for micro and small enterprises and EUR 3 000 for medium-sized and large enterprises. These results however are based on a limited number of responses.

A clear pattern is observed when looking at SMEs with regard to working days. As indicated in the table above, micro enterprises incur the lowest one-off costs in terms of staff time, followed by small enterprises and medium-sized enterprises. With regard to administrative or sales staff time, medium-sized enterprises spend the highest amount of resources on the one-off costs for checking compliance when entering another EU country's market.

As indicated in the business interview questionnaire, these costs exclude costs related to the translation of contracts, as translation costs would likely also be incurred in the absence of EU level consumer law, and correspond to costs incurred for checking compliance when entering *one* other EU country's market.

In addition, as detailed above in the methodology, interviewed businesses were asked to specify the costs they incurred for ***adjusting business practices*** (e.g. changing implementation of advertisement campaigns, using different standard contract terms) as a result of the compliance check.

The table below presents results in terms of one-off costs incurred by businesses for *adjusting business practices as a result of the compliance checks* when entering another EU country's market.

Table 10: One-off costs for adjusting business practices when entering another EU country's market – median, by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per country entered)	Administrative or sales staff time (number of working days per country entered)	Other costs, e.g. for legal advice (EUR per country entered)
By sector	Large household appliances	2.5	2.0	n.a.
	Electronic and ICT products	1.5	1.0	n.a.
	Gas and electricity services	7.5	3.5	n.a.
	Telecommunication services	10.0	0.0	n.a.
	Pre-packaged food and detergents	2.0	0.0	1 100
By company size	Micro	0.0	0.0	n.a.
	Small	0.3	0.0	500
	Medium-sized	5.0	5.0	n.a.
	Large	5.3	5.0	4 000
	Micro and small enterprises	0.0	0.0	100
	Medium-sized and large enterprises	5.0	5.0	3 000

Source: Civic Consulting based on business interviews. Questions: 'Please estimate the staff time in working days you have invested per country for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms): working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'When you have entered another EU country's market, have you incurred other costs for checking compliance with and adjusting your business practices to the legal requirements of the other Member State regarding advertising/marketing and standard contract terms (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider translation costs. If yes, please indicate the other costs that you spent on average per country. If no costs accrued, indicate '0'. Costs for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms).' Note: The median is the value separating the higher half of the sample from the lower half, and is presented above for categories where at least three values were provided. From left to right, number of businesses that provided quantitative data: large household appliances: N=6; 5; -; electronic and ICT products: N=16; 16; -; gas and electricity services: N=6; 6; -; telecommunication services: N=6; 5; -; pre-packaged food and detergents: N=17; 16; 3; micro: N=9; 9; -; small: N=19; 19; 3; medium-sized: N=9; 7; -; large: N=14; 13; 4.

As indicated in the table above, results show that to adjust business practices when entering another EU country's market, the median number of working days of professional staff spent by businesses that sell their products/services in other EU countries is between 1.5 in the electronic and ICT products sector and 10.0 in the telecommunication services sector. In addition, the median number of working days of administrative or sales staff spent on this by businesses that sell their products/services in other EU countries is between 0 in the telecommunication services and the pre-packaged food and detergents sectors and 3.5 in the gas and electricity services sector.

In terms of working days for adjusting business practices when entering another EU country's market, numbers are significantly higher in the network services sectors for

professional staff and the number of working days for administrative or sales staff is lower than for professional staff in all sectors. See also the larger variation in the number of working days for both staff categories specified by businesses in the telecommunication services sectors, as indicated by the range between the first and third quartiles in Annex II below.

Regarding company size, micro enterprises again incur the lowest costs for adjusting business practices when entering another EU country's market in terms of staff time, followed by small enterprises. Medium-sized enterprises and large enterprises incur the highest costs for adjusting business practices when entering another EU country's market, with similar numbers of working days in both staff categories.

As indicated in the business interview questionnaire, these costs exclude costs related to the translation of contracts and correspond to costs for adjusting business practices incurred when entering *one* other EU country's market.[30]

Finally, the table below presents the breakdown of the staff time and other costs that businesses spend on average when entering another EU country's market for **checking compliance with and adjusting their business practices** to legal requirements of the other Member State **for different legal requirements**, as indicated by interviewees. The average shares are presented by sector and by company size, where available.

[30] Please refer to the section on the extrapolation of business costs below for a complete overview of the total monetised one-off costs at the business level.

Table 11: Average one-off costs incurred when entering another EU country's market per business by legal requirement, by sector and size class of enterprises

Sector/Size class		Costs related to standard contract terms in consumer contracts	Costs related to advertising and marketing targeted at consumers	Costs related to advertising and marketing targeted at businesses
By sector	Large household appliances *	n.a.	n.a.	n.a.
	Electronic and ICT products	34%	49%	17%
	Gas and electricity services*	n.a.	n.a.	n.a.
	Telecommunication services*	n.a.	n.a.	n.a.
	Pre-packaged food and detergents	17%	62%	22%
By company size	Micro*	n.a.	n.a.	n.a.
	Small	13%	57%	30%
	Medium-sized*	n.a.	n.a.	n.a.
	Large	29%	49%	23%
	Micro and small enterprises	13%	57%	30%
	Medium-sized and large enterprises	35%	44%	21%

Source: Civic Consulting. Question: 'Considering the staff time and other costs you have spent on average checking compliance with and adjusting your business practices to legal requirements of the other Member State, please indicate: a) Which share of these costs is related to standard contract terms in consumer contracts? b) Which share of these costs is related to advertising and marketing targeted at consumers? c) Which share of these costs is related to advertising and marketing targeted at businesses?' Note: (*) Less than three values were provided in this category; N=7 for electronic and ICT products; N=6 for pre-packaged food and detergents; N=7 for small enterprises; and N=7 for large enterprises.

As highlighted in the table above, results are in some cases based on a limited number of interviews, which limits the comparability across sectors. In this regard, interviewees indicated that businesses typically considered the legal requirements in this area as a whole, not differentiating between specific directives and whether rules were originating at EU or national level. In the pre-packaged food and detergent sector, businesses that sell their products/services in other EU countries indicated that they spend the highest share of their one-off costs for compliance checks and adjusting business practices when entering another EU country's market on *advertising and marketing targeted at consumers* (62%). Businesses in the electronic and ICT sector also spend the highest share of their one-off costs related to *advertising and marketing targeted at consumers*, although this share amounts to less than half of these costs (49%). In this sector, businesses spend the lowest share of their one-off costs for compliance checks and adjusting business practices on *advertising and marketing targeted at businesses* (17%) and about a third of their one-off costs on *standard contract terms in consumer contracts*, which is twice as much as in the pre-packaged food and detergents sector.

2.2.2. Costs incurred by businesses on a regular basis

The next part of the interview focused on the regular costs incurred by businesses to check compliance and adjust their business practices to national legal requirements with respect to advertising, marketing and standard contract terms.

Frequency of compliance checks

All interviewed businesses (i.e. both those selling in other countries and those selling only domestically) were first asked how frequently they check that their advertising, marketing and standard contract terms are in compliance with national legislation.

The table below shows the distribution of answers by company size and by sector in percentage terms.

Table 12: Frequency distribution of compliance checks, by sector and size class of enterprises

Sector/Size class	Once a month or more often	Once every three months	Once every six months	Once a year	Once every two years	Less than once every two years	Never
Large household appliances	12%	4%	4%	40%	4%	12%	24%
Electronic and ICT products	11%	15%	13%	28%	2%	6%	26%
Gas and electricity services	33%	16%	15%	22%	5%	2%	7%
Telecommunica-tion services	39%	14%	14%	25%	6%	0%	3%
Pre-packaged food and detergents	16%	5%	11%	29%	4%	5%	29%
Micro	2%	3%	5%	34%	7%	10%	38%
Small	21%	11%	18%	23%	7%	4%	18%
Medium-sized	22%	17%	14%	25%	0%	3%	19%
Large	39%	16%	12%	27%	1%	1%	4%
Total	*22%*	*12%*	*12%*	*27%*	*4%*	*4%*	*19%*

Source: Civic Consulting. Question: 'In recent years, how frequently have you checked that your advertising/marketing and standard contract terms still comply with national legislation?' Note: Businesses that did not provide an answer are excluded; Percentages are rounded, the row total may thus slightly differ from 100%. N = 226.

There is a great deal of heterogeneity when it comes to the frequency of such compliance checks, even among firms that are the same size. As shown in the figure above, micro, small, medium and large enterprises report checking for compliance anywhere between once a month to less than once every two years. However, micro businesses check the least frequently—more than half (55%) of the micro businesses interviewed check for compliance only once every two years or less often. In contrast, nearly all large companies (93%) perform a compliance check at least once per year.

There is also heterogeneity in the frequency of these checks across sectors. For example, businesses in the gas and electricity services sector, as well as businesses in the telecommunications services sector check for compliance the most frequently. 85% and 92% of the businesses within these two sectors respectively check at least once per year, while between 24% and 29% of businesses in the other three goods sectors never perform such checks.

Overall, as indicated above for the total sample, about 19% of the businesses interviewed indicated they never check that their advertising/marketing and standard contract terms still comply with national legislation. In two thirds of the Member States, at least one of the interviewed businesses indicated that they never check compliance.[31]

In the table below, we compare the responses of businesses that indicated that they sell their products/services in other EU countries to the responses of those that only sell domestically.

Table 13: Frequency distribution of compliance checks for businesses that only sell domestically and businesses that sell in other countries

Sub-group of businesses	Once a month or more often	Once every three months	Once every six months	Once a year	Once every two years	Less than once every two years	Never
Businesses that sell only domestically	23%	14%	11%	24%	4%	5%	19%
Businesses that sell in other countries	20%	3%	14%	37%	5%	3%	17%
Total	*22%*	*12%*	*12%*	*27%*	*4%*	*4%*	*19%*

Source: Civic Consulting. Question: 'In recent years, how frequently have you checked that your advertising/marketing and standard contract terms still comply with national legislation?' Note: Businesses that did not provide an answer are excluded; Due to rounding, the row total may slightly exceed 100%. N = 226.

The table above shows that the pattern in the frequency of compliance checks does not differ significantly between businesses that sell their products/services in other EU countries and businesses that only sell domestically. Major differences are observed between the two groups with regard to the answer items 'Once every three months' and 'Once a year', but the distribution is otherwise similar. Particularly for businesses that do not check for compliance, the shares are between 17% and 19%, with an overall share of businesses that never check for compliance in the total sample of 19%. While there may be differences between the two groups in terms of the frequency of compliance checks, the two groups do not differ significantly from the total sample in terms of checking for compliance regularly (i.e. between once a month or more often and less than once every two years) vs. never checking at all.

[31] In the context of the interviews conducted for this study, the highest proportions of companies not checking for continued compliance were found in Hungary (43% of interviewed businesses), Latvia (33%) and Denmark (29%).

Annual costs for businesses

Those businesses that indicated that they undertake regular compliance checks (81% of the businesses interviewed, i.e. the 184 interviewed businesses in the five sectors who did not answer 'Never' to the question on the frequency of compliance checks – see previous tables) were then asked about the related costs. In particular, businesses were asked to distinguish between costs related to *checking compliance* with and adapting advertising/marketing and standard contract terms to the national legislation and *adjusting business practices* as a result (e.g. changing the implementation of advertisement campaigns, using different standard contract terms). Businesses were also asked to report total amounts for *all* EU countries they target, including the country in which they are registered, in order to obtain complete estimates of their regular costs.[32] In the same way as for one-off costs, businesses were asked to indicate the number of working days, separately for professional staff and for administrative or sales staff, and the amount of other costs (e.g. costs for legal advice) they spend *each time* they check that their advertising/marketing and standard contract terms still comply with national legislation. Interviewed businesses were asked to provide values for the latter three cost items in separate questions; therefore the base size differs by question. Finally, they were asked to indicate which shares of their regular costs relate to legal requirements regarding *standard contract terms* in consumer contracts, *advertising and marketing targeted at consumers*, and advertising *and marketing targeted at businesses*.

Almost all businesses that regularly undertake compliance checks provided quantitative data in terms of working days (more than 86%, depending on the item), and 47% of the businesses that regularly undertake compliance checks indicated they incur other costs (e.g. costs for legal advice), but less than half of them were able to provide quantitative cost estimates regarding these other costs.

For each business interviewed, we calculated yearly figures using the answer to the question on the frequency of the compliance checks and the costs provided in subsequent questions on the costs spent *each time* a compliance check was undertaken.[33] The table below presents annual costs by sector and by company size for the amount of resources spent on *checking compliance with and adapting advertising/marketing and standard contract terms to national legislation*. We provide the median value, which is less sensitive to extreme values than the average. To illustrate the distribution of answers, the first quartile, the third quartile, the minimum value and the maximum value are presented in Annex II for each item in the table below. The results presented below are directly based on the interview results.

[32] The analysis includes both businesses not operating cross-border, and those that do, as both incur regular costs. For the latter category it was clarified that costs invested when entering another EU country's market are not to be considered in the estimate, to avoid double-counting.

[33] The frequencies assigned for the calculation are as follows: 'Once a month or more often':12; 'Once every three months': 4; 'Once every six months':2; 'Once a year':1; 'Once every two years':0.5; 'Less than once every two years': 0.25.

Table 14: Annual costs for checking compliance and adapting advertising / marketing and standard contract terms – median, by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per year)	Administrative or sales staff time (number of working days per year)	Other costs e.g. for legal advice (EUR per year)
By sector	Large household appliances	2.0	1.3	n.a.
	Electronic and ICT products	2.5	2.0	1 000
	Gas and electricity services	5.0	5.0	4 500
	Telecommunication services	8.0	1.0	12 000
	Pre-packaged food and detergents	2.0	1.0	3 500
By company size	Micro	0.8	0.5	100
	Small	3.0	2.0	2 000
	Medium-sized	3.3	3.0	4 500
	Large	8.0	4.0	10 000
	Micro and small enterprises	2.0	1.0	920
	Medium-sized and large enterprises	6.6	4.0	5 000

Source: Civic Consulting based on business interviews. Questions: 'On average, how much staff time have you spent each time for this check and the resulting changes of your business practices, if any? Please estimate the staff time in working days you have spent each time for checking compliance with and adapting advertising/marketing and standard contract terms to changes in the national legislation: working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'Have you incurred other costs for this check and the resulting changes of your business practices, if any (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider one-off costs you incurred when entering another EU country's market. If yes, please indicate for the other costs that you spent each time on average (total for all EU countries that you are targeting, including country in which you are registered). If no costs accrued, indicate '0'. Costs for checking compliance with and adapting advertising/marketing and standard contract terms to changes in the national legislation.' Note: The median is the value separating the higher half of the sample from the lower half, and is presented above for categories where at least three values were provided. From left to right, number of businesses that provided quantitative data: large household appliances: N=19; 18; -; electronic and ICT products: N=36; 37; 17; gas and electricity services: N=50; 47; 10; telecommunication services: N=33; 31;9; pre-packaged food and detergents: N=31; 31; 4; micro: N=32; 35; 5; small: N=44; 42; 13; medium-sized: N=28; 27; 6; large: N=65; 60; 17.

When looking at the breakdown by sector shown in the table above, the overall costs are highest in the sectors for network services. In all sectors, the number of working days for professional staff is equal to or higher than the number of days for administrative or sales staff. Results show that the median number of working days of professional staff spent annually for checking compliance and adapting advertising/marketing and standard contract terms to the national legislation by businesses varies between 2.0 in the large household appliances sector and the pre-packaged food and detergent sector and 8.0 in the telecommunications services sector. The median number of working days of administrative or sales staff varies between 1.0 in the telecommunication services sector and the pre-packaged food and detergents sector and 5.0 in the gas and electricity services sector. Lastly, annual

other costs for checking compliance and adapting advertising/marketing and standard contract terms incurred by businesses consist of a median of EUR 1 000 in the electronic and ICT products sector and EUR 12 000 in the telecommunication services sector.

These annual costs, including working days and other costs, cannot directly be compared to the one-off costs incurred when entering another EU country's market presented earlier, as the annual regular costs are calculated on the basis of a different (larger) sample and cover the regular costs for all EU countries targeted by the business.

A clear pattern can be observed in the breakdown by company size: the larger the company, the larger the costs, both in terms of working days and other costs. Micro enterprises stand out with overall costs significantly lower than for small, medium-sized and large enterprises. While medium-sized enterprises and large companies reported similar numbers of working days for administrative or sales staff time and similar amounts for other costs, large companies reported more working days for professional staff time and higher other costs.

In addition, as detailed above in the methodology, these businesses (that undertake regular compliance checks) were asked to specify the costs they incurred for ***adjusting business practices to the national legislation*** (e.g. changing implementation of advertisement campaigns, using different standard contract terms) as a result of the compliance check.

The table below presents annual figures by sector and by company size for the amount of resources spent on *adjusting business practices*.

Table 15: Annual costs for adjusting business practices – median, by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per year)	Administrative or sales staff time (number of working days per year)	Other costs, e.g. for legal advice (EUR per year)
By sector	Large household appliances	1.0	1.0	n.a.
	Electronic and ICT products	2.5	2.0	400
	Gas and electricity services	4.5	9.0	5 738
	Telecommunication services	5.0	2.0	14 000
	Pre-packaged food and detergents	1.0	1.0	2 000
By company size	Micro	0.3	0.0	950
	Small	2.0	2.0	928
	Medium-sized	3.5	4.0	2 500
	Large	4.0	9.0	12 000
	Micro and small enterprises	1.0	0.8	950
	Medium-sized and large enterprises	4.0	6.5	9 238

Source: Civic Consulting based on business interviews. Questions: 'On average, how much staff time have you spent each time for this check and the resulting changes of your business practices, if any? Please estimate the staff time in working days you have spent each time for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms): working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'Have you incurred other costs for this check and the resulting changes of your business practices, if any (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider one-off costs you incurred when entering another EU country's market. If yes, please indicate for the other costs that you spent each time on average (total for all EU countries that you are targeting, including country in which you are registered). If no costs accrued, indicate '0'. Costs for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms).' Note: The median is the value separating the higher half of the sample from the lower half, and is presented above for categories where at least three values were provided. From left to right, number of businesses that provided quantitative data: large household appliances: N=16; 16; -; electronic and ICT products: N=36; 37; 14; gas and electricity services: N=48; 45; 12; telecommunication services: N=30; 32; 8; pre-packaged food and detergents: N=31; 29; 3; micro: N=32; 34; 6; small: N=41; 39; 12; medium-sized: N=26; 25; 6; large: N=62; 61; 14.

As indicated in the table above, annual costs for adjusting business practices resulting from compliance checks (for businesses that undertake regular compliance checks) are highest in the network services sector. The trends observed are similar to those described above regarding the annual costs for checking compliance and adapting advertising/marketing and standard contract terms. Results show that the median number of working days of professional staff spent for adjusting business practices spent by businesses varies between 1.0 in the large household appliances sector and the pre-packaged food and detergent sector and 5.0 in the telecommunications services sector. The median number of working days of administrative or sales staff varies between 1.0 in the large household appliances sector and the pre-packaged food and detergent sector and 9.0 in the gas and electricity services sector. Lastly, other costs for adjusting business practices incurred by businesses consist of a median

of EUR 400 in the electronic and ICT products sector and EUR 14 000 in the telecommunication services sector. Again, the other costs vary greatly between sectors.

When looking at company size, results again clearly show that the larger the company, the larger the costs, both in terms of working days and other costs. The costs incurred by micro enterprises for adjusting business practices are again significantly lower than for bigger companies. As shown in the table above, and in contrast to the annual costs for checking compliance, the number of working days for administrative and sales staff is generally equal to or higher than the number of working days of professional staff.

Finally, the table below presents the breakdown of the staff time and other costs that businesses have spent on average for checking that **advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices for different legal requirements**, as indicated by interviewees. The average shares are presented by sector and by company size.

Table 16: Average annual costs for checking that advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed by legal requirement, by sector and size class of enterprises

Sector/Size class		Costs related to standard contract terms in consumer contracts	Costs related to advertising and marketing targeted at consumers	Costs related to advertising and marketing targeted at businesses
By sector	Large household appliances	53%	43%	4%
	Electronic and ICT products	42%	50%	9%
	Gas and electricity services	53%	37%	10%
	Telecommunication services	51%	37%	13%
	Pre-packaged food and detergents	32%	48%	20%
By company size	Micro	55%	36%	9%
	Small	50%	36%	15%
	Medium-sized	52%	33%	15%
	Large	38%	52%	9%
	Micro and small enterprises	52%	36%	12%
	Medium-sized and large enterprises	42%	47%	11%

Source: Civic Consulting. Question: 'Considering the staff time and other costs you have spent for checking that advertising/marketing and standard contract terms still comply with national legislation (and adjusting your business practices, if needed), please indicate: a) Which share of these costs is related to standard contract terms in consumer contracts? b) Which share of these costs is related to advertising and marketing targeted at consumers? c) Which share of these costs is related to advertising and marketing targeted at businesses?'. N=6 for large household appliances; N=20 for electronic and ICT products; N=25 for gas and electricity services; N=19 for telecommunication services; N=14 for pre-packaged food and detergents; N=15 for micro enterprises; N=7 for small enterprises; N=14 for medium-sized enterprises; and N=35 for large enterprises.

As shown in the table above, businesses that undertake regular compliance checks indicated that they spend the lowest share of their annual costs for compliance checks with national legislation and adjusting business practices related to *advertising and marketing targeted at businesses*, which applies across all company sizes and sectors. The shares are similar for SMEs, with 50%-55% of such costs spent related to *standard contract terms in consumer contracts*, 33%-36% related to *advertising and marketing targeted at consumers*, and 9%-15% related to *advertising and marketing targeted at businesses*. Large enterprises indicated that they spend a lower share of such costs related to *standard contract terms in consumer contracts* and a higher share related to *advertising and marketing targeted at consumers* than SMEs. Businesses in the network services sectors reported very similar distributions of such costs by legal requirement. They indicated that more than half of their annual costs for compliance checks and adjusting business practices relate to *standard contract terms in consumer contracts* and over one third relate to *advertising and marketing targeted at consumers.* These shares are applied to total costs in Table 24 in the extrapolation section below.

Please refer to the section on the extrapolation of business costs for a complete overview of the total monetised one-off costs and annual compliance costs at the business level.

2.2.3. Unit pricing

The interviews also explored the costs for businesses in the pre-packaged food and detergents sector of providing unit price information at points of sale and/or on websites. Businesses were asked to specify the number of working days for professional staff and for administrative or sales staff spent per year for price indication, including unit price indication (e.g. to prepare and change price labels), as well as the amount of other costs incurred for price indication (e.g. for electronic price labels). Businesses were then asked for their best estimate of the share of these costs for the indication of the selling price in general that is specifically related to unit price indication.

Of the 65 interviews conducted in this sector, 75% of businesses reported that they indicate unit prices for pre-packaged food and/or detergents to consumers to comply with legislation (53% of interviewed micro businesses, 82% of interviewed small businesses, 80% of interviewed medium-sized businesses and 86% of interviewed large businesses), while 15% do not and 9% either did not know or did not provide an answer.

Regarding the amount of staff time spent per year for price indication, including unit price indication, half of the businesses in the relevant sector indicated a number of days and one third indicated that they incur other costs for this.[34] However, only one in ten businesses in the pre-packaged food and detergent sector provided quantitative data regarding other costs for price indication. On the basis of those who provided such data, the median number of working days spent per year on price indication by professional staff is 2.0, the number of working days spent per year on price indication by administrative or sales staff is 5.0 and the median amount of other costs for price indication, for those who incur other costs, is EUR 1 800 per business. Overall, respondents indicated that, on average, 30% of these costs are specifically related to *unit price* indication, which is equivalent to a median number of working days for professional staff of about 0.7, a median number of working days for administrative or sales staff of about 1.7 and a median amount of other costs of EUR 600 per business for unit price indication.

These figures appear rather low, which is partly explained by the fact that in line with the size distribution of companies in the food retail sector, the business interviews focused mostly on SMEs; moreover, large companies that were interviewed in this sector had difficulties providing estimates regarding the cost of price indication. Other reasons, as specified by interviewees, include the fact that price information is often provided automatically either on websites or on electronic labels using special software, which reduces related costs. Further breakdowns by company size, where sample sizes allow, are presented in Annex II.

2.2.4. Benefits from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU

The last section of the interview focused on benefits for businesses from the harmonisation of rules concerning advertising and marketing, standard contract terms,

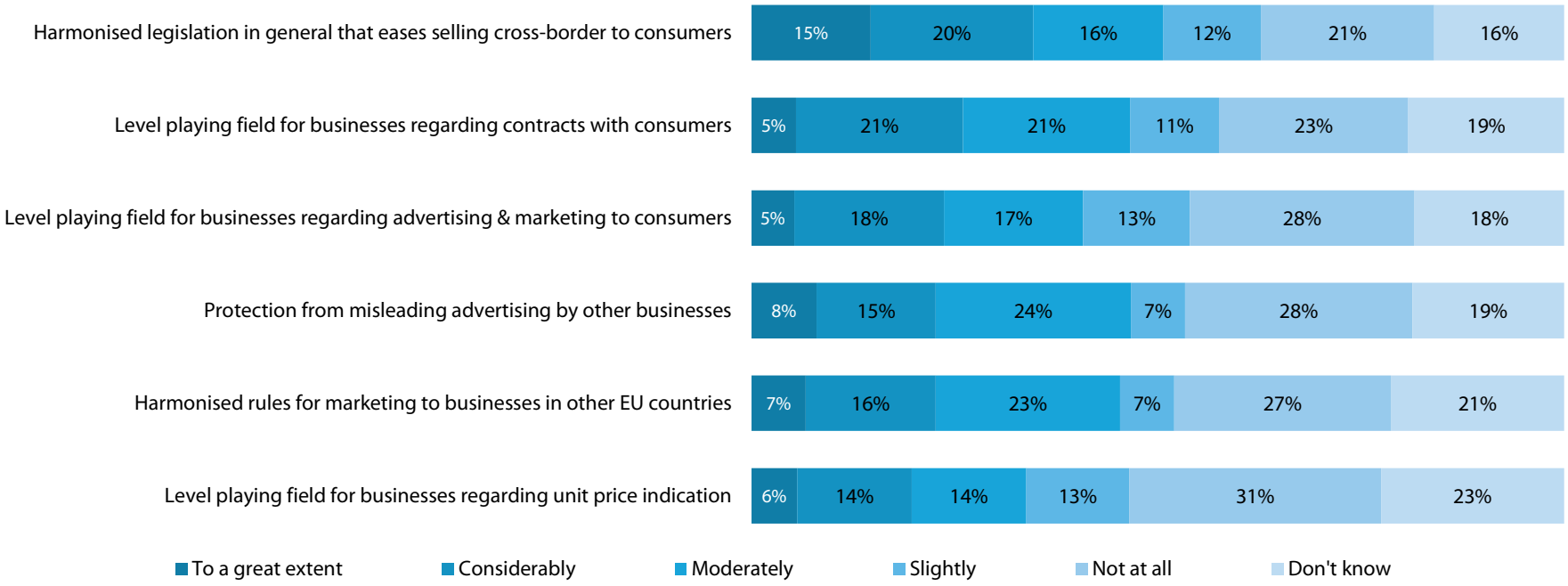
[34] Of those that indicated a number of days, 53% were micro and small enterprise and 47% were medium-sized and large enterprises, covering 21 Member States with an average of 2 businesses per country.

and unit price indication across the EU. Businesses were asked about the extent to which they benefitted from:

- Creating a level playing field across the EU for businesses regarding advertising and marketing to consumers by eliminating or constraining dishonest market practices;
- Creating a level playing field across the EU for businesses regarding contracts with consumers by safeguarding that standard contract terms are fair;
- Creating a level playing field across the EU for businesses regarding unit price indication by improving consumers' information on prices;
- Harmonised legislation in general that eases selling cross-border to consumers in other EU countries;
- Protection from misleading advertising by other businesses;
- Harmonised rules for marketing to businesses in other EU countries.

As several of these items relate to the harmonisation of rules across the EU and cross-border sales, we present results separately for businesses that sell their products/services in other EU countries and those that do not. The figure below presents the distribution of assessments provided by businesses that sell their products/services in other EU countries.

Figure 15: Extent to which businesses that sell their products/services in other EU countries benefitted from…

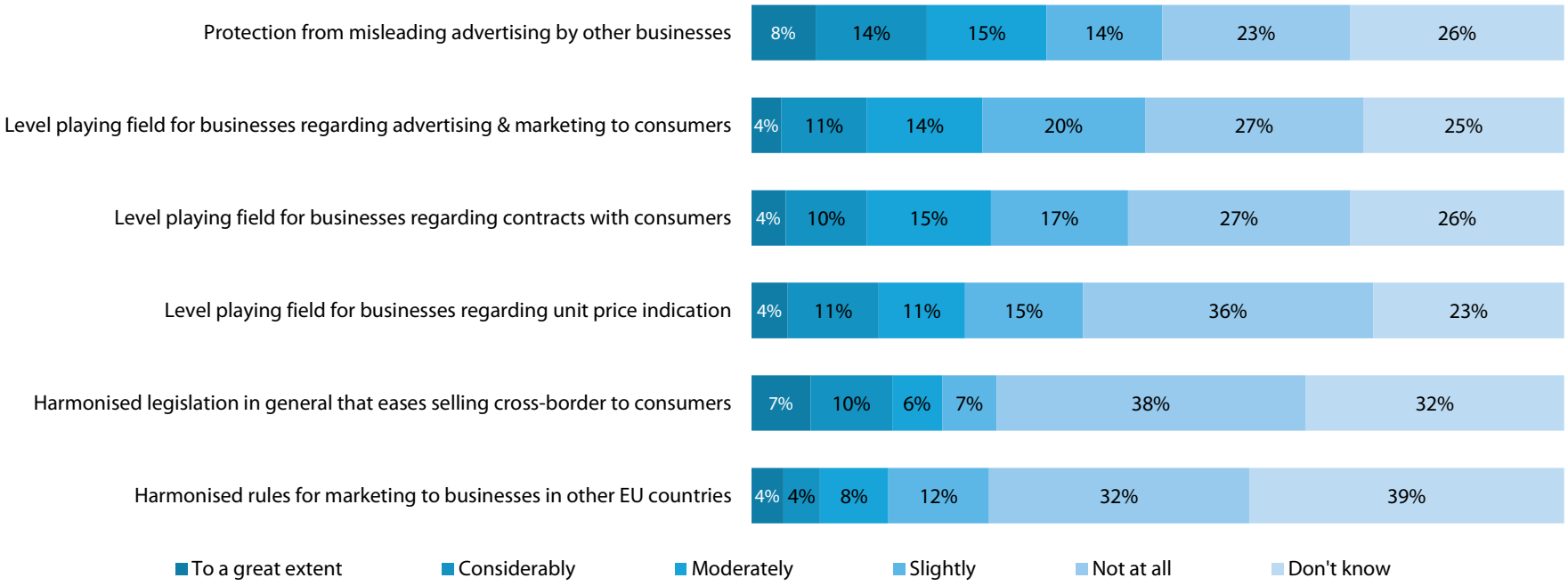


Source: Civic Consulting. Question: 'Based on your experiences, please indicate to what extent your company has benefitted so far from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU'. Note: Businesses that did not provide an answer are excluded. N = 63

As indicated in the figure above, across all items, between 46% and 63% of the businesses that sell their products/services in other EU countries indicated that they benefited at least slightly from the EU legislative framework subject to the Fitness Check. In particular, businesses that sell their products/services in other EU countries indicated that they benefited most from the harmonised legislation that facilitates selling cross-border to consumers in other EU countries, followed by the level playing field that was created across the EU for businesses regarding contracts with consumers by safeguarding that standard contract terms are fair. Further breakdowns by sector and by company size are provided in Annex II and suggest that medium-sized and large enterprises that sell their products/services in other EU countries benefit the most from the EU legislative framework subject to the Fitness Check, with between 50% to 80% of them across all items indicating that they benefit at least slightly from the EU legislative framework subject to the Fitness Check.

The figure below presents the distribution of assessments provided by businesses that do not sell their products/services in other EU countries.

Figure 16: Extent to which businesses that do not sell their products/services in other EU countries benefitted from…



Source: Civic Consulting. Question: 'Based on your experiences, please indicate to what extent your company has benefitted so far from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU'. Note: Businesses that did not provide an answer are excluded. N = 190

As indicated in the figure above, across all items, between 29% and 51% of the businesses that do not sell their products/services in other EU countries indicated that they benefited at least slightly from the legal framework. This is lower than for businesses that sell their products/services in other EU countries. The two items related to the benefits of having harmonised rules in the EU in view of selling cross-border ('harmonised legislation in general that eases selling cross-border to consumers in other EU countries' and 'harmonised rules for marketing to businesses in other EU countries') are, not surprisingly for this subsample of businesses, ranked last. Further breakdowns by sector and by company size provided in Annex II show that this finding is consistent across sectors and company size.

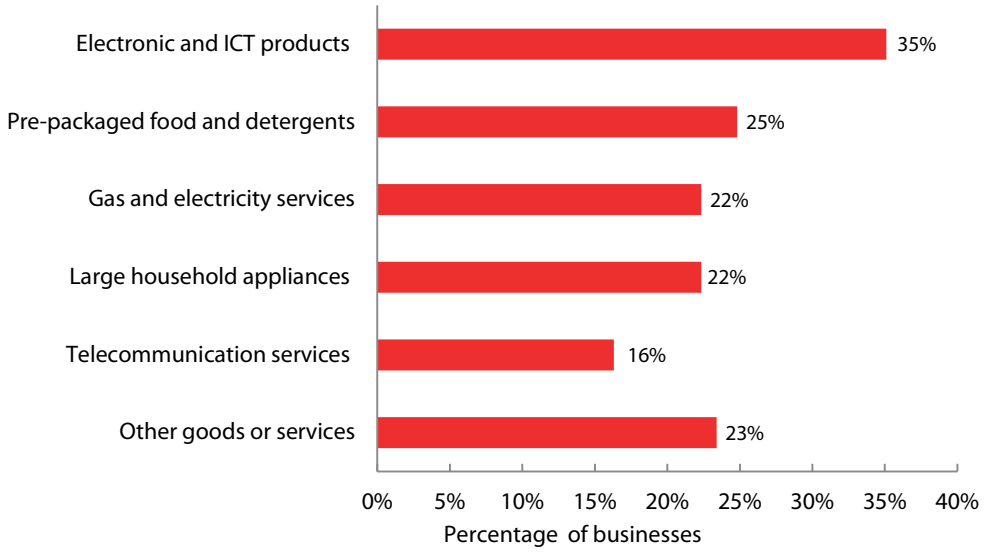
Businesses that do not sell their products/services in other EU countries indicated that they benefited most from the protection from misleading advertising by other businesses, the creation of a level playing field across the EU for businesses regarding advertising and marketing to consumers by eliminating or constraining dishonest market practices, and the creation of a level playing field across the EU for businesses regarding contracts with consumers by safeguarding that standard contract terms are fair.

2.2.5. Characteristics of the sample

2.2.5.1. Sectors covered

A total of 282 interviews were conducted throughout the EU. The case study interviews covered five economic sectors: electronic and ICT products (35% of businesses); pre-packaged food and detergents (26% of businesses); gas and electricity services (23% of businesses); large household appliances (23% of businesses) and telecommunication services (16% of businesses). Additionally, 23% of the interviewed businesses sell other goods or services. This sectoral breakdown is summarised in the figure below.

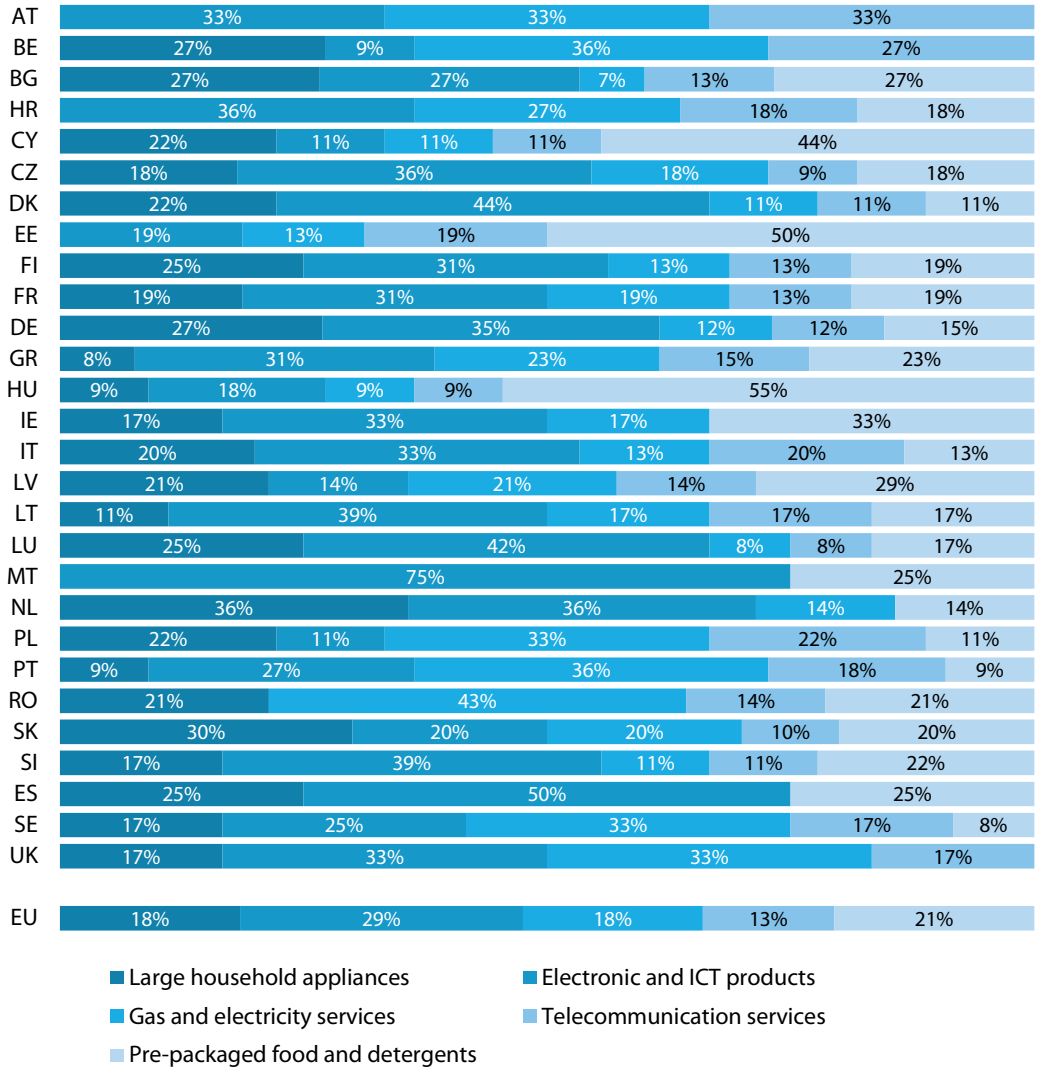
Figure 17: Economic sectors covered, overall



Source: Civic Consulting. Note: multiple answers were possible. Question: 'Which of the following do you sell to consumers?'

The interviews were conducted with companies across all 28 EU Member States. The sectoral breakdown of business interviews for each Member State is presented in the figure below.

Figure 18: Economic sectors covered, by Member State



Source: Civic Consulting. Note: In the figure above, for each interview the Member State indicated corresponds to the country of registration of the company. Question: 'Which of the following do you sell to consumers?' Note: multiple answers were possible.

As shown in the figure above, we were able to obtain a broad coverage of the sectors mentioned above for most Member States.

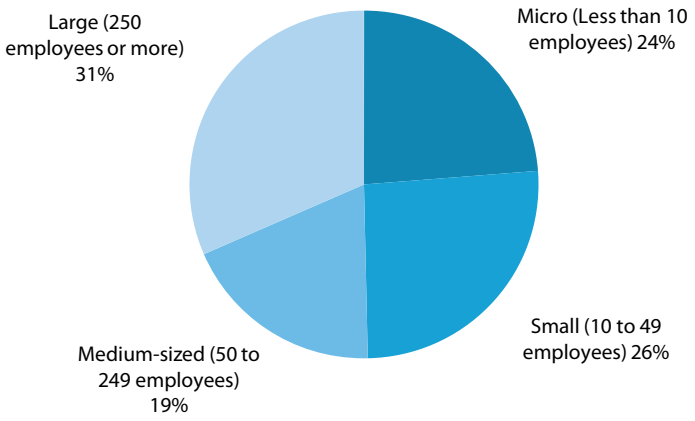
For comparison purposes we also interviewed a small sample of companies that were active in other sectors or focused on business-to-business transactions.

2.2.5.2. Company size

The case study interviews also covered a range of business sizes. While close to one-third of interviewees were large businesses with 250 or more employees, the remainder consisted of micro, small and medium-sized enterprises.[35] The figure below presents the breakdown of interviews by company size.

[35] The original focus of the exercise on SMEs was broadened after the kick-off meeting, especially in light of the selected sectors.

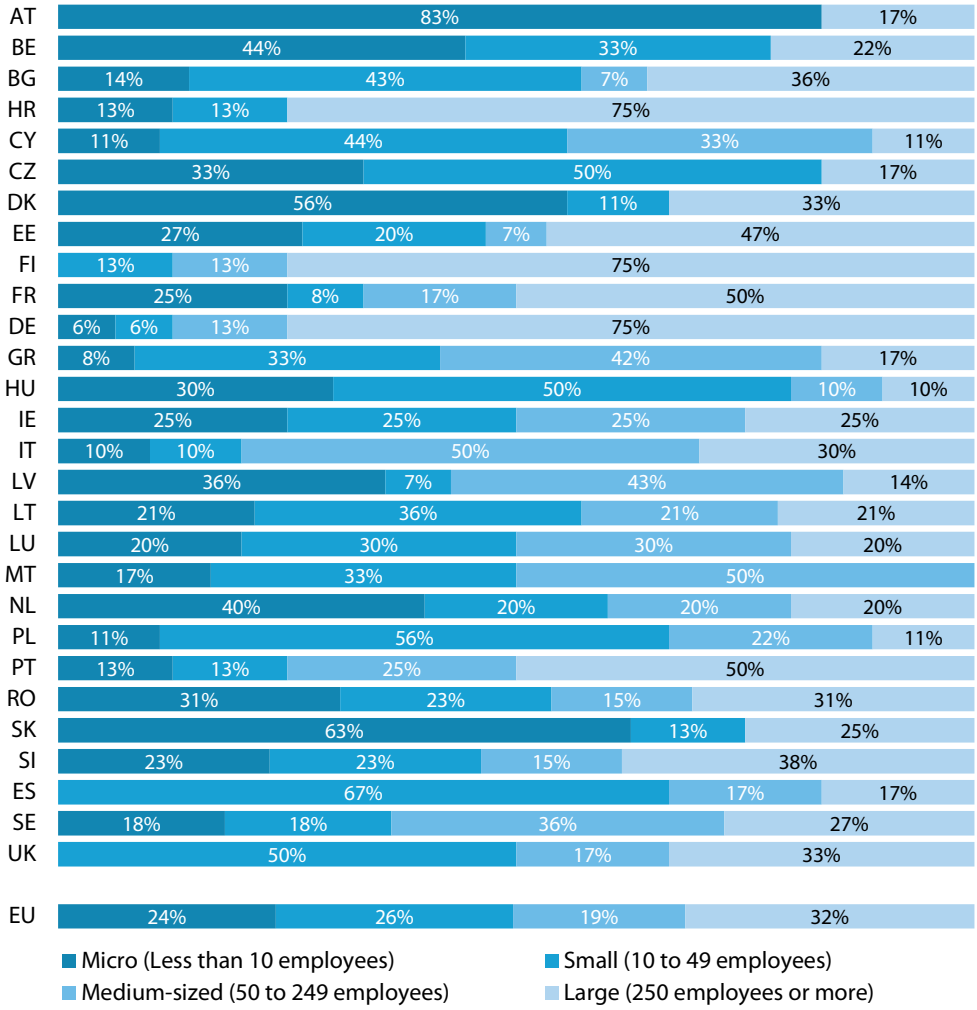
Figure 19: Size of interviewed businesses, overall



Source: Civic Consulting. Question: 'Does your company have…'

As shown in the figure below, we were also able to obtain a broad coverage of business sizes within the Member States.

Figure 20: Size of interviewed businesses, by Member State

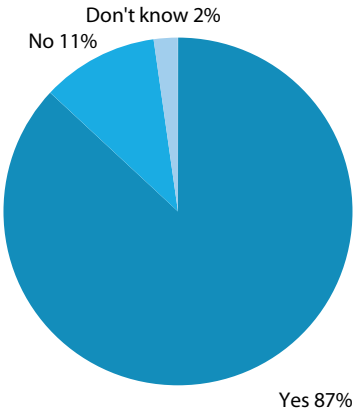


Source: Civic Consulting. Question: 'Does your company have…'

2.2.5.3. Standard written terms

Businesses were asked whether they use standard written terms in their contracts with consumers. As shown in the figure below, the majority (87%) of interviewed businesses do use standard written terms. The majority of businesses that do not use standard written terms are in the goods sector, mostly the pre-packaged food and detergent sector (close to two thirds), and a few businesses indicated that contract terms are negotiable.

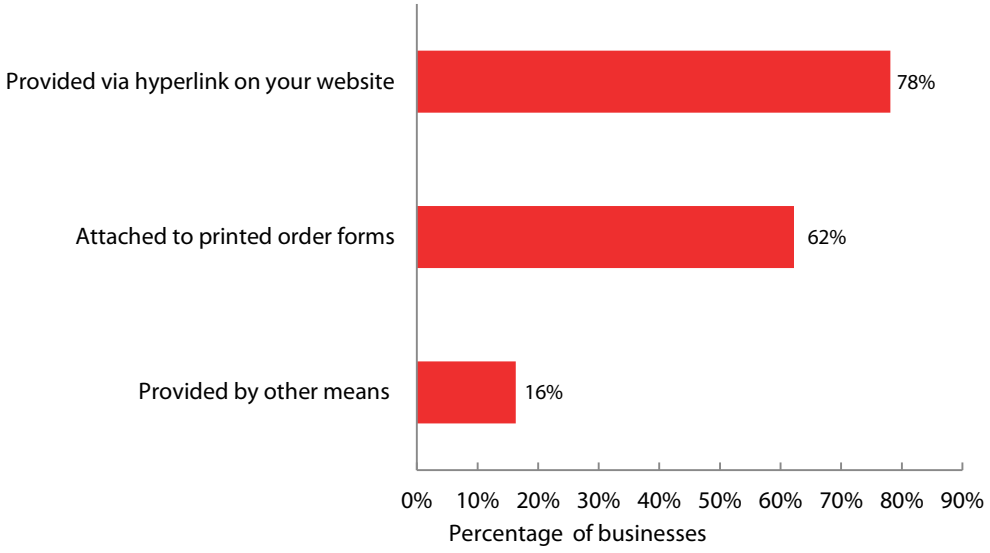
Figure 21: Use of standard written terms



Source: Civic Consulting. Question: 'Do you use standard written terms in your contracts with consumers?'

Among the businesses that use standard written terms in their contracts with consumers, 78% deliver these terms via a hyperlink on their website, 62% attach them to printed order forms, and 16% provide them via other means (see the figure below).

Figure 22: Delivery of standard written terms



Source: Civic Consulting. Note: multiple answers were possible. Question: 'If yes, are your standard terms:'

3. Results of the extrapolation of business costs to the EU level

In this section we present the approach to the assessment of costs for businesses and the approach to the extrapolation of business costs to the EU level, as well as related results. After a description of the methodology, we provide estimates of the compliance costs at the company level, differentiating between (i) the one-off costs incurred when entering another EU country's market for the first time to sell the company's products/services and (ii) the costs incurred on a regular basis for checking that the company's advertising/marketing and standard contract terms still comply with national legislation, and adjusting business practices if needed. We then present results of the extrapolation of business costs to the EU level by sector.

3.1. Methodology

3.1.1. Approach to assessing costs for businesses

To assess the costs for businesses in the EU, we collected primary data through sectoral business interviews that we conducted as part of this evaluation, complemented by secondary data on mean labour costs by staff category and on the number of enterprises by sector in the EU.

3.1.1.1. Sectoral business interviews

We conducted a total of 282 business interviews throughout the EU, focusing on the sectors for large household appliances, electronic and ICT products, gas and electricity services, telecommunication services, and pre-packaged food and detergents.[36]

As described above in the section on the methodology of the business interviews (Section 2.1), the interviews explored the costs incurred by businesses to ensure that their advertisements/marketing practices and standard contract terms comply with legislation. We distinguished between two types of costs for businesses:

- The *one-off costs* incurred when entering another EU country's market for the first time to sell the company's products/services;[37]
- The *costs incurred on a regular basis* for checking that the company's advertising/marketing and standard contract terms still comply with national legislation, and adjusting business practices (if needed).

While all interviewees were asked about their regular costs, only businesses that sell in other EU countries were asked about the one-off costs when entering another EU country's market for the first time.

Businesses were asked to express their costs in working days, both for professional staff and for administrative or sales staff, with one working day equal to 8 hours of

[36] For a more detailed description of the methodology for the business interviews and the related results, please see Section 2 above.

[37] Businesses that sell in other EU countries were asked about the costs related to checking compliance and adapting advertising/marketing and standard contract terms to the national legislation when entering another EU country's market and adjusting businesses practices if needed, which does not include costs of drawing up contracts for the new country entered.

staff time, and also to specify whether they incurred any other costs (e.g. costs for legal advice).

Finally, with the aim of differentiating between the relative weights of the different directives covered by this study in these costs, we asked businesses to specify, if possible, which share of their costs related to *standard contract terms* in consumer contracts, to *advertising and marketing targeted at consumers*, and to *advertising and marketing targeted at businesses*. It should be emphasised that the interviews explored the costs for checking compliance with and adjusting business practices to the national legislation in the other EU country's market regarding *advertising/marketing* and *standard contract terms* and therefore covered the combined effects of the UCPD, UCTD and MCAD, the national legislation possibly going beyond the requirements of the EU directives in these areas as well as relevant sectoral legislation.

The results of the extrapolation presented below are based on the results of the business interviews presented in the previous sections. As mentioned in Section 2.1.3.3 above, the quality assurance process ensured that all quantitative inputs were checked for plausibility and clarified with interviewees where necessary. As a result, none of the completed interviews were considered as outliers or excluded from the analysis on the basis of implausibility.

3.1.1.2. Assessing costs at the company level

As a first step, we assessed costs at the company level. The various cost items and totals are calculated by sector. Where possible, costs are also presented by sector and size class. However, the limited number of interviews per Member State in each sector (two on average) does not allow for possible variation across countries within sectors to be assessed.

Different samples of interviewed businesses are used. For the one-off costs, we calculated the costs per business for businesses that sell products/services in other EU countries. For the regular costs, we calculated the costs per business on an annual basis for businesses that indicated that they do check for compliance. The approach described below applies to both the one-off costs and the regular costs.

As indicated above in the section on the results of the business interviews, we used median values for the analysis, as they are less sensitive to extreme values than average values. For each cost item, the first and third quartiles are also provided to illustrate the distribution of answers, which showed heterogeneity within and across categories of respondents. Having calculated the first quartile, median and third quartile for all cost items,[38] namely professional staff time, administrative or sales staff time and other costs, as presented in Section 2 above, the following steps were applied to arrive at an estimate of costs at the company level.

First, we *monetised the amount of staff time* spent on compliance checks indicated in the interviews. We calculated the labour costs associated with the amount of staff time spent on checking compliance and adjusting business practices, reported in working days by interviewed businesses, with one working day equal to 8 hours of staff time. Labour costs at the company level were monetised using a population-weighted mean

[38] The median is the value separating the higher half of the sample from the lower half. The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset.

daily labour costs rate for the EU in Euro,[39] derived from country-specific data on mean hourly labour costs and on the number of businesses in the selected sectors. This ensures that the mean daily labour cost rates used take into account the different sizes of the Member States, in terms of the number of businesses active in the selected sectors. Due to data limitations, the rates used do not however take into account sectors or company size. The population-weighted mean daily labour cost rates for the EU are calculated separately for professional staff and for administrative or sales staff.

This is depicted in the equation below:

$$Labour\ costs_s^{staff} = WD_s^{staff} \times \frac{1}{Pop_{EU}} \sum_{EU\ MS} Mean\ daily\ labour\ costs_{MS}^{staff} \times Pop_{MS}$$

Where:

s denotes the sector;

staff denotes the staff category;

WD denotes the number of working days;

Pop denotes the number of businesses in the five selected sectors.

Second, we *calculated the amount of other costs* per business. As not all interviewed businesses in the sample incurred other costs in addition to the staff time spent on the compliance checks, it was necessary to derive the value of other costs incurred *per business in the sample*. We therefore multiplied the amount of other costs per business *that incurred other costs* (which were provided by interviewees in Euro) by the share of businesses that indicated that they incurred other costs as a percentage of the sample of businesses in the sample.

Lastly, total costs per business were calculated by summing the values for the three items, i.e. the labour costs for professional staff, the labour costs for administrative or sales staff and the other costs incurred. This is depicted in the equation below:

$$Compliance\ costs\ per\ business_s = Labour\ costs_s^{prof} + Labour\ costs_s^{admin} + Other\ costs_s$$

Where:

prof denotes professional staff;

admin denotes administrative or sales staff.

The results are presented by sector below in Section 3.2. Best estimates based on median values are presented below and ranges based on the first and quartiles are presented in Annex II. For the one-off costs, sample sizes do not allow for breaking down the results by sector and by size class. The results are therefore presented below irrespective of size class in each sector. For the regular costs, sample sizes allow for further differentiation, therefore results are provided both by size class in each sector.

[39] The labour costs rates include a standard proportion of so-called overhead costs, i.e. 25%, borne by businesses (fixed administration costs such as premises, telecommunications, heating, electricity and IT equipment).

Next, the results obtained at the business level for the sample in terms of the costs incurred on a regular basis for checking that the company's advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed were used to extrapolate results to the EU level, in order to obtain an estimate of overall regular compliance costs in the entire EU for the sectors subject to analysis.

3.1.2. Approach to extrapolation of business costs to the EU level

As for the regular compliance costs at the business level, we calculated these compliance costs at the EU level on an annual basis. Having calculated the annual costs per business per sector, we multiplied these costs by the number of businesses in each sector that check for compliance on a regular basis. This number was calculated by multiplying the total number of businesses in each sector in the EU, based on Eurostat data, by the share of surveyed businesses in each sector that indicated they check for compliance as a percentage of the total number of businesses interviewed in each sector.[40]

To calculate the total estimates at the EU level, we first extrapolated costs for businesses to the EU level separately by size class (i.e. for micro, small, medium-sized and large enterprises) and then summed the four intermediate EU-level estimates. This is depicted in the equation below:

$$Total\ compliance\ costs_s = \sum_{size} Compliance\ costs\ per\ business_{s,size} \times Number\ of\ businesses_{s,size}$$

Where:

s denotes the sector;

size denotes the size class.

The results of this calculation are shown using median values to derive best estimates, as well as using the first and third quartiles to obtain ranges of estimates for each sector and size class. The results of the extrapolation to the EU level are presented below in Section 3.2.1. Best estimates based on median values are presented below and ranges based on the first and quartiles are presented in Annex II.

3.2. Results of the assessment

3.2.1. Costs at the company level

As detailed above, we distinguish between the one-off costs incurred by businesses when entering another EU country's market for the first time to sell the company's products/services and the costs incurred on a regular basis for checking that the company's advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed. The results for these two types of costs are presented below at the business level.

[40] Due to data limitations, compliance rates were derived by sector and not by sector and size class.

3.2.1.1. One-off costs incurred by businesses when entering another EU country's market for the first time (regarding advertising/marketing and standard contract terms)

We first present results regarding one-off costs for compliance checks and adjusting business practices incurred by businesses when entering another EU country's market for the first time. By definition, these costs only accrue to businesses that sell their products and/or services in other EU Member States. The analysis below is thus conducted using a base of 68 interviewed businesses in the selected sectors that indicated that they sell their products and/or services in other EU Member States.[41]

The table below presents one-off costs per business by cost item, i.e. *labour costs for professional staff*, *labour costs for administrative or sales staff time*, and *other costs (e.g. costs for legal advice)*, by sector, for businesses that sell their products and/or services in other EU Member States.

[41] As indicated above in the section on the results of the business interviews, approximately 28% of interviewed businesses indicated that they sell their products and/or services in other EU Member States. Of these businesses, almost three quarters provided quantitative data in terms of working days, two fifths indicated having incurred other costs when entering another EU country's market, and less than half of them were able to provide quantitative estimates for these other costs (see Section 2.2.1 above). As a result, due to data limitations in some categories, further breakdowns by size class cannot be provided for the one-off costs.

Table 17: One-off costs incurred when entering another EU country's market per business, for businesses that sell their products/services to consumers in other EU countries (regarding advertising/marketing and standard contract terms) – based on median values, in Euro

Sector	Labour costs for professional staff (EUR per country entered)	Labour costs for administrative or sales staff (EUR per country entered)	Other costs, e.g. for legal advice (EUR per country entered)*
Large household appliances	1 357	620	333
Electronic and ICT products	946	465	316
Gas and electricity services	3 943	1 086	7 000
Telecommunication services	3 470	2 016	3 111
Pre-packaged food and detergents	1 262	155	1 111

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that sell their products and/or services in other EU Member States: 9 in the sector for large household appliances; 19 in the sector for electronic and ICT products; 8 in the sector for gas and electricity services; 9 in the sector for telecommunication services; and 23 in the sector for pre-packaged food and detergents. Notes: These estimates are based on median values, irrespective of size class. The median is the value separating the higher half of the sample from the lower half. Interviewed businesses were asked to provide amounts incurred when entering another EU country's market for the first time, or average amounts per country entered in cases where they had entered several other EU countries' markets. (*) In the sectors for large household appliances, electronic and ICT products, gas and electricity services, and telecommunication services, less than three answers were provided for other costs so the quartiles could not directly be calculated. We therefore calculated values for other costs on the basis of the values obtained for groups of sectors, i.e. for 'network services' (base: interviewed businesses in the gas and electricity services sector and in the telecommunication services sector that sell their products/services to consumers in other EU countries) or 'durable goods' (base: interviewed businesses in the large household appliances sector and in the electronic and ICT sector that sell their products/services to consumers in other EU countries).

As shown above, results suggest that the highest median labour costs for professional staff are in the sectors for gas and electricity services and telecommunication services, at EUR 3 943 and EUR 3 470 per business, respectively. The lowest median labour costs for professional staff time are in the sector for electronic and ICT products, at EUR 946 per business.

The highest median labour costs for administrative and sales staff are also in the network services sectors, at EUR 1 086 per business in the sector for gas and electricity services and EUR 2 016 per business in the sector for telecommunication services. These costs are lowest in the sector for pre-packaged food and detergents, at EUR 155 per business. In all sectors, labour costs are lower for administrative or sales staff than for professional staff.

Lastly, the median other costs are again highest in the network services sectors, at EUR 7 000 per business in the gas and electricity services sector and EUR 3 111 per business in the telecommunication services sector.

Overall, all three cost items are highest for businesses in the two network services sectors selected. These sectors are also characterised by higher levels of dispersion in the one-off costs, as indicated by the wide range between the first quartile and the third quartile in these sectors (see Annex II). As mentioned above, the interviews covered the combined effects of national legislation and the underlying EU directives,

most notably the directives covered by this evaluation, but also sectoral legislation, which may result in larger costs in the two network services than in the other sectors scrutinised.

The table below presents the total one-off costs per business, i.e. the sum of the three cost items presented in the table above, for compliance checks and adjusting business practices incurred by businesses when entering another EU country's market, by sector.

Table 18: Total one-off costs incurred when entering another EU country's market per business, for businesses that sell their products/services to consumers in other EU countries (regarding advertising/marketing and standard contract terms) – based on median values, in Euro

Sector	Total one-off costs
Large household appliances	2 310
Electronic and ICT products	1 727
Gas and electricity services	12 029
Telecommunication services	8 597
Pre-packaged food and detergents	2 528

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that sell their products and/or services in other EU Member States: 9 in the sector for large household appliances; 19 in the sector for electronic and ICT products; 8 in the sector for gas and electricity services; 9 in the sector for telecommunication services; and 23 in the sector for pre-packaged food and detergents. Notes: These estimates are based on median values, irrespective of size class. The median is the value separating the higher half of the sample from the lower half. Interviewed businesses were asked to provide amounts incurred when entering another EU country's market for the first time, or average amounts per country entered in cases where they had entered several other EU countries' markets.

As indicated in the table above, results suggest that the median one-off costs for compliance checks and adjusting business practices when entering another EU country's market are highest in the sector for gas and electricity services, with median costs of EUR 12 029 per business that sells its services to consumers in other EU countries, followed by the sector for telecommunication services, with median costs of EUR 8 597 per business that sells its services to consumers in other EU countries. Total one-off costs per business are similar in the sectors for pre-packaged food and detergents and large household appliances, with median costs of EUR 2 528 and EUR 2 310, respectively, and are lowest in the sector for electronic and ICT products, with median costs of EUR 1 727. Again, based on the distribution of results and as mentioned above regarding the various cost items, there is large variation in one-off costs per business in the network services sectors (see interquartile ranges in Annex II).

3.2.1.2. Costs incurred by businesses on a regular basis

Next, we present results regarding costs of compliance with national legal requirements with respect to advertising, marketing and standard contract terms, i.e. due to regular compliance checks conducted by businesses. Results are presented below on an annual basis. These annual costs cannot be directly compared to the one-off costs incurred when entering another EU country's market presented above, as the annual regular costs are calculated on the basis of a different (larger) sample and cover the regular costs for all EU countries targeted by the business. The analysis below is conducted using a base of 184 interviewed businesses in the selected sectors that indicated that they undertake compliance checks regularly.

In the tables below, we present annual costs per business by cost item, i.e. *labour costs for professional staff*, *labour costs for administrative or sales staff time*, and

other costs (e.g. for legal advice), for businesses that undertake compliance checks regularly.

First, the table below shows annual labour costs for professional staff per business due to regular compliance checks. The results are presented by size class as well as for the full sample of businesses that undertake compliance checks regularly (i.e. irrespective of size class).

Table 19: Annual labour costs for professional staff incurred for checking that the company's advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks – based on median values, in Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Micro and small enterprises	Medium-sized and large enterprises	Full sample
Large household appliances	158	1 262	868	50 160	221	1 893	946
Electronic and ICT products	394	2 445	1 420	6 467	1 041	2 997	1 577
Gas and electricity services	1 104	2 839	4 732	3 628	1 735	3 628	2 997
Telecommunication services	473	473	30 285	8 518	568	12 619	4 101
Pre-packaged food and detergents	79	1 743	1 893	2 697	252	1 893	946

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: These estimates are based on median values. The median is the value separating the higher half of the sample from the lower half. Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered.

When looking at the results across size classes in the table above, results show that in all sectors, micro enterprises incur the lowest levels of labour costs for professional staff, ranging from a median of EUR 79 per micro business in the sector for pre-packaged food and detergent to a median of EUR 1 104 per micro business in the sector for gas and electricity services. In all sectors, either medium-sized or large enterprises incur the largest levels of labour costs for professional staff.

Overall, the results presented in the table above show that there is significant variation in annual labour costs for professional staff time across and within sectors.

Next, the table below shows annual labour costs for administrative or sales staff per business due to regular compliance checks.

Table 20: Annual labour costs for administrative or sales staff incurred for checking that the company's advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks – based on median values, in Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Micro and small enterprises	Medium-sized and large enterprises	Full sample
Large household appliances	0	620	426	1 706	0	698	357
Electronic and ICT products	310	310	931	1 939	310	1 008	620
Gas and electricity services	465	1 241	2 404	4 032	931	3 102	2 171
Telecommunication services	0	159	13 028	2 481	0	2 869	465
Pre-packaged food and detergents	39	310	1 473	310	78	388	310

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: These estimates are based on median values. The median is the value separating the higher half of the sample from the lower half. Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered.

As indicated in the table above, micro enterprises incur the lowest costs in all sectors, with median annual labour costs for administrative or sales staff varying between EUR 0 per micro business in the sectors for large household appliances and telecommunication services and EUR 465 per micro business in the sector for gas and electricity services. In the sectors for large household appliances, electronic and ICT products, and gas and electricity services, the median annual labour costs for administrative or sales staff increase with company size, reaching up to EUR 4 032 per large business in the gas and electricity sector. This pattern of costs increasing with size is less clear in the other two sectors.

In nearly all sectors and size classes, with the exception of large enterprises in the gas and electricity services sector, the annual labour costs for administrative or sales staff are lower than the annual labour costs for professional staff. This is reflected in the number of working days reported by the interviewed businesses for these two staff categories.[42]

Lastly, the table below shows annual other costs (e.g. costs for legal advice) per business due to regular compliance checks.

[42] For more details, please refer to the results of the business interviews presented in the previous section.

Table 21: Annual other costs (e.g. costs for legal advice) incurred for checking that the company's advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks – based on median values, in Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Micro and small enterprises	Medium-sized and large enterprises	Full sample
Large household appliances*	36	343	406	2 940	126	1 363	516
Electronic and ICT products	160	786	1 219	7 692	172	2 925	735
Gas and electricity services	2 270	3 886	4 531	12 522	4 400	18 532	5 420
Telecommunication services	993	6 248	6 200	29 647	2 917	15 390	10 400
Pre-packaged food and detergents	0	670	2 414	11 857	211	5 619	1 833

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: These estimates are based on median values. The median is the value separating the higher half of the sample from the lower half. Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered; In the categories (i.e. a given sector and size class) where less than three answers were provided for other costs, the value was estimated. We calculated the estimated value using the value obtained for the total sample in the given sector weighted by size class. (*) In the sector for large household appliances, less than three answers were provided for other costs in the total sample for that sector, so we calculated values for other costs on the basis of the values reported by businesses in the sector for electronic and ICT products, as these two sectors are durable goods sectors. (**) In the sector for pre-packaged food and detergents, the micro businesses interviewed that check for compliance indicated that they do not incur other costs.

As indicated in the table above, results show significant variation of annual other costs across and within sectors. For all size classes, however, the median annual other costs per business are lower in the three selected goods sectors than in the two selected services sectors. In the three goods sectors, median annual other costs vary from between EUR 0 and EUR 160 per micro business to between EUR 2 940 to EUR 11 857 per large business while in the two selected services sectors, they vary from between EUR 993 and EUR 2 270 per micro business to between EUR 12 522 and EUR 29 647 per large business.

A clear pattern can be observed across sectors in the breakdown by company size: the larger the company, the larger the other costs. Large companies reported significantly higher other costs, ranging from a median of EUR 2 940 per business in the sector for large household appliances to a median of EUR 29 647 per business in the sector for telecommunication services.

The table below presents the total annual costs, i.e. the sum of the three cost items presented in the tables above, for compliance checks and adjusting business practices incurred by businesses that check for compliance on a regular basis, by sector and by size class.

Table 22: Annual total costs incurred for checking that the company's advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks –based on median values, in Euro by size class of enterprises

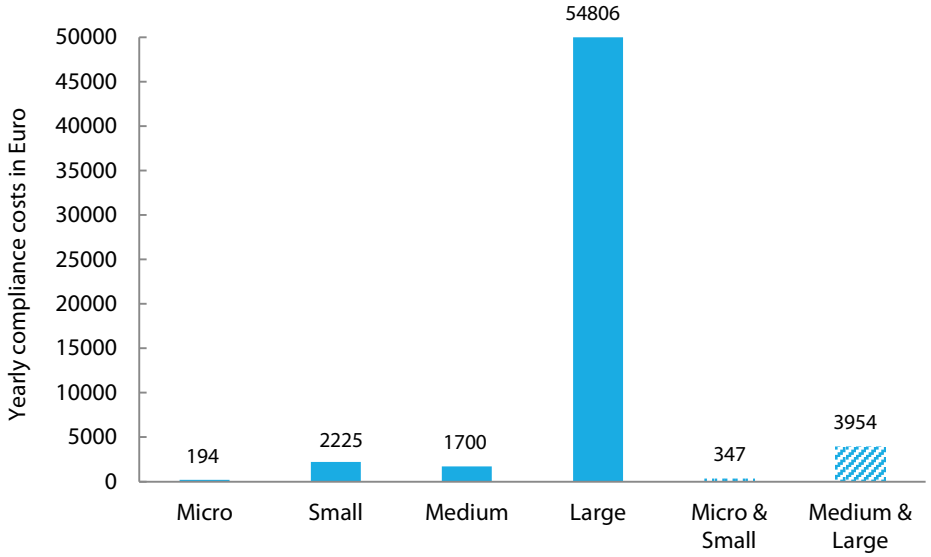
Sector/Size class	Micro	Small	Medium-sized	Large	Micro and small enterprises	Medium-sized and large enterprises	Full sample
Large household appliances	194	2 225	1 700	54 806	347	3 954	1 819
Electronic and ICT products	864	3 541	3 569	16 098	1 523	6 930	2 933
Gas and electricity services	3 840	7 966	11 667	20 182	7 066	25 261	10 588
Telecommunication services	1 466	6 880	49 513	40 646	3 485	30 878	14 966
Pre-packaged food and detergents	118	2 723	5 780	14 865	541	7 899	3 090

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: These estimates are based on median values. The median is the value separating the higher half of the sample from the lower half. Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered.

As indicated in the table above, results show that median annual costs increase with size in nearly all sectors, with the exception of small deviations in the sectors for pre-packaged food and detergents and telecommunication services. Similarly to the pattern for the one-off costs presented above in Section 3.2.1.1, regular costs are substantially higher in the two network services sectors. However, the results show less marked differences between sectors for large enterprises. The results are described by sector and size class below.

In the sector for large household appliances, the median annual total costs per business range from EUR 194 for micro businesses to an overall high of EUR 54 806 for large businesses. The very high costs for large enterprises in this sector may be due to the fact that, in this category, only very large companies were interviewed, however the data collected does not allow for further analysis within this category. Looking at the additional groupings presented on the figure however, the median annual total costs per business amount to EUR 3 954 for medium-sized and large enterprises (considered together in one subsample). The figure below provides a graphical overview of these results for businesses in the large household appliance sector.

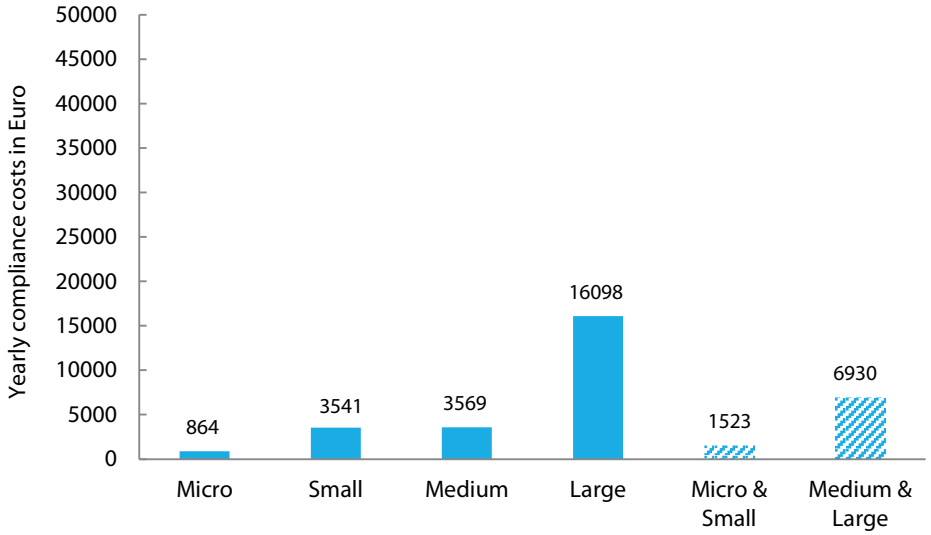
Figure 23: Median annual total costs for businesses undertaking compliance checks, per business, in Euro by size class – Large household appliances



Source: Civic Consulting, based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis in the sector for large household appliances, N=19.

In the sector for electronic and ICT products the median annual total costs per business range from EUR 864 for micro businesses to EUR 16 098 for large businesses. The figure below shows results for businesses in the electronic and ICT products sector.

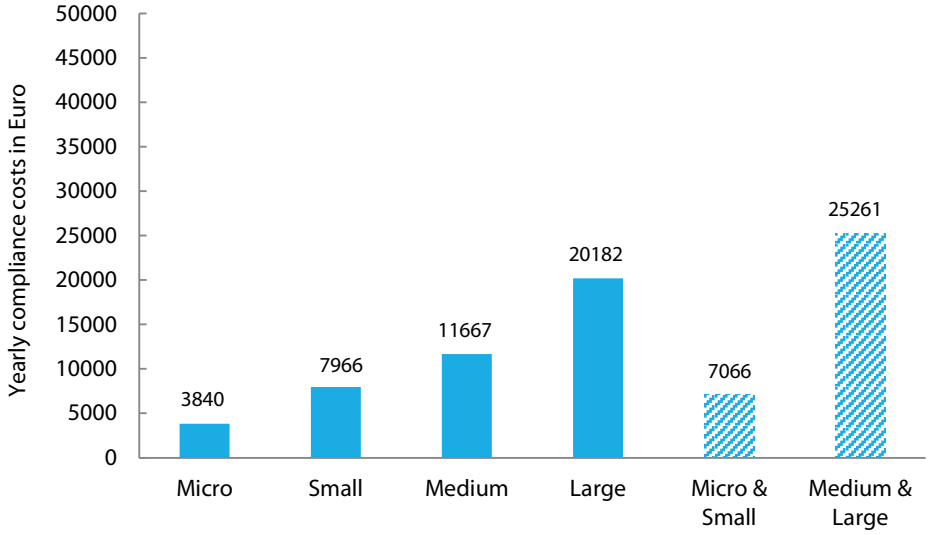
Figure 24: Median annual total costs for businesses undertaking compliance checks, per business, in Euro by size class – Electronic and ICT products



Source: Civic Consulting, based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis in the sector for electronic and ICT products, N=40.

In the sector for the gas and electricity services, the median annual total costs per business range from EUR 3 840 for micro businesses to EUR 20 182 for large businesses. The figure below shows provides a graphical overview of these results.

Figure 25: Median annual total costs for businesses undertaking compliance checks, per business, in Euro by size class – Gas and electricity services

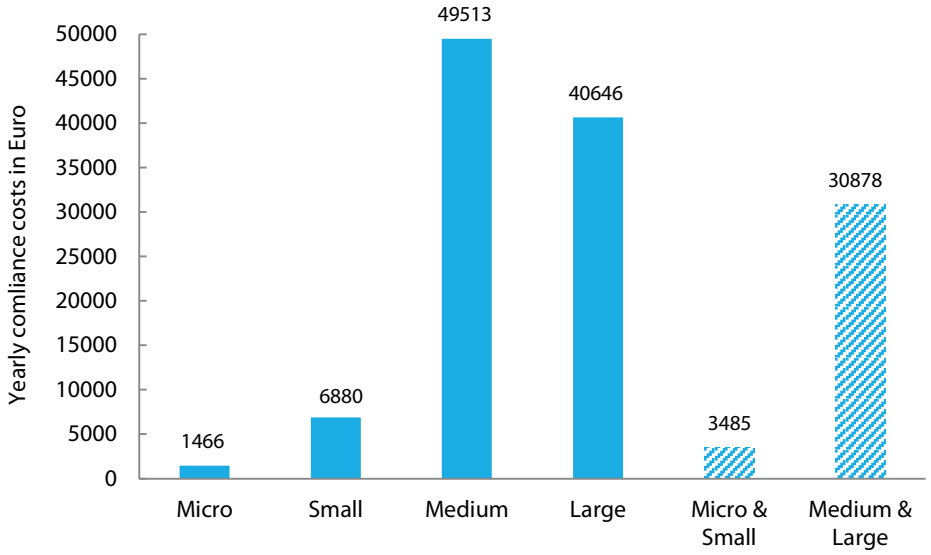


Source: Civic Consulting, based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis in the sector for gas and electricity services, N=51. Note: Of the medium-sized businesses in this sector, only one provided quantitative data for other costs. As indicated previously, in the categories where less than three answers were provided for other costs, the value was estimated. A conservative estimate of other costs was thus used in the calculation of total costs per business for medium-sized enterprises, based on the value obtained for the total

sample in this sector weighted by size class, i.e. not taking into account the one (high) input provided. No estimation was however needed for the calculation for the grouping medium and large enterprises, for which the base size was larger than three and included the one (high) input from the medium-sized business. As a result, the total estimate for medium and large enterprises is larger than the separate estimates for medium-sized businesses and for large businesses.

In the sector for telecommunication services, the median annual total costs per business range from EUR 1 466 for micro businesses to EUR 49 513 for medium-sized businesses and EUR 40 646 for large businesses. In this sector, the costs indicated by the medium-sized enterprises during the interviews were very similar to the numbers provided by large enterprises in this sector, however, the number of interviews and in particular the number of businesses that provided quantitative data regarding their costs (half of the businesses that provided quantitative data were large businesses) do not allow for further conclusions to be drawn on the differences in costs between these two categories. When looking at the sub-sample made of medium-sized and large enterprises, the median annual total costs per business are estimated at EUR 30 878. The distribution by size is illustrated by the figure below.

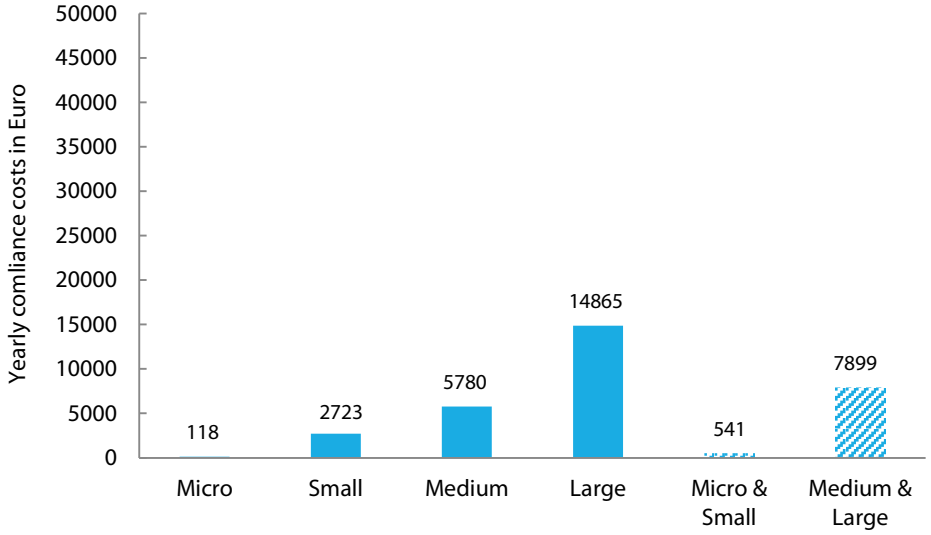
Figure 26: Median annual total costs for businesses undertaking compliance checks, per business, in Euro by size class – Telecommunication services



Source: Civic Consulting, based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis in the sector for telecommunication services, N=35.

In the sector for pre-packaged food and detergents, the median annual total costs per business range from an overall low of EUR 118 for micro businesses to EUR 14 865 for large businesses. The figure below shows results for businesses in the pre-packaged food and detergents sector.

Figure 27: Median annual total costs for businesses undertaking compliance checks, per business, in Euro by size class – Pre-packaged food and detergents



Source: Civic Consulting, based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis in the sector for pre-packaged food and detergents, N=39.

3.2.2. Costs at the EU level

Subsequently, the results obtained at the business level for the selected sectors are used to extrapolate results to the EU level. As detailed above in the methodology section, we extrapolated the costs incurred on a regular basis for checking that the company's advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed to the EU level, in order to obtain an estimate of regular compliance costs for businesses in the EU for the five sectors subject to analysis.

Having calculated the median annual costs per business per sector, we multiplied these costs by the number of businesses in the sector that check for compliance on a regular basis (for more details on the methodology for extrapolation, refer to Section 3.1.2). This was done first separately by size class (i.e. for micro, small, medium-sized and large enterprises), and the four intermediate EU-level estimates were then summed up. The results of the assessment at the company level presented in the previous table show that annual costs per business for the large number of micro enterprises were found to be lower than costs per business of any size (i.e. based on the full sample). Using the costs per business irrespective of size class and the number of businesses (of all size classes) concerned in the sector would have resulted in overestimations. The approach used for this study relies on more granular results and thus ensures that the resulting estimates provide a realistic picture which reflects that companies of different sizes employ a different amount of resources for compliance checks.

The table below presents results of the extrapolation by sector and size class. The 'total' column provides total annual costs incurred by all businesses in the EU, calculated by summing up the total amounts for the four size classes in each sector. The extrapolation to the EU level is conducted using median values for costs per business to derive a best estimate as well as using the first and the third quartiles in order to present a range (see ranges in Annex II of this part).

Table 23: Total annual costs incurred by businesses in the EU for checking that their advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed – best estimates in millions of Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Total (sum)
Large household appliances	5.1	2.9	0.2	1.6	9.8
Electronic and ICT products	45.4	9.0	1.5	0.8	56.7
Gas and electricity services*	n.a.	n.a.	n.a.	n.a.	11.3
Telecommunication services	22.8	8.9	13.5	4.7	49.8
Pre-packaged food and detergents	53.8	65.3	19.3	10.9	149.4

Source: Civic Consulting based on business interviews and Eurostat data on annual detailed enterprise statistics and distributive trades/services by employment size class (NACE Rev. 2). Notes: In the sector for telecommunication services, the share of businesses that sell to consumers was estimated, as the available Eurostat data on the number of businesses for the relevant NACE 2 category does not allow for distinguishing between businesses that sell to consumers and businesses that are only involved in business-to-business transactions. Based on information provided in the Broadband Internet Access Cost (BIAC) study 2016 (available at https://ec.europa.eu/digital-single-market/en/news/broadband-internet-access-cost-biac-study) and Eurostat data on annual detailed enterprise statistics for services (category wired telecommunications activities), we used an estimate of 41%; (*) In the sector for gas and electricity services, data on the number of businesses by size class is not available. As such, business costs could only be extrapolated to the EU level on the basis of the whole sample, i.e. by multiplying the median annual costs per business in the sample by the total number of businesses that check for compliance in this sector. In the sector for gas and electricity services, the share of businesses that sell to consumers was estimated, as the available Eurostat data on the number of businesses for the relevant NACE 2 category does not allow for distinguishing between businesses that sell to consumers and businesses that are only involved in business-to-business transactions. Instead, the CEER National Indicators Database (2016) was used, in particular the underlying data of the ACER electricity and gas retail markets volume for 2015.

Results based on the business interviews conducted in this study show that the best estimates of total annual costs incurred by businesses in the EU28 for checking that their advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed are as follows:[43]

- Pre-packaged food and detergents: EUR 149 million;
- Electronic and ICT products: EUR 57 million;
- Telecommunication services: EUR 50 million;
- Gas and electricity services: EUR 11 million;
- Large household appliances: EUR 10 million.

In the sector for gas and electricity services, while the costs at the business level were high compared to the costs in the goods markets assessed, the small number of suppliers compared to other sectors leads to lower EU level estimates.

In total, the annual costs incurred by businesses in the EU28 for checking that their advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed amount to EUR 278 million in the five selected sectors, which can be compared to an approximate turnover of EUR 1 180 billion in 2013 in these five sectors.[44] In other words, these costs amount to approximately 0.024 percent of turnover (best estimate).[45]

In this final step of the extrapolation, the number of businesses per sector and size class has a strong influence on the results. For instance, while lower levels of costs were measured for micro enterprises, the large number of such enterprises in the selected sectors results in high total amounts of business costs for this size class compared to the other size classes. This is illustrated in the table above, for example in the sector for electronic and ICT products where the best estimate of total annual costs incurred by micro businesses in the EU28 is EUR 45 million compared to between EUR 0.8 million for large businesses and EUR 9 million for small businesses.

These compliance costs are incurred on a regular basis by businesses and include costs related to checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation and adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms). They do not, however, include costs that may result from non-compliance (e.g. court costs). It is also worth noting that these estimates at EU level do not consider businesses that do not undertake compliance checks, which represent 19% of interviewed businesses, as the present assessment focuses on actual compliance costs incurred by businesses, and as reported by businesses. Furthermore, the ranges presented in Annex II are based on the interquartile ranges,

[43] The best estimates are based on median values calculated by size class on the basis on the business interviews. Ranges of estimates based on the first and third quartiles are presented in Annex II of this part.

[44] Turnover is a common measure of comparison and was used in this study on the basis of data availability (Eurostat) to put the results into perspective. The comparison at the sector level is not straightforward due to data limitations. In some cases, Eurostat data on turnover is available only at NACE 2 group level, while we have used more granular data, i.e. at class level, for the extrapolation. Data limitations about turnover by size class at the EU level also do not allow for the comparison of the assessed total compliance costs and turnover at size class level.

[45] For an estimated number of 962 261 businesses in the five selected sectors.

which do not reflect the very low or very high values reported by some interviewed businesses.[46]

Lastly, we multiplied the total annual costs presented above, using the best estimate based on the median values, by the average shares of these costs by legal requirement, as reported by businesses and presented in the results of the business interviews.[47] We thus obtained separate estimates of the annual compliance costs incurred by businesses in the EU separately for standard contract terms in consumer contracts, advertising and marketing targeted at consumers, and advertising and marketing targeted at businesses. The results are presented in the table below, based on median values.

Table 24: Annual costs for checking that advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed by legal requirement in the EU, best estimates in millions of Euro

Sector	Costs related to standard contract terms in consumer contracts	Costs related to advertising and marketing targeted at consumers	Costs related to advertising and marketing targeted at businesses
Large household appliances	5.2	4.2	0.4
Electronic and ICT products	23.8	28.4	5.1
Gas and electricity services*	6.0	4.2	1.1
Telecommunication services	25.4	17.9	6.5
Pre-packaged food and detergents	47.8	71.7	29.9
Total (5 sectors)	108.1	126.3	43.0
Share of total by legal requirement **	39%	46%	15%

Source: Civic Consulting based on business interviews. Note: (*) In the sector for gas and electricity services, data on the number of businesses by size class is not available therefore, as indicated in the previous table, business costs could only be extrapolated to the EU level on the basis of the whole sample, i.e. by multiplying the median annual costs per business in the sample by the total number of businesses that check for compliance in this sector; (**) These shares are calculated on the basis of the median values in the 'total' row, which are the sum of the five sector-specific values in the rows above.

As indicated in the table above, in the five selected sectors, results suggest that total business costs related to advertising and marketing targeted at consumers amount to EUR 126 million and represent 46% of the annual costs incurred by businesses in these sectors in the EU for checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation and adjusting business practices as a result. In the five selected sectors, costs related to

[46] This is in line with the recommendations in the Better Regulation Toolbox to focus on 'normally-efficient' businesses.

[47] Please refer to the table on Average annual costs for checking that advertising/marketing and standard contract terms still comply with national legislation and adjusting business practices if needed by legal requirement, by sector and size class of enterprises in the previous section on the results of the business interviews.

standard contract terms in consumer contracts amount to EUR 108 million and represent on average 39% of these costs. In contrast, total business costs related to advertising and marketing targeted at businesses in the EU are lowest, at EUR 43 million (or 15% of these costs).

As the interviews covered the costs and benefits due to the combined effects of national legislation and EU directives in these areas, including also sectoral legislation (which is especially relevant in the two network services sectors covered), the costs above cannot be directly linked to specific directives.

4. Results of the panel data analysis

In this section we present the results of the panel data analysis that we conducted to assess the potential causal effects of EU consumer law on the key outcome variables of consumer trust and cross-border online purchases. We first discuss the objectives, the data set and the empirical approach followed in the analysis before presenting the results of the panel regressions for consumer trust and cross-border online purchases. The section concludes with a discussion of general results and limitations of the analysis, as well as potential policy implications of the findings.

4.1. Rationale

Panel data regression models are often used in policy evaluation to determine the quantitative impact of an independent variable of choice (the policy reform: in this case, the implementation of the UCPD) on an outcome (dependent) variable of choice, based on historical cross-sectional data from both before and after the implementation of the policy.

We conducted a panel data analysis in this study in order to obtain a more precise judgement of the *causal impacts* of the directives on specific outcome variables of interest. The panel analysis allows us to analyse whether identified changes towards achieving the objectives of the Directive can be reasonably attributed to the Directive itself rather than any other factors. Such an analysis also contributes to the assessment of EU added value of the Directive.

4.2. Methodology

The following sections outline the choice of the scope of the analysis, the data set (including descriptive statistics and notable characteristics of the chosen outcome variables), and discuss our empirical approach to constructing the regression models, as well as the sensitivity testing that was undertaken to test our model specifications. The results are then presented and discussed by outcome variable. We conclude by discussing the limitations and then the overall results of the panel data analysis, along with their policy implications.

4.2.1. Scope

The UCPD was chosen for our analysis as the Directive presents several characteristics that would make it relatively more amenable to assessment via a panel data regression model:

- Its comparatively more recent adoption in 2005 means that, unlike for many of the older directives covered by the Fitness Check, good quality cross-country time series data can be obtained for nearly all Member States;
- The full-harmonisation character of the Directive (except in the area of financial services and immovable property) entails that a more accurate estimation of the sole impacts of the Directive could be possible;
- While the deadline for transposition of the UCPD was in 2007, transposition was delayed in several Member States to 2008, 2009 and 2010. These differences in transposition dates provide a degree of variation which may also allow for a more accurate estimation of the impacts of the Directive.

As the main focus of the panel data analysis is on the causal effects of the UCPD, we have made use of data and regression models that can be used in this respect.

4.2.2. Description of the data set

Our dataset has mainly been collected from Eurobarometer and Eurostat. Data is available for the years between 2006 and 2014 (excluding 2007 and 2013, where no relevant Eurobarometer data was collected) for all 28 EU Member States.[48]

4.2.2.1. Outcome variables

In order to obtain a meaningful measure of progress toward the objectives of the Directives covered by this study, i.e. to establish a high level of consumer protection and to eliminate obstacles to the functioning of the internal market, consumer trust and cross-border online purchases were selected as the outcome variables.

Consumer trust and cross-border online purchases by consumers were considered to be particularly appropriate as outcome variables for the panel data analysis for the following reasons:

- Consumer trust and cross-border online purchases by consumers may be considered acceptable proxy measures of perceived consumer protection level and internal market integration, respectively;
- Consumer trust and cross-border online purchases by consumers are expected to have a direct and tangible link to changes in EU consumer law, making these variables more appropriate measures to assess the specific impact of the UCPD than, for example, broader macroeconomic measures such as GDP or consumption per capita, where the effect of the UCPD would be difficult to disentangle from other macroeconomic factors;
- Furthermore, regular and comparable data is available for these variables in almost all Member States over a sufficient period of time (2006-2014) to measure potential effects of the UCPD.

The following table provides further detail on the two selected outcome variables.

Table 25: Outcome variables for the panel data analysis

Variable	Measure	Source
Consumer trust *(Cons_trust)*	Percentage of consumers who either 'agree' or 'strongly agree' that 'In [our country], in general, retailers and service providers respect your rights as a consumer.'	Special Eurobarometers 252 and 298, Flash Eurobarometers 282, 299, 332, 358, 397
Cross-border online purchases *(XBorder)*	Percentage of consumers who reported making at least one online cross-border purchase from a seller located in another EU country within the last 12 months.	Special Eurobarometers 252 and 298, Flash Eurobarometers 282, 299, 332, 358, 397

Source: Civic Consulting. Data sources as indicated in the table above.

The following table provides a brief overview of the key descriptive statistics for each of the two outcome variables.

[48] Note, however, that due to the later accession dates of Romania, Bulgaria and Croatia, Eurobarometer data for these Member States is only available from 2008 (for Romania and Bulgaria) or 2012 (for Croatia).

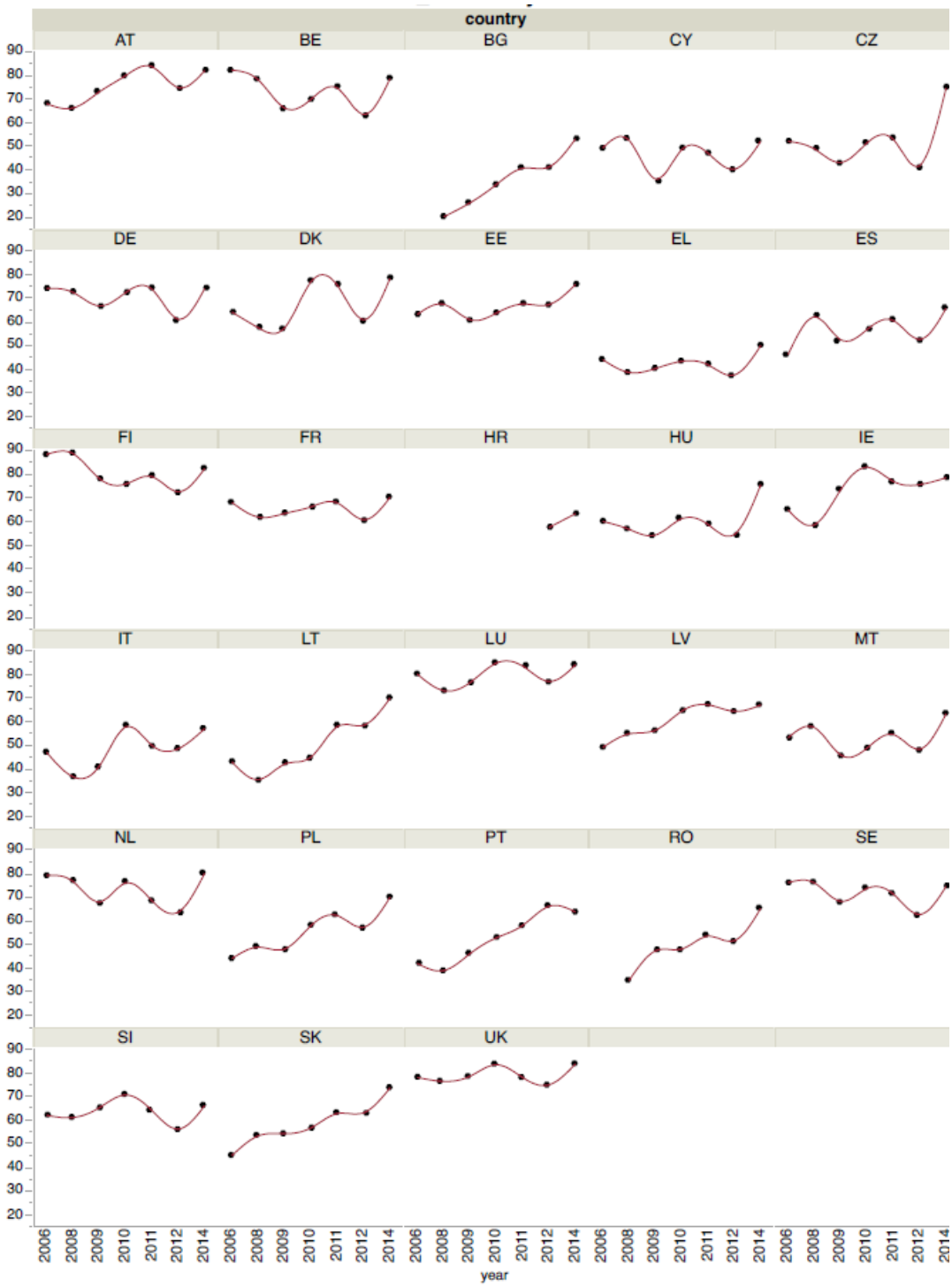
Table 26: Descriptive statistics of the outcome variables

Variable	Number of Observations	Mean	Standard Deviation	Minimum Value	Maximum Value
Consumer trust	189	61.661	13.782	20	89
Cross-border online purchases	189	14.063	11.441	1	51

Source: Civic Consulting, based on Eurobarometer data.

The following figure provides an overview of the development of consumer trust and for each Member State during the time period of the analysis.

Figure 28: Consumer trust by Member State (% of consumers agreeing that in general, retailers and service providers in their country respect their rights as a consumer), 2006-2014, EU28.

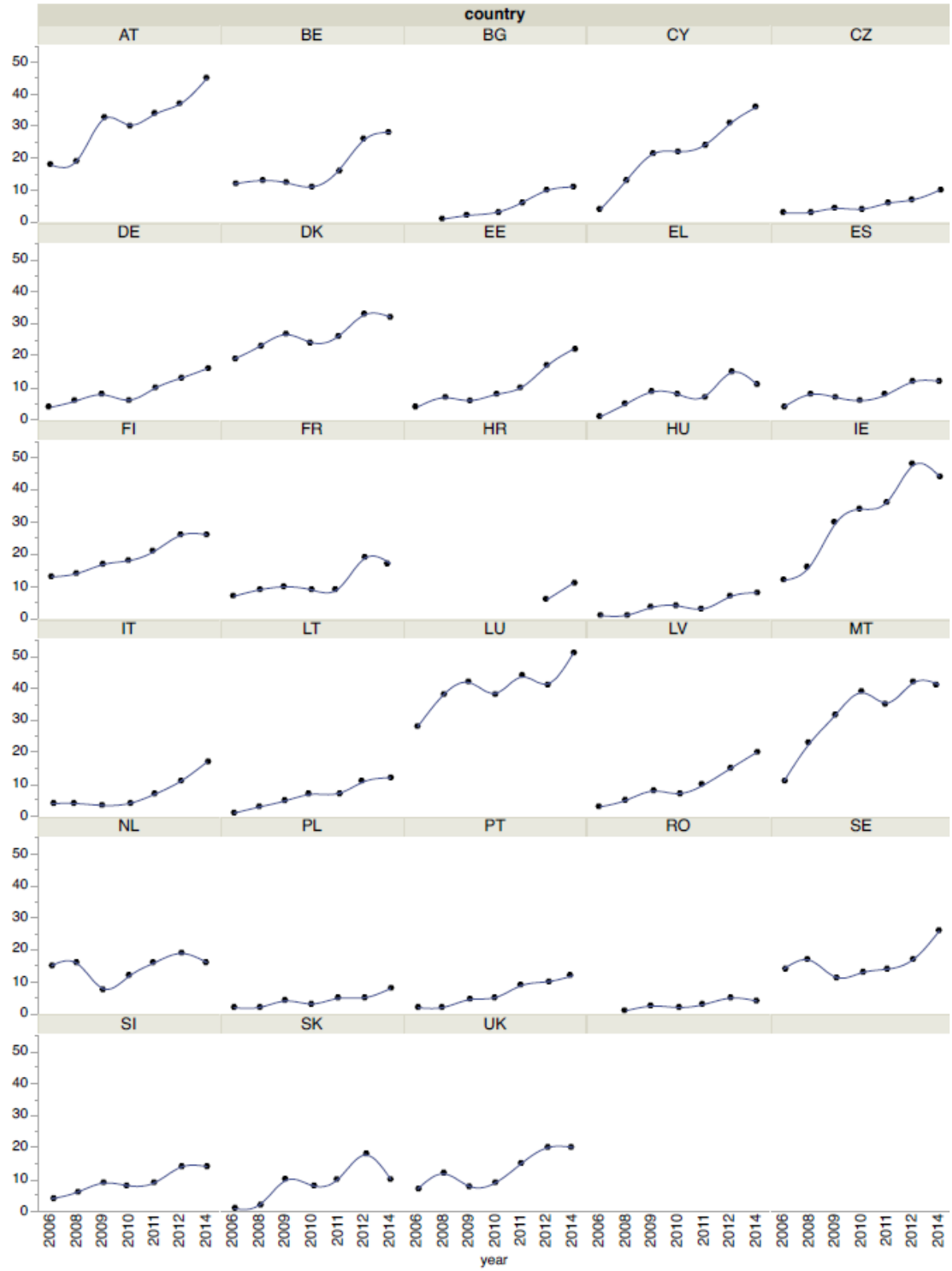


Source: Civic Consulting. Data retrieved from Special Eurobarometers 252, 298, and Flash Eurobarometers 282, 299, 332, 358, 397.

As shown in the figure above, the level of consumer trust increased at the national level for many Member States, particularly for those that joined the EU after 2004, as well as increasing on average across the EU between 2006 and 2014.

The following figure provides an overview of the development of consumer trust and for each Member State during the time period of the analysis.

Figure 29: Cross border online purchases by Member State (% of consumers who indicated making at least one online cross-border purchase from a seller located in another EU country within the last 12 months), 2006-2014, EU28.



Source: Civic Consulting. Data retrieved from Special Eurobarometers 252, 298, and Flash Eurobarometers 282, 299, 332, 358, 397.

As shown in the figure above, the level of cross-border online purchases have increased at the national level for most Member States and on average across the EU between 2006 and 2014. The regressions of consumer trust and cross-border online purchases on a set of independent variables are intended to isolate how much of this effect can be directly attributed to the UCPD transposition, and to other factors.

4.2.2.2. Independent variables

A broad dataset of macroeconomic variables for all Member States over the relevant time period was collected from Eurobarometers and Eurostat in order to control for factors that would not be captured by the fixed effects, i.e. factors varying over both time and countries that would be expected to influence the selected outcome variables.

The following table describes the variables that were included in the panel data analysis.

Table 27: Independent variables included in the panel data analysis

Variable	Definition	Source
UCPD in place *(UCPD_inplace)*	Dummy variable equal to 1 for each full year that the UCPD was in force and 0 otherwise	Variable constructed by Civic based on UCPD implementation dates
Consumer trust* *(Cons_trust)*	Percentage of consumers who either 'agree' or 'strongly agree' that 'In [our country], in general, retailers and service providers respect your rights as a consumer.'	Special Eurobarometers 252 and 298, Flash Eurobarometers 282, 299, 332, 358, 397
Internet access *(Internet)*	Percentage of households with internet access at home	Eurostat, dataset code tin00088
Consumption per capita *(ConsumpPC)*	Per capita final consumption expenditure of households, in EUR '000 (chain linked volumes, base year 2010)	Eurostat, dataset code nama_10_pc
Unemployment *(Unempl)*	Unemployment rate as a percentage of the active population	Eurostat, dataset code tipsun20
Finance *(Finance)*	Consolidated private sector credit flow as % of GDP	Eurostat, dataset code tipspc20
Interest rate *(Interest)*	Annual averages of 3-month interest rate (EURIBOR for Eurozone, local averages for non-Eurozone)	Eurostat, dataset code Irt_st_m
Incident *(Incident)*	Dummy variable equal to 1 if a major incident that could affect consumer trust occurred at the national level in a given year and 0 otherwise	Variable constructed by Civic based on information provided by country legal experts
New Member** State *(NMS)*	Dummy variable equal to 1 if a Member State joined the EU in 2004 or later and 0 otherwise	Variable constructed by Civic based on Member State accession dates
Year *(Year)*	Individual dummy variables for each year of the analysis (2006 to 2014)	Variable constructed by Civic
Country** *(Country)*	Individual dummy variables for each Member State included in the analysis	Variable constructed by Civic

Source: Civic Consulting. Data sources as indicated in the table above. Notes: *Although consumer trust is one of the outcome variables, the same data series was also included as an independent variable in the panel regressions for cross-border online purchases. **These variables were only included in the Least-Squared Dummy Variable (LSDV) model.

A number of other variables including GDP per capita, industrial production, and enterprise turnover from ecommerce were collected and extensively tested in different model specifications but were ultimately not selected for the final regression models due to either low explanatory power or strong correlation with other variables included in the regression (for example, between consumption per capita and GDP per capita).[49] For more detail, see the discussion of the sensitivity testing in section 4.2.3.5.

[49] Note that national-level measures which are more static over the given time period, such as gender balance and working age population, were not included in the regression model. These effects are already controlled for through the use of country fixed effects.

The following table provides a brief overview of the key descriptive statistics for the independent variables used in our empirical analysis.

Table 28: Descriptive statistics of the outcome variables

Variable	Number of Observations	Mean[50]	Standard Deviation	Minimum Value	Maximum Value
UCPD in place	196	0.7908	0.4078	0	1
Consumer trust*	189	61.661	13.782	20	89
Internet access	195	65.118	17.444	14	96
Consumption p.c.	196	12.274	5.8722	2.8	25.1
Unemployment	196	9.1934	4.2643	3.4	26.5
Finance	196	5.4031	10.489	-36.2	50.8
Interest rate	182	2.4538	2.2980	0.2	12.3
Incident	196	0.2041	0.4041	0	1
New Member State**	196	0.4643	0.5000	0	1

Source: Civic Consulting, based on data from Eurobarometers and Eurostat. Notes: *Although consumer trust is one of the outcome variables, the same data series was also included as an independent variable in the panel regressions for cross-border online purchases. **This variable was only included in the Least-Squared Dummy Variable (LSDV) model.

4.2.3. Empirical approach

Our empirical approach to the panel analysis utilizes the panel structure of our dataset. Three separate but related panel regression techniques were chosen to model the potential impact of the UCPD on consumer trust and cross-border purchases:

- The two-way fixed effects model;
- The least-squared dummy variables (LSDV) model;
- The random effects model.

In addition, a more distinct fourth model – a fixed-effects logistic regression – was conducted to supplement the results of the first three models. While the first three models are reported together by outcome variable in the results section due to the strong similarities between these three models, the results of the logistic regression are presented separately.

A brief summary of each of the models and a discussion of the model specification and testing process follows in the next subsections.

4.2.3.1. The two-way fixed effects model

The *two-way fixed effects model* allows us to use each Member State's 'baseline' level as its own control to filter out the influence of unobserved, time-invariant differences between countries (for example, the overall composition of the population, to the extent that this remains static over the relevant time period). Time fixed effects are

[50] Note that for dummy variables, the mean represents the proportion of observations in which the variable takes on a value of 1. For example, the mean of 0.2041 for the incident variable indicates that approximately 20% of the observations in the data set recorded a major incident that could affect consumer trust at the national level.

also added to the model in order to control for factors that vary over time but not between Member States (for example, technological progress).[51]

The two-way fixed effects model was estimated separately for each outcome variable. These regressions took the following general form:

- For the consumer trust model:

$$Cons_Trust_{it} = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \beta_8 Year_{it} + \varepsilon_{it}$$

- For the cross-border online purchases model:[52]

$$Ln(XBorder)_{it} = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \beta_8 Cons_Trust_{it} + \beta_8 Year_{it} + \varepsilon_{it}$$

Where:

- The variables are as defined in Tables 25 and 27;
- *i* represents the country of the observation;
- *t* represents the year;
- $Year_{it}$ represents the set of time dummy variables; and
- ε_{it} represents the idiosyncratic error term.

4.2.3.2. The least-squared dummy variables (LSDV) model

The *least squared dummy variables (LSDV) model* is a variation of the fixed effects model. However, while the fixed effects model discussed above uses a 'within-estimator' to calculate the regression coefficients by demeaning the variables by using time averages,[53] the LSDV model instead introduces country and time dummy variables for each Member State and for each year of the analysis.[54]

Although the fixed effects model and the LSDV model are in principle expected to provide the same estimates for the regression coefficients, LSDV is considered to be a more appropriate method for estimating significant effects when there is low variation

[51] Factors that vary across both countries *and* time periods – for example, the financial crisis, to the extent that the impact was felt differently across Member States – are not captured in the fixed effects model unless explicitly controlled for through the inclusion of independent variables.

[52] As the data for cross-border online purchases exhibited a strong positive skew, a log transformation was used to make the data conform to a more normal distribution. This has implications for the interpretation of the regression coefficients, which is discussed with the results in Section 4.3.

[53] 'Demeaning' refers to the process of calculating the mean across a given variable and then subtracting this mean from each individual value of that variable. In a fixed effects regression, when this is done for each panel unit (in this case, the Member States), this process allows us to filter out the 'fixed effect' for each entity, for example, the fixed effect of 'being Germany'. As a result, biases caused by so-called unobserved heterogeneity can be avoided.

[54] Dummy variables (also called indicator variables) are variables that are equal to 1 when a condition is met and 0 when the condition is not met. For example, a country dummy variable for Poland would appear in the data set as 1 when a particular observation is from Poland and 0 otherwise.

in the dependent and/or independent variables.[55] The results of the LSDV model have therefore been provided as a comparison.

The LSDV model was estimated separately for each outcome variable. These regressions took the following general form:

- For the consumer trust model:

$$Cons_Trust_{it} = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \beta_8 NMS_{it} + \beta_9 Country_{it} + \beta_{10} Year_{it} + \varepsilon_{it}$$

- For the cross-border online purchases model:

$$Ln(XBorder)_{it} = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \beta_8 Cons_Trust_{it} + \beta_8 NMS_{it} + \beta_9 Country_{it} + \beta_{10} Year_{it} + \varepsilon_{it}$$

Where:

- The variables are as defined in Tables 25 and 27;
- *i* represents the country of the observation;
- *t* represents the year of the observation;
- $Country_{it}$ represents the set of country dummy variables;
- $Year_{it}$ represents the set of time dummy variables; and
- ε_{it} represents the idiosyncratic error term.

Additionally, a dummy variable for Member States that joined the EU in 2004 or later, i.e. the New Member States (NMS_{it}), was added into the LSDV model to control for possible factors that may be common to these countries as a result of their recent accession to the EU.

4.2.3.3. The random effects model

The *random effects model* is similar to the fixed effects model, but assumes in contrast to the fixed effects model that the individual effects associated with each of the panel units (the Member States) are statistically independent from the independent variables.[56] The results from this set of regressions are provided here purely for comparison purposes.

The random effects regressions take the same general form as the fixed effects models, which are the following:

[55] See: Greene, William H. (2008): *Econometric Analysis*, 6th Ed., Pearson, Prentice Hall, Upper Saddle River: NJ (pp. 194-196) in addition to Hayashi, Fumio (2000): *Econometrics*, Princeton University Press, Princeton: NJ (pp. 330-331).

[56] An advantage of the random effects model in comparison to the fixed effects model is that variables that have no or little variation over time can be included in the model. Additionally, random effects may produce smaller standard errors than fixed effects when there is low variation in the panel units over time; however, in comparison to fixed effects, these coefficient estimates are more likely to be biased if key explanatory variables are not controlled for.

For the consumer trust model:

$$Cons_Trust_{it} = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \beta_8 Year_{it} + \varepsilon_{it}$$

For the cross-border online purchases model:

$$Ln(XBorder)_{it} = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \beta_8 Cons_Trust_{it} + \beta_8 Year_{it} + \varepsilon_{it}$$

Where:

- The variables are as defined in Tables 25 and 27;
- *i* represents the country of the observation;
- *t* represents the year of the observation;
- $Year_{it}$ represents the set of time dummy variables; and
- ε_{it} represents the idiosyncratic error term.

4.2.3.4. The fixed-effects logistic model

The final model is the *fixed-effects logistic model*. While the first three models described above are theoretically similar to each other, this fourth model represents a a theoretical departure, and is included to supplement the first three models and provide an alternative perspective for analysis.

For the fixed-effects logistic model, we have redefined each of the dependent variables and constructed a binary dummy variable that is equal to 1 if the outcome variable increased over the last year and 0 otherwise.[57]

This new dummy variable representing an increase in consumer trust or cross-border online purchases was then regressed on the same set of regressors as the previous three models using a logistic regression technique with fixed effects.

Rather than estimating the effect of the independent variables on the *level* of consumer trust or cross-border online purchases, this new model now estimates the effect of the independent variables on the *likelihood* that consumer trust or cross-border online purchases will be *higher than in the last year*.

The logistic model therefore presents a supplementary perspective, which considers that levels of consumer trust and cross-border online purchases may rise only gradually over time as consumers accumulate experience under the new legal framework. Estimating the effects of the UCPD on *changes* in consumer trust and cross-border online purchases may therefore allow for the identification of significant effects much earlier than for *levels* of consumer trust and cross-border online purchases, as the latter effect may take longer to become distinguishable in an econometric analysis. The general form of the fixed-effects logistic regression for each of the new outcome variables is the following:

[57] As an example: if consumer trust in Belgium increased between 2008 and 2009, the dummy variable would equal 1. If consumer trust did not increase or decreased, this dummy variable would be equal to 0.

For the consumer trust model:

$$logit(TrustINC_{it}) = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \varepsilon_{it}$$

For the cross-border online purchases model:

$$logit(XBorderINC)_{it} = \beta_0 + \beta_1 UCPD_inplace_{it} + \beta_2 Internet_{it} + \beta_3 ConsumpPC_{it} + \beta_4 Unempl_{it} + \beta_5 Finance_{it} + \beta_6 Interest_{it} + \beta_7 Incident_{it} + \beta_8 Cons_Trust_{it} + \varepsilon_{it}$$

Where:

- *TrustINC*$_{it}$ and *XBordertINC*$_{it}$ in the above models are the constructed dummy variables that equal 1 when the respective outcome variable has increased since the last time period and 0 otherwise;
- The independent variables are as defined in Tables 25 and 27;
- *i* represents the country of the observation;
- *t* represents the year of the observation; and
- ε_{it} represents the idiosyncratic error term.

Furthermore, in order to provide a more nuanced analysis of the fixed-effects logistic model, we conducted two rounds of regressions for each of the outcome variables: first with the full data set, i.e. the data set including all 28 Member States, and then again with a restricted data set which excluded seven Member States which our legal country experts had assessed as having a legal framework regarding unfair commercial practices nearly equivalent to the UCPD prior to the transposition of the UCPD.[58] Results are reported for the full and restricted data sets for both outcome variables.

4.2.3.5. Model specification and sensitivity testing

In order to ensure that the models chosen were well-designed and appropriate for the analysis, we undertook a rigorous round of sensitivity testing that included testing dozens of different model specifications and various restrictions on the data set.

In determining the precise specifications of the models presented here, we took two broad approaches to the sensitivity testing:

- *Additional independent variables* were extensively tested for inclusion in the model. This included testing for the inclusion of entirely new variables (such as enterprise turnover from ecommerce) and choosing between various alternatives or proxies (such as the possibility of using GDP per capita instead of consumption per capita);
- *Different functional forms and interaction effects* were tested as alternative model specifications. In particular, interaction effects between the UCPD dummy variable and a variable based on an assessment by our country legal experts of the pre-UCPD legal framework in each Member State were investigated, but ultimately discarded, as they had little explanatory power.

[58] The seven Member States excluded from the restricted data set on the basis of the country legal analysis were Austria, Germany, Denmark, Spain, Finland, France and the United Kingdom.

In addition to the tests performed to determine and affirm the model specifications, we also tested various restrictions on the data set itself to determine whether there was a meaningful difference e.g. when the regressions were carried out separately for the EU15 and the New Member States, or when excluding Member States that already had a comprehensive legal framework approximating the UCPD prior to its transposition. The latter restriction has indeed been included in the reporting on the results of the fixed-effects logistic regression.

4.3. Results of the analysis

This section presents the results of the various regressions performed as part of the panel data analysis.

As the first three models discussed above – the two-way fixed effects model, the LSDV model, and the random effects model – are similar in form, their results are presented together in the following two subsections by outcome variable. The results of the fixed-effects logistic regression, as a more distinct model, are presented separately.

4.3.1. Results of the panel regressions for consumer trust

The following table presents the results of the panel regressions regarding the *level of consumer trust*.

Table 29: Panel regressions – Consumer trust

	Fixed Effects	*LSDV*	*Random Effects*
UCPD in place	-2.384 (2.863)	-2.384 (2.785)	-2.456 (2.863)
Internet access	0.526** (0.153)	0.526*** (0.138)	0.608*** (0.103)
Consumption p.c.	0.908 (1.738)	0.908 (1.607)	0.202 (0.241)
Unemployment	0.112 (0.278)	0.112 (0.352)	-0.0352 (0.283)
Finance	-0.0306 (0.0830)	-0.0306 (0.0622)	-0.0369 (0.0842)
Interest rate	-0.888 (0.483)	-0.888 (0.576)	-0.366 (0.359)
Incident	-1.108 (1.370)	-1.108 (1.375)	-1.052 (1.311)
New Member State	-	-5.827 (17.16)	-
Year dummies	Yes	Yes	Yes
Country dummies	-	Yes	-
Constant	26.63 (25.47)	14.69 (43.00)	31.26*** (6.410)
Observations	175	175	175
R^2	0.523	0.884	-

Standard errors in parentheses
* p < 0.05, ** p < 0.01, *** p< 0.001

Source: Civic Consulting

One can first note that the signs, magnitude, and significance of the coefficients are broadly similar across all three models in the regression output above, and particularly so between the fixed effects and LSDV models, as expected.

Most relevant to our analysis is the coefficient on the dummy variable for 'UCPD in place'. This coefficient describes the *ceteris paribus* (i.e. 'all else being equal') effect of

the UCPD transposition on the dependent variable, in this case on the level of consumer trust. The estimate is not statistically significant at a 95% confidence level, or in other words, the coefficient is *not statistically different from zero* at any conventional level of significance used in the social sciences.[59] The model therefore suggests that the UCPD did not have a significant causal effect on the level of consumer trust.

Notably, the only significant coefficient in the regression output above is the one for internet access. The coefficient of 0.526 on the internet access variable describes the *ceteris paribus* effect of increasing the level of internet penetration in a given Member State. Accordingly, the average effect of increasing the level of internet penetration by 1 percentage point while everything else in the model stays exactly the same is to increase the level of consumer trust by approximately 0.5 percentage points, on average. This estimate is statistically significant at a 99% confidence level in the fixed effects model and at a 99.9% confidence level in the other two models.

Other factors included in the model such as the level of consumption per capita, unemployment rate, and 3-month annualised interest rate are not estimated to have a significant effect on the level of consumer trust. Additionally, the LSDV model suggests no significant *ceteris paribus* effect from being a New Member State, although as much of this effect may have been absorbed into the country dummy variables for the Member States concerned, this result should be interpreted cautiously.

4.3.2. Results of the panel regressions for cross-border online purchases

The following table presents the results of the panel regressions regarding the *(log) level of cross-border online purchases*.

[59] In social science research, 'conventional levels of significance' are generally considered as significance at a 95% confidence level or higher. This is indicated by a single star (*) beside the coefficient in our regression output. Coefficients that are significant at a 99% or 99.9% confidence level (indicated by two and three stars respectively in our regression output) are considered to be highly statistically significant.

Table 30: Panel regressions – Log of cross-border online purchases

	Fixed Effects	*LSDV*	*Random Effects*
UCPD in place	-0.154 (0.123)	-0.154 (0.121)	-0.148 (0.130)
Consumer trust	0.0140** (0.00495)	0.0140** (0.00487)	0.0116* (0.00538)
Internet access	0.0281** (0.00897)	0.0281** (0.00886)	0.0213** (0.00725)
Consumption p.c.	0.163 (0.100)	0.163 (0.0918)	0.0522* (0.0209)
Unemployment	0.0301 (0.0232)	0.0301 (0.0227)	0.0129 (0.0111)
Finance	-0.00106 (0.00218)	-0.00106 (0.00283)	-0.000800 (0.00258)
Interest rate	0.0133 (0.0406)	0.0133 (0.0365)	-0.0174 (0.0336)
Incident	0.00817 (0.0553)	0.00817 (0.0700)	0.0268 (0.0549)
New Member State	-	2.239** (0.825)	-
Year dummies	Yes	Yes	Yes
Country dummies	-	Yes	-
Constant	-2.971 (1.541)	-3.862 (2.355)	-0.829 (0.446)
Observations	175	175	175
R^2	0.751	0.918	-

Standard errors in parentheses
* p < 0.05, ** p < 0.01, *** p< 0.001

Source: Civic Consulting

As with the consumer trust panel regressions, one can note first of all that the signs, magnitude, and significance of the coefficients are broadly consistent across all three models in the regression output above, especially the fixed effects and LSDV models (again, as expected from the theory).

An important note for the interpretation of the above table is that the outcome variable of cross-border online purchases was transformed by taking the natural log. As a rough approximation, the percentage effect of each independent variable can now be obtained by multiplying the coefficient by 100.[60]

Similarly to the consumer trust panel regressions, we can see in the above output that there is no statistically significant effect of the UCPD transposition on cross-border online purchases at any conventional level of significance. The coefficient estimates, although negative in each model, are not statistically different from zero.

However, again similarly to the consumer trust results, we can see a highly significant and positive effect of internet access on the level of cross-border shopping. Given that our outcome variable is measured as the percentage of consumers who report making an *online* cross-border purchase in the last year, this is not a surprising result. The magnitude of the *ceteris paribus* effect – estimated on average at 2.8% per 1 percentage point increase of internet in the fixed effects and LSDV models and 2.1% in the random effects model – is still notable, however.

[60] More technically, the *ceteris paribus* marginal effect on the dependent variable in a log-linear model such as this one is estimated from the coefficient according to the formula $\%\Delta y = 100(e^{\beta_x} - 1)$. However, in many cases, a general approximation of this result can be obtained by simply multiplying the coefficient by 100.

Also notable is the highly significant and positive effect of the level of consumer trust on cross-border online purchases. On average, with all else held equal, a 1 percentage point increase in the level of consumer trust is associated with a 1.4% (or 1.2% in the random effects model) increase in the proportion of consumers reporting an online cross-border purchase in the last year. This estimate is significant at the 99% level on the fixed effects and LSDV models and at the 95% level in the random effects model.

The large and significant coefficient on the New Member State dummy also stands out unexpectedly. This estimate would suggest that, all else being equal (including consumption per capita, consumer trust, etc.), New Member States would have a level of cross-border shopping that is on average more than double the level of the EU15 countries. However, as discussed in the previous section, this estimate should be interpreted cautiously, as part of this effect is likely to be captured as well in the country dummy variables.

Most other factors included in the model were not estimated to have a significant effect on the level of cross-border online purchases.

4.3.3. Results of the fixed-effect logistic regressions

The following table presents the results of the fixed-effect logistic regressions for both consumer trust and cross-border online purchases, for both the full data set and the restricted data set described in the methodology.

Table 31: Panel logistic regressions with fixed effects – Likelihood of year-over-year increase in consumer trust and cross-border online purchases, full and restricted data sets, output in odds ratios

	Consumer trust		*Cross-border online purchases*	
	Full	*Restricted*	*Full*	*Restricted*
UCPD in place	7.434* (6.556)	78.39* (143.3)	3.500 (2.496)	6.962* (6.746)
Consumer trust	-	-	0.974 (0.0308)	1.004 (0.0391)
Internet access	1.016 (0.0365)	0.987 (0.0429)	1.154** (0.0489)	1.115* (0.0560)
Consumption p.c.	1.988 (1.279)	2.359 (1.795)	1.337 (0.895)	2.057 (1.631)
Unemployment	0.924 (0.131)	1.030 (0.172)	0.880 (0.131)	0.961 (0.173)
Finance	0.946* (0.0230)	0.931* (0.0279)	0.966 (0.0209)	0.965 (0.0219)
Interest rate	0.792 (0.135)	0.753 (0.149)	1.827*** (0.330)	1.548* (0.301)
Incident	0.557 (0.327)	0.165* (0.149)	0.419 (0.254)	0.931 (0.747)
Observations	181	132	175	126

Exponentiated coefficients (output in odds ratios)
Standard errors in parentheses
* p < 0.05, ** p < 0.01, *** p< 0.001

Source: Civic Consulting

As noted in the methodology section, these regressions differ significantly from those presented in the previous two subsections, as the dependent variables and model structure have been changed. The dependent variable in each of the above regressions is now a dummy variable that is equal to 1 when consumer trust or cross-border online purchases increased over the last year and 0 otherwise. The coefficients above now describe the effect of each variable on the *likelihood* of consumer trust or

cross-border online purchases being higher in the current year compared to the previous year.

An important note regarding the interpretation of the above table is that the results are reported as *odds ratios*.[61] An odds ratio of 1 implies that a variable has no effect on the likelihood of the outcome described by the dependent variable; an odds ratio greater than 1 implies a positive effect; and an odds ratio less than 1 implies a negative effect.

As an example to aid with the interpretation, the odds ratio of 1.016 on the internet access variable in the full-data set consumer trust model above suggests that, all else equal, a 1 percentage point increase in internet penetration would increase the odds of consumer trust being higher (as opposed to staying the same or decreasing) next year by 1.016 times, or 1.6%. In contrast, the odds ratio of 0.924 on unemployment in the same model suggests that, all else equal, a 1 percentage point increase in the unemployment rate would decrease the odds of consumer trust being higher next year by 1 – 0.924 = 0.076 times, or 7.6%. Neither of these effects are, however, statistically significant.

The logistic models above suggest that there is a statistically significant and positive effect of the UCPD transposition on the likelihood of consumer trust being higher in the current year compared to the previous year, and that the size of this effect is much higher for the restricted data set, i.e. for the Member States that were assessed as having a legal framework for unfair commercial practices before the UCPD transposition that was not as strong as the UCPD. This effect is statistically significant at the 95% level.

Additionally, the models reported above show a statistically significant and positive effect of the UCPD transposition on the likelihood of cross-border online purchases being higher than in the previous year, but only for the restricted data set. This effect is statistically significant at the 95% level.

Another notable result from the models reported above is that internet access continues to have a positive and statistically significant effect on cross-border online purchases (although now not on consumer trust). Private sector credit flow (the 'Finance' variable above) and the three-month annualised interest rate also appear to have significant effects on consumer trust and cross-border shopping, respectively.

4.4. Limitations of the analysis

In order to provide a better context for understanding the results and their policy implications, the key limitations of this analysis have to be considered. These limitations can be broadly divided into two types: limitations of the data set, and limitations of the empirical approach.

4.4.1. Limitations of the data set

A key challenge in the panel data analysis from the very beginning was the difficulty in obtaining comparable data for all Member States over a sufficient time period to capture the effects of the UCPD, or any other directive in this study.

[61] Odds ratios are generally preferred for presenting the output of fixed-effects logistic regressions as the inclusion of fixed-effects in the logistic regression prevents a straightforward calculation of any average marginal effects.

Although we were able to collect analytically-relevant data for nearly all Member States in the time period from 2006 to 2014, the lack of comparable data from previous years limits our ability to provide an accurate 'before' and 'after' picture surrounding the introduction of the UCPD, which was adopted in 2005.

Furthermore, with only seven data points per variable per Member State (except for Romania, Bulgaria, and Croatia, which had even fewer data points owing to their late accession dates), it may be difficult to see the effect of new legislation such as the UCPD over such a small sample size and relatively short timeframe.

4.4.2. Limitations of the empirical approach

The panel structure of the data set allows us to use more sophisticated regression techniques with a greater chance of identifying significant or even causal effects. However, panel techniques cannot control for all possible exogenous factors influencing the dependent and independent variables.

While the two-way fixed effects, LSDV, and random effects models are able to control for unobserved factors that vary across countries but not time (through the country fixed effects), or for unobserved factors that vary across time but not countries (through the time fixed effects), these models are not able to control for factors that vary across both countries *and* time unless such factors are explicitly controlled for through the introduction of independent variables.

One such factor that likely had a strong influence on both our dependent and independent variables over the time period considered in the analysis is the 2008 financial crisis and the ensuring Eurozone sovereign debt crisis beginning in 2010. As the severity of the financial crisis developed with time and affected European countries differently, the full effects of the crisis are very difficult to control for in our analysis. Although some of the effect of the financial crisis is absorbed by the country and time fixed effects, it cannot be completely controlled for, and likely added much noise to the data set, making it difficult to determine any significant causal effect of the UCPD.

Another factor that likely had a considerable influence on the analysis is the fact that nearly half of the countries in our data set joined the EU just one year before the adoption of the UCPD and two years before the first observation in our data set. Although part of this effect was likely absorbed into the country fixed effects for the Member States concerned, or into the New Member State dummy variable used in the LSDV model, the fact that the accession process affected countries differently at different points in time makes it difficult to fully control for in our model. The effects of the recent accession in almost half of the data set likely make it more difficult to isolate any causal impact of the UCPD.

Finally, while the fixed-effects logistic regression was presented to supplement the first three regression models with a different perspective, it features some of the same limitations as the non-logistic models, i.e. the challenge in controlling for external factors that vary across both countries and time. Additionally, as time fixed effects were not included in the logistic regression, the results should be interpreted with particular care; the same caveats given above regarding the effect of the financial crisis and recent accession process also apply to the logistic model.[62]

[62] However, the logistic regression model uses changes in consumer trust and cross-border shopping between different years. As a result, possible trends are removed from the dataset. This effect is well-known from time series analysis, where deterministic as well as stochastic trends can be removed from time series by taking first differences.

4.5. Overall findings and conclusions

In this section, we summarise and discuss the overall findings across the four different regression models and two outcome variables. The UCPD results are summarised first, followed by other notable results regarding consumer trust and internet penetration.

4.5.1. Effect of the UCPD

In the three initial panel regression models considered – the fixed effects, LSDV, and random effects models – the UCPD was not determined to have any significant causal effect on the overall level of consumer trust, nor on the overall level of cross-border online purchases.

It is important to note, however, this does not dismiss the possibility that such an effect does exist. As discussed in the above section on the limitations of the analysis, the size and length of the data set, as well as the complications presented by the coincidence of the time period with the financial crisis and recent accession of nearly half the countries to the EU, make it difficult to disentangle any significant effects of the UCPD.

A fourth and more distinct regression model, the fixed-effects logistic regression, was conducted to supplement the results of the first three models. Rather than testing the effect of the UCPD transposition on the *level* of consumer trust or cross-border online purchases, this model used binary dependent variables to test the *likelihood* that the UCPD transposition would lead to a higher level of consumer trust or cross-border online purchases in the current year compared to the previous year.

The fixed-effects logistical model found a significant effect of the UCPD being in place on consumer trust, both with the full data set (all Member States) and the restricted data set (excluding the seven Member States that already had a comprehensive legislative framework concerning unfair commercial practices in place before the UCPD was transposed). It also found a significant effect of the UCPD being in place on cross-border online purchases (with the restricted data set only). However, as with the results of the first three regressions, these results should also be interpreted with care, and are not unequivocal proof of a causal effect from the UCPD being transposed in the Member States. Rather, these results support the hypothesis that an effect may exist, and would require further investigation to draw more robust conclusions (e.g. once a longer time series of relevant outcome variables becomes available, if the relevant Eurobarometer questions continue to be used in future surveys).

4.5.2. Effect of consumer trust for cross-border online purchases

Although the introduction of the UCPD was not found to have a significant effect on cross-border online purchases in the three main regression models, consumer trust was found to have a statistically significant effect in the magnitude of 1.1% to 1.4% on the proportion of consumers making online cross-border purchases per 1 percentage point increase in consumer trust.

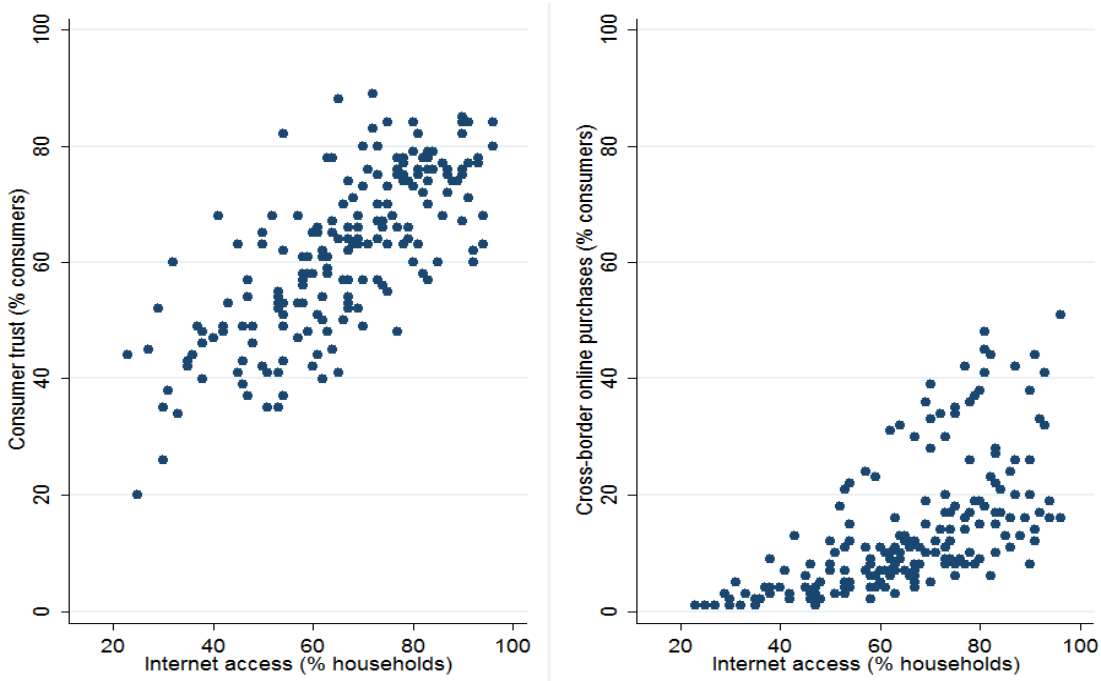
It is perhaps unsurprising that consumers with a higher level of trust in traders likely also feel more confident about purchasing online from a trader located in another EU country. Nonetheless, this is an important result to emphasise that consumer trust and cross-border purchasing are interrelated, and that from a policy perspective, improving or encouraging one may have the potential to positively influence the other.

4.5.3. Effect of higher internet penetration

The most robust and consistent result across all regression types and both outcome variables was the result regarding the internet access variable. In nearly all of the regressions carried out, internet access was found to have a positive and highly statistically significant effect on the outcome variables of consumer trust and online cross-border purchases. The robustness of this effect is striking in comparison with all other variables that were used in the analysis.

Indeed, a simple graphical representation of internet access plotted against both consumer trust and cross-border online shopping shows that internet access has a very strong and positive correlation with both variables:

Figure 30: Internet access plotted against consumer trust (left) and cross-border online purchases (right), 2006-2014, EU28.



Source: Civic Consulting. Data retrieved from Special Eurobarometers 252 and 298, Flash Eurobarometers 282, 299, 332, 358, 397, and Eurostat (dataset code tin00088).

The robustness of the result for the internet access variable has significant policy implications for EU initiatives aimed at increasing internet penetration across the EU. Based on the results of this panel data analysis, providing better access for consumers to online goods and services (in line with the Digital Single Market strategy) and to information available over the internet is likely to improve consumer trust and levels of cross-border online purchasing.

Both variables are closely related to the overall objectives of the Directives in this study: Consumer trust that "in general, retailers and service providers respect your rights as a consumer" (which is the wording of the relevant Eurobarometer question) is a key indicator for the functioning of the consumer protection framework in place; cross-border online purchases are a key indicator for the degree to which obstacles to the internal market have been eliminated (both in a consumer and trader perspective, because both parties are required for a cross-border transaction).

The results also underline that the concept of consumer information has to be broadly interpreted and cannot only focus on information requirements that are related to specific phases of specific transactions between consumers and businesses (be it the purchase of a product or service), but also needs to take into account the effects of information available online, such as online articles, review websites, product data sheets, product and service tests, blogs, etc. Finally, the results show the considerable value of multiannual Eurobarometer data series that can serve as key indicators for specific policy objectives.[63]

[63] Unfortunately, such data series are the exception, due to changes of wording of essential questions or their replacement with questions concerning other issues.

Annex I Business interview questionnaire

BUSINESS SURVEY – FITNESS CHECK OF EU CONSUMER AND MARKETING LAW

In the framework of a 'Fitness Check' of EU consumer and marketing law, we are conducting an EU-wide survey to better understand companies' experience with legislation regarding advertising/marketing, standard contract terms and price indication.[1] The survey is brief, and the results will be used anonymously. Your participation in the survey will help to improve current legislation, if and where needed.

Date: _____

Company: _____

1. Does your company sell directly to consumers? (One answer only)

   ☐ Yes
   ☐ No

2. Which of the following do you sell to consumers? (Multiple answers possible)

   ☐ Large household appliances (e.g. washing machines)
   ☐ Electronic and ICT products (e.g. DVDs, cameras, computers, mobile phones)
   ☐ Gas and electricity services
   ☐ Telecommunication services (e.g. fixed/mobile phone services, internet provision)
   ☐ Pre-packaged food and detergents

   ☐ Other goods or services

   Comments: _____

3. Does your company also target sales to other businesses? (One answer only)

   ☐ Yes
   ☐ No

   Comments: _____

4. Which of the following do you sell for businesses? (Multiple answers possible)

   ☐ Large household appliances (e.g. washing machines)
   ☐ Electronic and ICT products (e.g. DVDs, cameras, computers, mobile phones)
   ☐ Gas and electricity services
   ☐ Telecommunication services (e.g. fixed/mobile phone services, internet provision)
   ☐ Pre-packaged food and detergents

   ☐ Other goods or services

   Comments: _____

[1] More details on the Fitness Check are available under http://ec.europa.eu/consumers/consumer_rights/review/index_en.htm.

5. Does your company have… (One answer only)

- ☐ Less than 10 employees
- ☐ 10 to 49 employees
- ☐ 50 to 249 employees
- ☐ 250 employees or more
- ☐ Don't know

Comments: _____

6. In which EU country are you registered? (One answer only)

Note: If you have subsidiaries in multiple countries, refer to the country of your (EU) headquarters.

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☐ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ The Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovakia
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom
- ☐ Registered outside the EU

Comments: _____

7. Which sales channels do you use in the country in which you are registered? (Multiple answers possible)

- ☐ Bricks & mortar stores, i.e. physical shops
- ☐ Doorstep-selling (incl. promotional/sales events at private homes, work places or during excursions)
- ☐ E-commerce (from any device)
- ☐ Telephone sales
- ☐ Mail order/ catalogue sales via post
- ☐ Other (please specify)

Comments: _____

8. Do you use standard written terms in your contracts with consumers? (One answer only)

☐ Yes
☐ No
☐ Don't know

IF YES, are your standard terms: (Multiple answers possible)

☐ Provided via hyperlink on your website
☐ Attached to printed order forms
☐ Provided by other means (please specify)

Comments: _____

9. Do you also sell products/services in other EU countries? (One answer only)
Note: Please do not consider sales to foreign/non-domestic consumers made in shops and other points of sale in your own country.

☐ Yes
☐ No

IF YES:
a) Which other EU countries do you target for the sales of your products/services? (Multiple answers possible)

☐ Austria
☐ Belgium
☐ Bulgaria
☐ Croatia
☐ Cyprus
☐ Czech Republic
☐ Denmark
☐ Estonia
☐ Finland
☐ France
☐ Germany
☐ Greece
☐ Hungary
☐ Ireland
☐ Italy
☐ Latvia
☐ Lithuania
☐ Luxembourg
☐ Malta
☐ The Netherlands
☐ Poland
☐ Portugal
☐ Romania
☐ Slovakia
☐ Slovenia
☐ Spain
☐ Sweden
☐ United Kingdom

Comments: _____

b) Through which channels? (Multiple answers possible)

☐ Bricks & mortar stores, i.e. physical shops
☐ Doorstep-selling (incl. promotional/sales events at private homes, work places or during excursions)
☐ E-commerce (from any device)
☐ Telephone sales
☐ Mail order/ catalogue sales via post
☐ Other (please specify)

Comments: _____

IF NO, why you do not sell your products/services in other EU countries? (Multiple answers possible)

☐ Too complicated
☐ Differences in legal requirements regarding advertising/marketing and standard contract terms
☐ Other differences in legal requirements
☐ Legal uncertainty
☐ No demand for our products/services in other countries
☐ Other obstacles (please specify)

Comments: _____

I. ADVERTISING/MARKETING AND STANDARD CONTRACT TERMS

Advertising and marketing of traders operating within the EU has to adhere to certain standards. For example, certain practices are prohibited by law, such as including false or deceptive messages in advertising, leaving out important information or using aggressive sales techniques. Also, according to EU law, standard (i.e. not individually negotiated) terms in contracts with consumers have to be drafted in plain and intelligible language. Terms that are considered to be unfair are not binding for consumers that sign the contract.
The questions in this section explore the costs for your company to safeguard that your advertisements/ marketing practices and standard contract terms comply with legislation.

A) We first ask about the one-off costs you have incurred when entering another EU country's market for the first time to sell your products/services.
B) We then ask about the costs you incur on a regular basis for checking that your advertising/marketing and standard contract terms still comply with legislation.

In case do not sell your products/services in other EU countries, please continue with question 13.

A) One-off costs when entering another EU country's market to sell your products/services

10. When you have entered another EU country's market, on average how much staff time have you invested for checking compliance with and adjusting your business practices to the legal requirements of the other Member State regarding advertising/marketing and standard contract terms?
Note: Please indicate in working days, with 1 working day equalling 8 hours of staff time. Please do not consider staff time for translation. If no staff time was involved, indicate '0'.

Please estimate the staff time in working days you have invested per country for:

a) Checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation:

_____ working days professional staff time (e.g. legal or management)
_____ working days administrative or sales staff time

Comments: _____

b) Adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms):

_____ working days professional staff time (e.g. legal or management)
_____ working days administrative or sales staff time

If you cannot quantify the staff time involved, please describe the needed adjustments: _____

11. When you have entered another EU country's market, have you incurred other costs for checking compliance with and adjusting your business practices to the legal requirements of the other Member State regarding advertising/marketing and standard contract terms (e.g. costs for legal advice, costs for adapting standard contract terms)?
Please do not consider translation costs. (One answer only)

☐ Yes
☐ No
☐ Don't know

IF YES: Please indicate the other costs that you spent on average per country. If no costs accrued, indicate '0'.

a) Costs for checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation:

€ _____

☐ Don't know

Comments: _____

b) Costs for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms):

€ _____

☐ Don't know

Please describe other costs for needed adjustments, even if you cannot quantify them: _____

12. Considering the staff time and other costs you have spent on average checking compliance with and adjusting your business practices to legal requirements of the other Member State, please indicate:

a) Which share of these costs is related to standard contract terms in consumer contracts?

_____%

☐ Not relevant
☐ Don't know

Comments: _____

b) Which share of these costs is related to advertising and marketing targeted at *consumers*?

_____%

☐ Not relevant
☐ Don't know

Comments: _____

c) Which share of these costs is related to advertising and marketing targeted at *businesses*?

_____%

☐ Not relevant
☐ Don't know

Comments: _____

B) Regular costs due to changes in legal requirements regarding advertising/marketing and standard contract terms

13. In recent years, how frequently have you checked that your advertising/marketing and standard contract terms still comply with national legislation? (One answer only)

☐ Once a month or more often
☐ Once every three months
☐ Once every six months
☐ Once a year
☐ Once every two years
☐ Less than once every two years
☐ Never
☐ Don't know

IF NEVER, please continue with question 17. Otherwise continue with the next question.

14. On average, how much staff time have you spent each time for this check and the resulting changes of your business practices, if any?

Note: Please indicate total staff time in working days, with 1 working day equalling 8 hours of staff time (total for all EU countries that you are targeting, including country in which you are registered). Do not include staff time you invested when entering another EU country's market. If no staff time was involved, indicate '0'.
Please estimate the staff time in working days you have spent each time for:

a) Checking compliance with and adapting advertising/marketing and standard contract terms to changes in the national legislation:

_____ working days professional staff time (e.g. legal or management)
_____ working days administrative or sales staff time

Comments: _____

b) Adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms):

_____ working days professional staff time (e.g. legal or management)
_____ working days administrative or sales staff time

Please describe staff time for needed adjustments, even if you cannot quantify them: _____

15. Have you incurred other costs for this check and the resulting changes of your business practices, if any (e.g. costs for legal advice, costs for adapting standard contract terms)? (One answer only)
Please do not consider one-off costs you incurred when entering another EU country's market.

☐ Yes
☐ No
☐ Don't know

IF YES: Please indicate for the other costs that you spent each time on average (total for all EU countries that you are targeting, including country in which you are registered). If no costs accrued, indicate '0'.

a) Costs for checking compliance with and adapting advertising/marketing and standard contract terms to changes in the national legislation:

€_____

☐ Don't know

Comments: _____

b) Costs for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms):

€_____

☐ Don't know

Please describe other costs for needed adjustments, even if you cannot quantify them: _____

16. Considering the staff time and other costs you have spent for checking that advertising/marketing and standard contract terms still comply with national legislation (and adjusting your business practices, if needed), please indicate:

a) Which share of these costs is related to standard contract terms in consumer contracts?

_____%

☐ Not relevant
☐ Don't know

Comments: _____

b) Which share of these costs is related to advertising and marketing targeted at *consumers*?

_____%

☐ Not relevant
☐ Don't know

Comments: _____

c) Which share of these costs is related to advertising and marketing targeted at *businesses*?

_____%

☐ Not relevant
☐ Don't know

Comments: _____

II. UNIT PRICE INDICATION AT THE POINT OF SALES (IF YOU DO NOT SELL 'PRE-PACKAGED FOOD AND DETERGENTS' CONTINUE WITH QUESTION 21)

Traders have to indicate both the selling price and, where applicable, the price per unit of measurement (i.e. per kg or per litre) for goods offered to consumers. For example, if the selling price for a chocolate bar of 80g is €1.20, the unit price must be separately indicated as €1.50/100g or €15.00/kg
The questions in this section explore the costs for your company to provide unit price information at your points of sale and/or on your website.

17. Do you indicate unit prices for pre-packaged food and/or detergents to consumers to comply with legislation? (One answer only)

☐ Yes
☐ No
☐ Don't know

IF NO OR DON'T KNOW, please continue with question 21. Otherwise continue with the next question.

18. On average, how much staff time is spent per year for price indication, including unit price indication (e.g. to prepare and change price labels)?

Please estimate the staff time in working days per year (total for all EU countries that you are targeting, including country in which you are registered):

_____ working days professional staff time (e.g. legal or management)
_____ working days administrative or sales staff time

Comments: _____

19. Do you incur other costs for price indication, including unit price indication (e.g. for electronic price labels)? (One answer only)

☐ Yes
☐ No
☐ Don't know

IF YES, estimate the other costs per year (total for all EU countries that you are targeting, including country in which you are registered):

€ _____

☐ Don't know

Comments: _____

20. Considering staff time spent and other costs for price indication that you specified above: What is your best estimate of the share of these costs that is specifically related to unit price indication (rather than to indication of the selling price of the product in general)?

_____%

☐ Not relevant
☐ Don't know

Comments: _____

III. CONCLUDING QUESTIONS

21. If you sell gas/electricity services or telecommunication services: Are there overlapping requirements of the rules applying specifically to your sector with the general consumer protection legislation regarding unfair contract terms or unfair commercial practices? (One answer only)

☐ Yes
☐ No
☐ Don't know

IF YES: Which requirements overlap? _____

Regarding these overlapping requirements, costs have been (one answer only):

☐ No costs
☐ Very low
☐ Low
☐ Medium
☐ High
☐ Very high

☐ Don't know
☐ Not relevant

IF LOW OR MORE: Please explain. If possible, estimate these costs per year: _____

22. Based on your experiences, please indicate to what extent your company has benefitted so far from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU (only one answer per question):

a) Benefits of creating a level playing field across the EU for businesses regarding advertising and marketing to consumers by eliminating or constraining dishonest market practices.

☐ Not at all
☐ Slightly
☐ Moderately
☐ Considerably
☐ To a great extent

☐ Don't know

b) Benefits of creating a level playing field across the EU for businesses regarding contracts with consumers by safeguarding that standard contract terms are fair.

☐ Not at all
☐ Slightly
☐ Moderately
☐ Considerably
☐ To a great extent

☐ Don't know

c) Benefits of creating a level playing field across the EU for businesses regarding unit price indication by improving consumers' information on prices.

☐ Not at all
☐ Slightly
☐ Moderately
☐ Considerably
☐ To a great extent

☐ Don't know

d) Benefits of harmonised legislation in general that eases selling cross-border to consumers in other EU countries.

☐ Not at all
☐ Slightly
☐ Moderately
☐ Considerably
☐ To a great extent

☐ Don't know

e) Benefits for businesses from the protection from misleading advertising by other businesses.

☐ Not at all
☐ Slightly
☐ Moderately
☐ Considerably
☐ To a great extent

☐ Don't know

f) Benefits for businesses from the harmonised rules for marketing to businesses in other EU countries.

☐ Not at all
☐ Slightly
☐ Moderately
☐ Considerably
☐ To a great extent

☐ Don't know

Please provide more details about the relevant benefits: _____

Thank you for your participation

Annex II Additional data tables on sectoral business interviews

This annex presents additional result tables on the sectoral business interviews, in addition to the results provided in Sections 2 and 3 above.

1. Sample

The table below presents the sectoral breakdown of business interviews for each Member State, in absolute number of businesses. Businesses that indicated that they are involved in several sectors were grouped in the analysis under their main sector of activity, which resulted in the distribution below.

Table 32: Economic sectors covered, by Member State

	Large household appliances	Electronic and ICT products	Gas and electricity services	Telecommuni-cation services	Pre-packaged food and detergents
AT	0	2	2	2	0
BE	2	1	4	2	0
BG	4	3	1	2	4
HR	0	2	2	2	2
CY	2	0	1	1	4
CZ	1	3	2	1	2
DK	1	3	1	0	1
EE	0	1	2	3	8
FI	0	3	2	1	2
FR	1	1	3	2	3
DE	2	6	2	1	2
GR	0	4	3	2	3
HU	0	2	1	1	6
IE	0	2	0	0	2
IT	0	4	2	0	1
LV	2	2	3	2	4
LT	1	4	3	3	3
LU	2	3	1	1	2
MT	0	3	0	0	1
NL	1	5	2	0	2
PL	2	0	3	2	1
PT	1	0	4	2	1
RO	2	0	6	2	3
SK	2	1	2	1	2
SI	1	4	2	2	3
ES	1	3	0	0	2
SE	1	2	4	2	1
UK	1	1	2	1	0

Source: Civic Consulting. Note: In the figure above, for each interview the Member State indicated corresponds to the country of registration of the company. Question: 'Which of the following do you sell to consumers?'.

2. One-off costs incurred by businesses when entering another EU country's market

To further illustrate the distribution of answers, the table below presents minimum and maximum values reported in the interviews and the first and third quartiles regarding the one-off costs incurred by businesses for *checking compliance and adapting advertising/marketing and standard contract terms to the national legislation* when entering another EU country's market, expressed in terms of working days for professional staff, working days for administrative or sales staff, and Euros for other costs.

Table 33: One-off costs for checking compliance and adapting advertising/marketing and standard contract terms to the national legislation when entering another EU country's market – first quartile, third quartile, minimum and maximum by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per country entered)		Administrative or sales staff time (number of working days per country entered)		Other costs, e.g. for legal advice (EUR per country entered)	
		First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum
By sector	Large household appliances	1.1 – 2.8	0.0 – 4.0	1.0 – 7.0	0.0 – 10.0	n.a.	2000 *
	Electronic and ICT products	0.2 – 6.3	0.0 – 40.0	0.0 – 8.5	0.0 – 40.0	200 – 3 000	0 – 3500
	Gas and electricity services	1.3 – 23.8	0.0 – 53.0	0.5 – 16.3	0.0 – 53.0	2 500 – 9 500	1000 – 15000
	Telecommunication services	1.0 – 10.0	0.0 – 5000.0	2.0 – 34.5	0.0 – 1000.0	n.a.	300 – 4000000**
	Pre-packaged food and detergents	1.0 – 9.4	0.0 – 53.8	0.0 – 3.3	0.0 – 40.0	75 – 5 000	0 – 5000
By company size	Micro	0.0 – 1.0	0.0 – 5.0	0.0 – 1.0	0.0 – 10.0	n.a.	3500 *
	Small	0.0 – 5.0	0.0 – 53.8	0.0 – 3.5	0.0 – 53.0	300 – 7 750	100 – 15000
	Medium-sized	1.5 – 10.0	0.0 – 20.0	3.0 – 8.0	0.0 – 10.0	n.a.	3000 – 5000**
	Large	2.0 – 30.0	0.0 – 5000.0	2.0 – 20.0	0.0 – 1000.0	1 500 – 4 500	200 – 4000000

Source: Civic Consulting based on business interviews. Questions: 'Please estimate the staff time in working days you have invested per country for checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation: working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'When you have entered another EU country's market, have you incurred other costs for checking compliance with and adjusting your business practices to the legal requirements of the other Member State regarding advertising/marketing and standard contract terms (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider translation costs. If yes, please indicate the other costs that you spent on average per country. If no costs accrued, indicate '0'. Costs for checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation.' Note: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; In categories where less than three values were provided, quartiles cannot be calculated. From left to right, number of businesses that provided quantitative data: large household appliances: N=6; 5; -; electronic and ICT products: N=16; 16; 4; gas and electricity services: N=6; 6; 3; telecommunication services: N=5; 6; -; pre-packaged food and detergents: N=18; 16; 3; micro: N=9; 9; -; small: N=20; 19; 3; medium-sized: N=9; 7; -; large: N=13; 14; 7. (*) Only one value was provided for this item in this category; (**) Only two values were provided for this item in this category.

The table below presents results in terms of one-off costs incurred by businesses for *adjusting business practices as a result of the compliance checks* when entering another EU country's market.

Table 34: One-off costs for adjusting business practices when entering another EU country's market – first quartile, third quartile, minimum and maximum by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per country entered)		Administrative or sales staff time (number of working days per country entered)		Other costs, e.g. for legal advice (EUR per country entered)	
		First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum
By sector	Large household appliances	1.3 – 4.5	0.0 – 7.0	1.0 – 7.0	0.0 – 10.0	n.a.	3000*
	Electronic and ICT products	0.2 – 3.3	0.0 – 40.0	0.0 – 6.3	0.0 – 40.0	n.a.	0 – 500**
	Gas and electricity services	1.3 – 10.0	0.0 – 53.0	0.5 – 8.8	0.0 – 53.0	n.a.	5000 – 15000**
	Telecommunication services	0.0 – 35.0	0.0 – 3000.0	0.0 – 23.0	0.0 – 1000.0	n.a.	600 – 3000000**
	Pre-packaged food and detergents	0.0 – 5.0	0.0 – 60.0	0.0 – 2.1	0.0 – 60.0	150 – 2 250	0.0 – 3000
By company size	Micro	0.0 – 2.0	0.0 – 5.0	0.0 – 0.0	0.0 – 5.0	n.a.	0*
	Small	0.0 – 2.5	0.0 – 60.0	0.0 – 2.3	0.0 – 60.0	350 – 7 750	200 – 15000
	Medium-sized	2.0 – 10.0	0.0 – 20.0	2.5 – 8.5	0.0 – 23.0	n.a.	600 – 2000**
	Large	2.0 – 10.0	0.0 – 3000.0	2.0 – 10.0	0.0 – 1000.0	3 500 – 753 750	3000 – 3000000

Source: Civic Consulting based on business interviews. Questions: 'Please estimate the staff time in working days you have invested per country for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms): working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'When you have entered another EU country's market, have you incurred other costs for checking compliance with and adjusting your business practices to the legal requirements of the other Member State regarding advertising/marketing and standard contract terms (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider translation costs. If yes, please indicate the other costs that you spent on average per country. If no costs accrued, indicate '0'. Costs for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms).' Note: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; In categories where less than three values were provided, quartiles cannot be calculated. From left to right, number of businesses that provided quantitative data: large household appliances: N=6; 5; -; electronic and ICT products: N=16; 16; -; gas and electricity services: N=6; 6; -; telecommunication services: N=6; 5; -; pre-packaged food and detergents: N=17; 16; 3; micro: N=9; 9; -; small: N=19; 19; 3; medium-sized: N=9; 7; -; large: N=14; 13; 4. (*) Only one value was provided for this item in this category; (**) Only two values were provided for this item in this category.

3. Costs incurred by businesses on a regular basis

The table below presents minimum and maximum values for annual costs[64] reported in the interviews regarding the regular costs incurred by businesses for *checking compliance with and adapting advertising/marketing and standard contract terms to the national legislation*, expressed in terms of working days for professional staff, working days for administrative or sales staff, and Euros for other costs.

[64] For each business interviewed, we calculated yearly figures using the answer to the question on the frequency of the compliance checks and the costs provided in subsequent questions on the costs spent *each time* a compliance check was undertaken.

Table 35: Annual costs for checking compliance and adapting advertising/marketing and standard contract terms – first quartile, third quartile, minimum and maximum by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per year)		Administrative or sales staff time (number of working days per year)		Other costs e.g. for legal advice (EUR per year)	
		First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum
By sector	Large household appliances	0.3 – 3.5	0.0 – 1200.0	0.0 – 3.8	0.0 – 60.0	n.a.	12000*
	Electronic and ICT products	0.9 – 8.5	0.0 – 420.0	0.6 – 6.0	0.0 – 60.0	100 – 8 000	0 – 60000
	Gas and electricity services	2.0 – 12.0	0.0 – 240.0	2.0 – 12.0	0.0 – 240.0	3 081 – 19 418	200 – 80000
	Telecommunication services	2.0 – 24.0	0.0 – 36000.0	0.0 – 13.0	0.0 – 12000.0	35 – 54 000	0 – 36000000
	Pre-packaged food and detergents	0.4 – 11.5	0.0 – 483.8	0.0 – 2.0	0.0 – 240.0	1 750 – 5 500	1000 – 7000
By company size	Micro	0.0 – 2.0	0.0 – 60.0	0.0 – 1.5	0.0 – 24.0	75 – 200	75 – 4000
	Small	1.0 – 9.8	0.0 – 240.0	0.1 – 6.0	0.0 – 120.0	370 – 7 000	35 – 24000
	Medium-sized	2.0 – 17.3	0.0 – 216.0	1.0 – 14.0	0.0 – 120.0	2 500 – 10 250	1000 – 40800
	Large	2.0 – 24.0	0.0 – 36000.0	1.0 – 12.5	0.0 – 12000.0	1 000 – 54 000	0 – 36000000

Source: Civic Consulting based on business interviews. Questions: 'On average, how much staff time have you spent each time for this check and the resulting changes of your business practices, if any? Please estimate the staff time in working days you have spent each time for checking compliance with and adapting advertising/marketing and standard contract terms to changes in the national legislation: working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'Have you incurred other costs for this check and the resulting changes of your business practices, if any (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider one-off costs you incurred when entering another EU country's market. If yes, please indicate for the other costs that you spent each time on average (total for all EU countries that you are targeting, including country in which you are registered). If no costs accrued, indicate '0'. Costs for checking compliance with and adapting advertising/marketing and standard contract terms to changes in the national legislation.' Note: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; In categories where less than three values were provided, quartiles cannot be calculated. From left to right, number of businesses that provided quantitative data: large household appliances: N=19; 18; -; electronic and ICT products: N=36; 37; 17; gas and electricity services: N=50; 47; 10; telecommunication services: N=33; 31;9; pre-packaged food and detergents: N=31; 31; 4; micro: N=32; 35; 5; small: N=44; 42; 13; medium-sized: N=28; 27; 6; large: N=65; 60; 17. (*) Only one value was provided for this item in this category.

The table below presents annual figures by sector and by company size for the amount of resources spent on *adjusting business practices to the national legislation*.

Table 36: Annual costs for adjusting business practices – first quartile, third quartile, minimum and maximum by sector and size class of enterprises

Sector/Size class		Professional staff time (number of working days per year)		Administrative or sales staff time (number of working days per year)		Other costs, e.g. for legal advice (EUR per year)	
		First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum	First quartile – Third quartile	Minimum - Maximum
By sector	Large household appliances	0.3 – 3.3	0.0 – 1200.0	0.0 – 2.3	0.0 – 120.0	n.a.	15000*
	Electronic and ICT products	0.5 – 4.5	0.0 – 1008.0	0.0 – 10.0	0.0 – 108.0	25 – 2 000	0 – 80000
	Gas and electricity services	2.0 – 21.0	0.0 – 3996.0	2.0 – 24.0	0.0 – 39996.0	1 914 – 24 000	0 – 60000
	Telecommunication services	1.3 – 54.0	0.0 – 24000.0	0.0 – 24.0	0.0 – 12000.0	35 – 19 200	0 – 36000000
	Pre-packaged food and detergents	0.0 – 6.5	0.0 – 84.0	0.0 – 2.4	0.0 – 78.0	1 500 – 4 500	1000 – 7000
By company size	Micro	0.0 – 2.0	0.0 – 60.0	0.0 – 1.2	0.0 – 24.0	150 – 1 900	0 – 20000
	Small	0.1 – 10.0	0.0 – 240.0	0.1 – 7.5	0.0 – 78.0	0 – 5 500	0 – 80000
	Medium-sized	1.0 – 27.0	0.0 – 216.0	0.3 – 20.0	0.0 – 156.0	625 – 11 800	0 – 60000
	Large	2.0 – 33.0	0.0 – 24000.0	1.0 – 24.0	0.0 – 39996.0	2 000 – 20 000	0 – 36000000

Source: Civic Consulting based on business interviews. Questions: 'On average, how much staff time have you spent each time for this check and the resulting changes of your business practices, if any? Please estimate the staff time in working days you have spent each time for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms): working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'Have you incurred other costs for this check and the resulting changes of your business practices, if any (e.g. costs for legal advice, costs for adapting standard contract terms)? Please do not consider one-off costs you incurred when entering another EU country's market. If yes, please indicate for the other costs that you spent each time on average (total for all EU countries that you are targeting, including country in which you are registered). If no costs accrued, indicate '0'. Costs for adjusting business practices as a result (e.g. changing implementation of advertisement campaigns, using different standard contract terms).' Note: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; In categories where less than three values were provided, quartiles cannot be calculated. From left to right, number of businesses that provided quantitative data: large household appliances: N=16; 16; -; electronic and ICT products: N=36; 37; 14; gas and electricity services: N=48; 45; 12; telecommunication services: N=30; 32; 8; pre-packaged food and detergents: N=31; 29; 3; micro: N=32; 34; 6; small: N=41; 39; 12; medium-sized: N=26; 25; 6; large: N=62; 61; 14. (*) Only one value was provided for this item in this category.

4. Unit pricing

The table below presents annual figures by company size for the amount of resources spent by businesses in the pre-packaged food and detergents sector for providing price information (including unit price information) at points of sale and/or on websites. The results presented below are directly based on interview results.

Table 37: Costs related to price indication – median per business based on interview results, by size class of enterprises

	Professional staff time (number of working days per year)	Administrative or sales staff time (number of working days per year)	Other costs, e.g. for electronic price labels (EUR per year)	Share of these costs specifically related to *unit price* indication
Micro	2.0	3.5	n.a.	n.a.
Small	6.0	3.5	1 800	31%
Medium-sized	5.0	5.0	n.a.	n.a.
Large	1.0	20.0	n.a.	28%
Micro and small enterprises	2.3	3.5	600	27%
Medium-sized and large enterprises	2.0	16.0	n.a.	34%
Total sample	*2*	*5*	*1800*	*30%*

Source: Civic Consulting based on business interviews. Questions: 'On average, how much staff time is spent per year for price indication, including unit price indication (e.g. to prepare and change price labels)? Please estimate the staff time in working days per year (total for all EU countries that you are targeting, including country in which you are registered): working days professional staff time (e.g. legal or management); working days administrative or sales staff time', 'Do you incur other costs for price indication, including unit price indication (e.g. for electronic price labels)? If yes, estimate the other costs per year (total for all EU countries that you are targeting, including country in which you are registered)', 'Considering staff time spent and other costs for price indication that you specified above: What is your best estimate of the share of these costs that is specifically related to unit price indication (rather than to indication of the selling price of the product in general)?' Note: The median is the value separating the higher half of the sample from the lower half, and is presented above for categories where at least three values were provided. From left to right, number of businesses that provided quantitative data: micro: N=9; 8; -; -; small: N=9; 10; 3; 6; medium-sized: N=6; 7; -; -; large: N=10; 11; -; 4; micro and small enterprises: N=18; 18; 5; 8; medium-sized and large enterprises: N=16; 18; -; 5.

Following the methodology described in Section 3.1 above, the cost items are monetised at the business level: first, we monetised the amount of staff time spent on price indication indicated in the interviews; second, we calculated the amount of other costs per business. As not all interviewed businesses that indicate unit prices incurred other costs in addition to the staff time spent on price indication, we multiplied the amount of other costs per business that incurred other costs (which were provided by interviewees in Euro, see previous table for results) by the share of businesses that indicated that they incurred other costs as a percentage of the sample of businesses in the sample. The table below presents costs related to price indication per business by cost item, i.e. labour costs for professional staff, labour costs for administrative or sales staff time, and other costs, for businesses in the sector for pre-packaged food and detergents that indicate unit prices.

Table 38: Costs related to price indication – based on median values in Euro, per business, by size class of enterprises

	Labour costs for professional staff (EUR per year)	Labour costs for administrative or sales staff (EUR per year)	Other costs, e.g. for electronic price labels (EUR per year)	Total (sum in EUR)
Micro	631	543	n.a.	n.a.
Small	1893	543	n.a.	n.a.
Medium-sized	1577	775	n.a.	n.a.
Large	315	3102	n.a.	n.a.
Micro and small enterprises	726	543	257	1526
Medium-sized and large enterprises	631	2481	n.a.	n.a.
Total sample	*631*	*775*	*771*	*2178*

Source: Civic Consulting based on business interviews. Sample of interviewed businesses in the sector for pre-packaged food and detergents that indicate unit prices. Results are presented above for categories where at least three values were provided.

As indicated in the table above, median costs of interviewed businesses that indicate unit prices in the pre-packaged food and detergents sector are EUR 2 178 per business per year (e.g. staff costs to prepare and change price labels and other costs such as equipmentelectronic price labels). As indicated in the previous table, 30% of these costs are specifically related to unit price indication. Total figures are not available by size class due to data limitations.

5. Benefits from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU

The table below provides a breakdown by sector and by company size. For each item, the table shows the percentage of interviewed businesses that sell their products/services in other EU countries that indicated that they benefited at least slightly.

Table 39: Share of interviewed businesses that sell their products/services in other EU countries that indicated that they benefited at least slightly from the EU legislative framework subject to the Fitness Check, by sector and size class of enterprises

		Level playing field for businesses regarding advertising & marketing to consumers	Level playing field for businesses regarding contracts with consumers	Level playing field for businesses regarding unit price indication	Harmonised legislation in general that eases selling cross-border to consumers	Protection from misleading advertising by other businesses	Harmonised rules for marketing to businesses in other EU countries
By sector	Large household appliances	67%	67%	33%	44%	44%	67%
	Electronic and ICT products	53%	47%	47%	47%	47%	37%
	Gas and electricity services	63%	75%	38%	63%	63%	50%
	Telecommunication services	56%	44%	22%	23%	44%	44%
	Pre-packaged food and detergents	43%	48%	39%	70%	61%	52%
By company size	Micro	44%	44%	44%	67%	33%	22%
	Small	30%	30%	35%	43%	35%	39%
	Medium-sized	75%	83%	67%	83%	67%	75%
	Large	67%	63%	42%	54%	58%	58%
	Micro and small enterprises	34%	34%	38%	50%	34%	34%
	Medium-sized and large enterprises	69%	69%	50%	64%	61%	64%

Source: Civic Consulting based on business interviews. Question: 'Based on your experiences, please indicate to what extent your company has benefitted so far from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU'. Note: Businesses that did not provide an answer are excluded. N = 63

Results in the table above suggest that medium-sized and large enterprises that sell their products/services in other EU countries benefit most from the EU legislative framework subject to the Fitness Check, with between 50% to 69% of them across all items indicating that they benefit at least slightly from the framework. Across sectors, results do not show clear patterns or marked differences. Businesses that sell their products/services in other EU countries in the gas and electricity sector benefited most from the level playing field for businesses regarding contracts with consumers and businesses in the pre-packaged food and detergents sector benefited most from the harmonised legislation in general that eases selling cross-border to consumers.

The table below provides a breakdown by sector and by company size. For each item, the table shows the percentage of interviewed businesses that do not sell their products/services in other EU countries that indicated that they benefited at least slightly.

Table 40: Share of interviewed businesses that do not sell their products/services in other EU countries that indicated that they benefited at least slightly from the EU legislative framework subject to the Fitness Check, by sector and size class of enterprises

		Level playing field for businesses regarding advertising & marketing to consumers	Level playing field for businesses regarding contracts with consumers	Level playing field for businesses regarding unit price indication	Harmonised legislation in general that eases selling cross-border to consumers	Protection from misleading advertising by other businesses	Harmonised rules for marketing to businesses in other EU countries
By sector	Large household appliances	48%	43%	33%	29%	48%	24%
	Electronic and ICT products	48%	46%	30%	28%	37%	22%
	Gas and electricity services	40%	38%	35%	25%	56%	31%
	Telecommunication services	52%	48%	34%	21%	52%	21%
	Pre-packaged food and detergents	43%	45%	48%	31%	43%	26%
By company size	Micro	40%	36%	34%	30%	38%	18%
	Small	48%	48%	41%	27%	43%	25%
	Medium-sized	45%	36%	33%	27%	48%	21%
	Large	47%	50%	36%	23%	55%	33%
	Micro and small enterprises	44%	41%	37%	29%	40%	21%
	Medium-sized and large enterprises	46%	45%	35%	25%	53%	29%

Source: Civic Consulting based on business interviews. Question: 'Based on your experiences, please indicate to what extent your company has benefitted so far from the harmonisation of rules concerning advertising and marketing, standard contract terms, and unit price indication across the EU'. Note: Businesses that did not provide an answer are excluded. N = 190

Results in the table above further illustrate that businesses that do not sell their products/services in other EU countries benefited least from the two items related to the benefits of having harmonised rules in the EU in view of selling cross-border ('harmonised legislation in general that eases selling cross-border to consumers in other EU countries' and 'harmonised rules for marketing to businesses in other EU countries'). This finding is consistent across sectors and company sizes.

6. Extrapolation of the one-off costs at the company level

The table below presents one-off costs per business by cost item, i.e. labour costs for professional staff, labour costs for administrative or sales staff time, and other costs (e.g. costs for legal advice), by sector, for businesses that sell their products and/or services in other EU Member States.

Table 41: One-off costs incurred when entering another EU country's market per business, for businesses that sell their products/services to consumers in other EU countries (regarding advertising/marketing and standard contract terms) – based on first and third quartiles in Euro

Sector	Labour costs for professional staff (EUR per country entered)	Labour costs for administrative or sales staff (EUR per country entered)	Other costs, e.g. for legal advice (EUR per country entered)*
Large household appliances	757 – 2 303	310 – 2 171	61 – 861
Electronic and ICT products	126 – 3 029	0 – 2 295	84 – 1 737
Gas and electricity services	820 – 10 663	155 – 3 893	3 200 – 385 375
Telecommunication services	315 – 14 196	310 – 8 918	1 089 – 172 500
Pre-packaged food and detergents	315 – 4 543	0 – 837	68 – 2 207

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that sell their products and/or services in other EU Member States: 9 in the sector for large household appliances; 19 in the sector for electronic and ICT products; 8 in the sector for gas and electricity services; 9 in the sector for telecommunication services; and 23 in the sector for pre-packaged food and detergents. Notes: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; Interviewed businesses were asked to provide amounts incurred when entering another EU country's market for the first time, or average amounts per country entered in cases where they had entered several other EU countries' markets. (*) In the sectors for large household appliances, electronic and ICT products, gas and electricity services, and telecommunication services, less than three answers were provided for other costs so the quartiles could not directly be calculated. We therefore calculated values for other costs on the basis of the values obtained for groups of sectors, i.e. for 'network services' (base: interviewed businesses in the gas and electricity services sector and in the telecommunication services sector that sell their products/services to consumers in other EU countries) or 'durable goods' (base: interviewed businesses in the large household appliances sector and in the electronic and ICT sector that sell their products/services to consumers in other EU countries).

The table below presents the total one-off costs per business, i.e. the sum of the three cost items presented in the table above, for compliance checks and adjusting business practices incurred by businesses when entering another EU country's market, by sector.

Table 42: Total one-off costs incurred when entering another EU country's market per business, for businesses that sell their products/services to consumers in other EU countries (regarding advertising/marketing and standard contract terms) – based on first and third quartiles in Euro

Sector	Total one-off costs
Large household appliances	1 128 – 5 335
Electronic and ICT products	210 – 7 061
Gas and electricity services	4 175 – 399 931
Telecommunication services	1 715 – 195 614
Pre-packaged food and detergents	384 – 7 587

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that sell their products and/or services in other EU Member States: 9 in the sector for large household appliances; 19 in the sector for electronic and ICT products; 8 in the sector for gas and electricity services; 9 in the sector for telecommunication services; and 23 in the sector for pre-packaged food and detergents. Notes: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; Interviewed businesses were asked to provide amounts incurred when entering another EU country's market for the first time, or average amounts per country entered in cases where they had entered several other EU countries' markets.

7. Extrapolation of the regular costs at the company level

In the tables below, we present annual costs per business by cost item, i.e. labour costs for professional staff, labour costs for administrative or sales staff time, and other costs, by sector and size class, for businesses that undertake compliance checks regularly.

First, the table below shows annual labour costs for professional staff per business due to regular compliance checks.

Table 43: Annual labour costs for professional staff incurred for checking that the company's advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks – based on first and third quartiles in Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Full sample
Large household appliances	39 – 276	789 – 3 312	572 – 1 183	2 445 – 260 264	189 – 2 145
Electronic and ICT products	0 – 1 420	434 – 2 997	710 – 6 783	907 – 17 982	442 – 4 101
Gas and electricity services	552 – 6 152	848 – 10 411	2 445 – 10 647	1 420 – 9 385	1 262 – 10 411
Telecommunication services	79 – 1 341	123 – 2 997	19 244 – 46 374	2 997 – 30 285	1 041 – 24 607
Pre-packaged food and detergents	0 – 670	170 – 7 414	631 – 8 202	670 – 20 190	126 – 5 678

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered.

Next, the table below shows annual labour costs for administrative or sales staff per business due to regular compliance checks.

Table 44: Annual labour costs for administrative or sales staff incurred for checking that the company's advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks – based on first and third quartiles in Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Full sample
Large household appliances	0 – 233	155 – 1 202	281 – 582	814 – 8 724	0 – 946
Electronic and ICT products	58 – 620	0 – 1 551	504 – 2 947	271 – 9 305	93 – 2 481
Gas and electricity services	155 – 1 241	620 – 3 722	465 – 4 187	931 – 7 677	620 – 5 583
Telecommunication services	0 – 79	31 – 514	6 979 – 18 145	271 – 8 452	0 – 5 738
Pre-packaged food and detergents	0 – 252	39 – 2 249	349 – 3 838	0 – 667	0 – 682

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered.

Lastly, the table below shows annual other costs (e.g. costs for legal advice) per business due to regular compliance checks.

Table 45: Annual other costs (e.g. costs for legal advice) incurred for checking that the company's advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks – based on first and third quartiles in Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Full sample
Large household appliances*	2 – 192	31 – 2 464	36 – 2 875	240 – 19 200	46 – 3 684
Electronic and ICT products	83 – 417	264 – 3 571	108 – 8 625	1 077 – 14 462	66 – 5 250
Gas and electricity services	789 – 9 508	1 093 – 8 597	2 733 – 26 923	8 674 – 37 565	2 644 – 22 986
Telecommunication services	3 – 1 496	17 – 17 954	17 – 16 950	8 206 – 178 676	28 – 29 280
Pre-packaged food and detergents	n.a.**	393 – 1 210	1 441 – 4 430	7 643 – 23 286	1 083 – 3 333

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered; In the categories (i.e. a given sector and size class) where less than three answers were provided for other costs, the value was estimated. We calculated the estimated value using the value obtained for the total sample in the given sector weighted by size class. (*) In the sector for large household appliances, less than three answers were provided for other costs in the total sample for that sector, so we calculated values for other costs on the basis of the values reported by businesses in the sector for electronic and ICT products, as these two sectors are durable goods sectors. (**) In the sector for pre-packaged food and detergents, the micro businesses interviewed that check for compliance indicated that they do not incur other costs.

The table below presents the **total annual costs**, i.e. the sum of the three cost items presented in the tables above, for compliance checks and adjusting business practices incurred by businesses that check for compliance on a regular basis, by sector and by size class.

Table 46: Annual total costs incurred for checking that the company's advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed, per business, for those that undertake compliance checks – based on first and third quartiles in Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Full sample
Large household appliances	42 – 700	975 – 6 978	889 – 4 640	3 499 – 288 188	235 – 6 775
Electronic and ICT products	141 – 2 457	698 – 8 119	1 322 – 18 354	2 255 – 41 749	600 – 11 833
Gas and electricity services	1 496 – 16 901	2 561 – 22 730	5 643 – 41 757	11 024 – 54 627	4 527 – 38 980
Telecommunication services	81 – 2 916	171 – 21 465	26 239 – 81 470	11 474 – 217 414	1 069 – 59 625
Pre-packaged food and detergents	0 – 922	601 – 10 872	2 421 – 16 470	8 313 – 44 143	1 210 – 9 694

Source: Civic Consulting based on business interviews. Sample of interviewed businesses that check for compliance on a regular basis: 19 in the sector for large household appliances; 40 in the sector for electronic and ICT products; 51 in the sector for gas and electricity services; 35 in the sector for telecommunication services; and 39 in the sector for pre-packaged food and detergents. Notes: The first quartile, i.e. the 25th percentile, is defined as the middle number between the smallest number and the median of the dataset. The third quartile, i.e. the 75th percentile, is the middle value between the median and the highest value of the dataset; Interviewed businesses were asked to report total amounts for all EU countries they target, including the country in which they are registered.

8. Extrapolation of the regular costs at the EU level

The table below presents results of the extrapolation by sector and size class. The 'total' column provides total annual costs incurred by all businesses in the EU, calculated by summing up the total amounts for the four size classes in each sector. The extrapolation to the EU level is conducted using the first and the third quartiles below in order to present a range.

Table 47: Total annual costs incurred by businesses in the EU for checking that their advertising / marketing and standard contract terms still comply with national legislation and adjusting business practices if needed – ranges based on first and third quartiles in millions of Euro by size class of enterprises

Sector/Size class	Micro	Small	Medium-sized	Large	Total (sum)
Large household appliances	1.1 – 18.6	1.3 – 9.0	0.1 – 0.5	0.1 – 8.4	2.6 – 36.5
Electronic and ICT products	7.4 – 129.2	1.8 – 20.6	0.6 – 7.8	0.1 – 2.1	9.9 – 159.6
Gas and electricity services*	n.a.	n.a.	n.a.	n.a.	4.8 – 41.5
Telecommunication services	1.3 – 45.3	0.2 – 27.7	7.1 – 22.2	1.3 – 25.0	9.9 – 120.1
Pre-packaged food and detergents	0 – 421.9	14.4 – 260.8	8.1 – 55.1	6.1 – 32.4	28.6 – 770.2

Source: Civic Consulting based on business interviews and Eurostat data on annual detailed enterprise statistics and distributive trades/services by employment size class (NACE Rev. 2). Notes: In the sector for telecommunication services, the share of businesses that sell to consumers was estimated, as the available Eurostat data on the number of businesses for the relevant NACE 2 category does not allow for distinguishing between businesses that sell to consumers and businesses that are only involved in business-to-business transactions. Based on information provided in the Broadband Internet Access Cost (BIAC) study 2016 (available at https://ec.europa.eu/digital-single-market/en/news/broadband-internet-access-cost-biac-study) and Eurostat data on annual detailed enterprise statistics for services (category wired telecommunications activities), we used an estimate of 41%; (*) In the sector for gas and electricity services, data on the number of businesses by size class is not available. As such, business costs could only be extrapolated to the EU level on the basis of the whole sample, i.e. by multiplying the median annual costs per business in the sample by the total number of businesses that check for compliance in this sector. In the sector for gas and electricity services, the share of businesses that sell to consumers was estimated, as the available Eurostat data on the number of businesses for the relevant NACE 2 category does not allow for distinguishing between businesses that sell to consumers and businesses that are only involved in business-to-business transactions. Instead, the CEER National Indicators Database (2016) was used, in particular the underlying data of the ACER electricity and gas retail markets volume for 2015.

Annex III Questionnaire for survey of qualified entities

A. Introduction and identification of the entity

STUDY TO SUPPORT THE FITNESS CHECK OF EU CONSUMER LAW

Survey of qualified entities under the Injunctions Directive (2009/22/EC)

The European Commission's Directorate General for Justice and Consumers (DG JUST) has commissioned Civic Consulting to undertake a study to support the Fitness Check of EU Consumer law.

The Fitness Check will assess whether the objectives of consumer law directives have been efficiently achieved and fully delivered. In particular, it will assess whether the directives covered have efficiently achieved consumer protection and market integration objectives. It will also identify and recommend ways to facilitate uniform enforcement and application of the consumer law directives, for instance through further harmonisation, targeted legislative adjustments on procedural aspects and/or further guidance for enforcement authorities and stakeholders, self- and co-regulatory actions and awareness raising/training activities.[1]

A key element of the study is to evaluate the effectiveness, efficiency, relevance, coherence and EU added value of the covered directives, which includes the Injunctions Directive (2009/22/EC).

This survey is targeted at all qualified entities designated according to Article 4 of the Directive.

[1] For further information on the Fitness Check, see http://ec.europa.eu/consumers/consumer_rights/review/index_en.htm

The information you provide in this survey will be an essential contribution to assessing the functioning of this Directive in practice, and to

consider possible approaches for improvement. Results will be presented in aggregate format and comments you provide will be presented anonymously.

Once completed, the study will be published on the DG JUST website and will be sent to all participants of the survey.

When completing the questionnaire, please consider the following clarifications:

- 'Injunction action' refers to all actions for injunctions as referred to in Art. 2 of the Directive;
- 'Your organisation' refers to the public authority/body, consumer organisation or other qualified entity that you represent;
- 'Infringement' means in line with Article 1 of the Directive any act contrary to the Directives listed in Annex I of the Injunctions Directive as transposed into the internal legal order of the Member States which harms the collective interests of consumers;
- The wording 'in the five year period' or 'in the last five years' refers to the period from June 2011 to May 2016.

If you have any questions on this survey, please do not hesitate to contact Civic Consulting, Camille Salinier.

Email: survey@civic-consulting.de;
Telephone: +49 30 2196 2295

Please note that you can skip questions for which you do not know the answer.

A. IDENTIFICATION OF THE ENTITY

1. Name of the entity:

2. Type of qualified entity:

Note: If you are not an organisation designated as qualified entity, this survey is not intended for you. In this case, you can participate in the open online consultation regarding the Fitness Check on the Europa website (http://ec.europa.eu/justice/newsroom/consumer-marketing/opinion/160502_en.htm)

Public authority/body

Consumer organisation

Other

3. Country:

4. Contact person:

5. E-mail address:

6. Telephone number:

B. Injunction actions initiated by your organisation since June 2011

B. Injunction actions initiated by your organisation since June 2011

1. What is the total number of injunction actions initiated by your organisation since June 2011?

If you do not have exact statistics, please estimate. In case you initiated no injunction actions in one of the years, indicate '0'.

	Number of injunction actions initiated	Comments
6/2011 - 12/2011		
2012 (full year)		
2013 (full year)		
2014 (full year)		
2015 (full year)		
1/2016 - 5/2016		
Total 5 year period		

2. Please indicate the number of injunction actions initiated by your organisation since June 2011, differentiating between actions regarding national infringements and actions regarding infringements originating in another country.

If you do not have exact statistics in this respect, please estimate. In case you initiated no injunction actions in a specific category, indicate '0'. The total should be identical to the total in the previous question.

	Number of injunction actions initiated	Comments
Number of injunction actions initiated by your organisation regarding national infringements:		
Number of injunction actions initiated by your organisation regarding infringements originating in another EU country:		
Number of injunction actions initiated by your organisation regarding infringements originating in a non-EU country:		

3. Please provide the following details concerning the injunction actions that your organisation initiated regarding infringements originating in another EU country since June 2011, indicating how you brought the action (in your jurisdiction or another EU country jurisdiction).

If you do not have exact statistics in this respect, please estimate. In case you initiated no injunction actions in a specific category, indicate '0'.

	Number of injunction actions	Please explain the reasons for the choice of jurisdiction within which you brought action(s), and specify the EU country/ies where you brought the action(s)
Number of injunction actions regarding infringements originating in another EU country brought by your organisation within your own jurisdiction:		
Number of injunction actions regarding infringements originating in another EU country brought by your organisation in another EU country:		
Number of injunction actions in which you cooperated with a qualified entity from another EU country (or with several qualified entities from other EU countries):		

4. What are the three economic sectors most affected by the injunction actions initiated by your organisation since June 2011 (in order of

importance)?

	Please select	If Other sector, please specify:
Most important sector:		
Second most important sector:		
Third most important sector:		

Comments:

5. What are the three types of unlawful practices most frequently challenged by the injunction actions initiated by your organisation since June 2011 (in order of frequency)?

	Please select	If Other sector, please specify:
Most frequent unlawful practice:		
Second most frequent unlawful practice:		
Third most frequent unlawful practice:		

Comments:

6. Please indicate the number of injunction actions for infringements related to Internet and digital technologies initiated by your organisation since June 2011.

If you do not have exact statistics, please estimate. In case you initiated no such injunction actions, indicate '0'.

Comments:

7. Please indicate the number of injunction actions initiated by your organisation in which a settlement with the alleged perpetrator of the infringement was reached since June 2011.

If you do not have exact statistics, please estimate. In case you initiated no such injunction actions, indicate '0'.

	Number of injunction actions	Comments
Number of injunction actions in which a settlement was reached directly between the qualified entities and traders:		
Number of injunction actions in which a settlement was reached with the help of a third party, e.g. a court or an out-of-court dispute resolution body:		

8. Please provide the following details regarding the injunction action initiated by your organisation since June 2011 that you consider as the most effective given the consumer protection objective.

a. Brief description of case, including the practice and sector in question, and the type of trader involved:

b. Did the case have a cross-border element (e.g. infringement originating in another country, trader established in another country, consumers from another country affected)?

c. Was a settlement reached in the case?

Yes

No

Comments:

9. Please provide the following details regarding the injunction action initiated by your organisation since June 2011 that you consider as the second most effective given the consumer protection objective.

a. Brief description of case, including the practice and sector in question, and the type of trader involved:

b. Did the case have a cross-border element (e.g. infringement originating in another country, trader established in another country, consumers from another country affected)?

c. Was a settlement reached in the case?

Yes

No

Comments:

C. Effectiveness of national implementation of the Injunctions Directive

C. Effectiveness of national implementation of the Injunctions Directive

Please assess the effectiveness of specific measures taken in the national implementation of the Injunctions Directive by your Member State with respect to the injunctions procedure. Please only assess those measures that exist in your national legal order.

On a scale of 1 to 5, please assess the effectiveness of the following measures, if they exist in the national legal order of your country:

	1 (Not at all effective)	2	3	4	5 (Very effective)	Measure does not exist in the national legal order	Don't know	Comments
Injunction procedure is regulated together with the enforcement procedures foreseen by other EU consumer directives (Unfair Contract Terms Directive and/or Unfair Commercial Practices Directive and/or Consumer Rights Directive) within a single legal act, possibly as a single procedure.	○	○	○	○	○	○	○	
Extension of the scope of application of the Injunctions Directive to the rights not covered by the EU Directives listed in Annex I to the Injunctions Directive	○	○	○	○	○	○	○	
Possibility to bring an injunction action jointly against several traders from the same economic sector or their associations	○	○	○	○	○	○	○	
Protection of business' interests covered by the injunctions procedure	○	○	○	○	○	○	○	
Out-of-court preliminary stage in the injunction procedures	○	○	○	○	○	○	○	
Measures regarding prior consultation (Art. 5 of the Injunctions Directive)	○	○	○	○	○	○	○	
Measures ensuring summary procedure	○	○	○	○	○	○	○	
Sanctions for non-compliance with the injunction order	○	○	○	○	○	○	○	

On a scale of 1 to 5, please assess the effectiveness of the following measures, if they exist in the national legal order of your country:

	1 (Not at all effective)	2	3	4	5 (Very effective)	Measure does not exist in the national legal order	Don't know	Comments
Measures regarding the publication of the decision/ a corrective statement	○	○	○	○	○	○	○	
Possibility to claim for sanctions for the infringement within the injunction procedure	○	○	○	○	○	○	○	
Possibility to bring an action for damages to be paid to the qualified entity or the public purse within the injunction procedure	○	○	○	○	○	○	○	
Possibility to bring an action for the restitution of profits obtained as a result of infringements, including an order that those profits are paid to the public purse or to another beneficiary within the injunction procedure	○	○	○	○	○	○	○	
Possibility to bring an action for damages or redress to be paid to the consumers concerned within the injunction procedure	○	○	○	○	○	○	○	
Possibility for individual consumers to base their individual claims for damages/remedies on the injunctions order	○	○	○	○	○	○	○	
Possibility for a qualified entity to claim other measures beyond the injunction	○	○	○	○	○	○	○	
Extension of the effects of individual injunction orders to future infringements and/or same or similar illegal practices of other traders	○	○	○	○	○	○	○	

D. Obstacles to the effective use of the injunctions procedure and cooperation w

D. Obstacles to the effective use of the injunctions procedure and cooperation with qualified entities in other MS

1. Are you aware of the legal possibility to bring injunction actions in another EU country?

Yes

No

Comments

2. Are you aware of the procedural modalities of the injunction procedure in other EU countries?

Yes

No

Comments

3. On a scale of 1 to 5, please indicate the importance of the following potential obstacles to the effective use of the injunctions procedure related to national infringements:

	1 (Not at all important obstacle)	2	3	4	5 (Very important obstacle)	Don't Know	Comments
Costs and the associated financial risks of injunction procedure	○	○	○	○	○	○	
Complexity of the injunction procedure	○	○	○	○	○	○	
Length of actions	○	○	○	○	○	○	
Limited effects of the injunction orders	○	○	○	○	○	○	
Limited effectiveness of the sanctions for non-compliance with the injunction orders	○	○	○	○	○	○	
Difficulties with the enforcement of the injunction orders	○	○	○	○	○	○	

4. On a scale of 1 to 5, please indicate the importance of the following potential obstacles to the effective use of the injunctions procedure related to infringements originating in another EU country:

	1 (Not at all important obstacle)	2	3	4	5 (Very important obstacle)	Don't Know	Comments
Costs and the associated financial risks of injunction procedure	○	○	○	○	○	○	
Complexity of the injunction procedure	○	○	○	○	○	○	
Length of actions	○	○	○	○	○	○	
Limited effects of the injunction orders	○	○	○	○	○	○	
Limited effectiveness of the sanctions for non-compliance with the injunction orders	○	○	○	○	○	○	
Difficulties with the enforcement of the injunction orders	○	○	○	○	○	○	

5. During the last five years, have you cooperated on specific injunction actions with qualified entities from other EU countries?

	Please select	Comments
With qualified entities which are consumer organisations		
With qualified entities which are independent public bodies		

6. During the last five years, have you informed qualified entities from other country/ies, if an infringement affected consumer from their country?

Comments

7. Has staff from your organisation participated in measures financed by the European Commission to encourage a better use of the injunctions procedure in a cross-border context? *This refers to the Consumer Justice Enforcement Forum (CoJEF I and II) and the Consumer Law Enforcement Forum (CLEF)*

Yes

No

Don't know

8. On a scale of 1 to 5, how do you assess the effectiveness of the above measures financed by the European Commission?

1 (Not at all effective)	2	3	4	5 (Very effective)	Don't Know

Please explain

9. On a scale of 1 to 5, how do you assess the effectiveness of the provisions of the Injunctions Directive enabling the qualified entities from one EU country to seek injunction in another EU country where the infringement originated (Article 4) ?

1 (Not at all effective)	2	3	4	5 (Very effective)	Don't Know

Please explain

7. On a scale of 1 to 5, how do you assess the effectiveness of the provisions of the Injunctions Directive enabling the qualified entities from one EU country to seek injunction in another EU country where the infringement originated (Article 4) ?

1 (Not at all effective)	2	3	4	5 (Very effective)	Don't Know

Please explain

10. How do you assess the practicability of the procedural modalities of the injunction procedure in other EU countries?

1 (Not at all effective)	2	3	4	5 (Very effective)	Don't Know

Please explain

8. How do you assess the practicability of the procedural modalities of the injunction procedure in other EU countries?

1 (Not at all effective)	2	3	4	5 (Very effective)	Don't Know

Please explain

E. Possible future measures

E. Possible future measures

1. On a scale of 1 to 5, please assess the extent to which further harmonisation of the injunction procedure across the EU and under the Injunctions Directive would be beneficial. Consider the following aspects:

	1 (Not at all beneficial)	2	3	4	5 (Very beneficial)	Don't know	Please indicate experiences and best practices that should be taken into account, if any:
Extension of the scope of the Injunctions Directive by including additional EU legislation into Annex I (please indicate which EU legislation in the text box on the right)	○	○	○	○	○	○	
Exemption of qualified entities from legal costs within the injunction procedure (i.e. waiving costs)	○	○	○	○	○	○	
Possibility to bring an injunction action jointly against several traders from the same economic sector or their associations	○	○	○	○	○	○	
Mandatory summary procedure	○	○	○	○	○	○	
Mandatory publication of the injunction decision/corrective statement	○	○	○	○	○	○	
Measures regarding prior consultation (Art. 5 of the Injunctions Directive)	○	○	○	○	○	○	
Common rules on the burden of proof	○	○	○	○	○	○	
Sanctions for the infringements defined by the Injunctions Directive, taking into account provisions of the Directives listed in the Annex I to the Injunctions Directive as transposed into internal legal orders of the Member States	○	○	○	○	○	○	

On a scale of 1 to 5, please assess the extent to which further harmonisation of the injunction procedure across the EU and under the Injunctions Directive would be beneficial. Consider the following aspects:

	1 (Not at all beneficial)	2	3	4	5 (Very beneficial)	Don't know	Please indicate experiences and best practices that should be taken into account, if any:
More precise sanctions in case of non-compliance with the injunction order	○	○	○	○	○	○	
Possibility to bring an action for damages to be paid to the qualified entity or the public purse within the injunction procedure	○	○	○	○	○	○	
Possibility to bring an action for the restitution of profits obtained as a result of infringements, including an order that those profits are paid to the public purse or to another beneficiary within the injunction procedure	○	○	○	○	○	○	
Possibility to bring an action for damages or redress to be paid to the consumers concerned within the injunction procedure	○	○	○	○	○	○	
Possibility for individual consumers to base their individual claims for damages/remedies on the injunction order	○	○	○	○	○	○	
Possibility for a qualified entity to claim other measures beyond the injunction	○	○	○	○	○	○	
Extension of the effects of individual injunction orders to future infringements and/or same or similar illegal practices	○	○	○	○	○	○	
The cross-border effect of the injunction order within the EU	○	○	○	○	○	○	

2. On a scale of 1 to 5, please assess the extent to which further measures to increase the use of injunction procedures by consumer organisations and to strengthen the cooperation between consumer organisations from different EU countries would be useful. Consider the following aspects:

	1 (Not at all useful)	2	3	4	5 (Very useful)	Don't know	Please indicate experiences and best practices that should be taken into account, if any:
Awareness raising activities (for example on the "e-justice" portal)	○	○	○	○	○	○	
Further measures addressed to the qualified entities which are consumer organisations, so that they coordinate their injunction actions regarding infringements having a cross-border dimension (such as CoJEF II)	○	○	○	○	○	○	
Measures to encourage out-of-court settlements aiming at stopping infringements to improve the enforcement of EU legislation protecting the collective interests of consumers	○	○	○	○	○	○	

F. Concluding questions

F. Concluding questions

1. On a scale of 1 to 5, please assess the impact of the injunction procedure on consumers in your country in terms of reduction in the number of infringements to consumer protection rules in the last five years.

	Reduction in number of infringements						
	1 (No reduction at all)	2	3	4	5 (Very significant reduction)	Don't know	Please explain:
Impact regarding purely national infringements	○	○	○	○	○	○	
Impact regarding infringements originating in another EU country	○	○	○	○	○	○	

2. On a scale of 1 to 5, please assess the impact of the injunction procedure on consumers in your country in terms of reduction in consumers' detriment in the last five years.

Note: In the context of this study, consumers' detriment is understood as consumers' financial loss caused or that could have been caused by the infringements as defined by Article 1(2) of the Injunctions Directive.

	Reduction in consumer detriment						
	1 (No reduction at all)	2	3	4	5 (Very significant reduction)	Don't know	Please explain:
Impact regarding purely national infringements	○	○	○	○	○	○	
Impact regarding infringements originating in another EU country	○	○	○	○	○	○	

3. Please estimate the average reduction in detriment through the injunction actions you have brought regarding purely national infringements in the last five years (total reduction for all affected consumers per injunction action)

If 10 million euros or more, please indicate:

4. Please estimate the average reduction in detriment through the injunction actions you have brought regarding infringements originating in another EU country in the last five years (total reduction for all affected consumers per injunction action)

If 10 million euros or more, please indicate:

5. Do you have any other comments?

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Annex IV Interview guides

Study to support the Fitness Check of EU Consumer law (main study): Interview guide for consumer organisations and ECC

Background

This study to support the Fitness Check of EU Consumer law analyses consumer and marketing law in all 28 Member States, focusing on the national transposition, as well as on relevant national provisions going beyond the minimum harmonisation requirements of the following five Directives: Unfair Contract Terms Directive (93/13/EEC, UCTD), Unfair Commercial Practices Directive (2005/29/EC, UCPD), Price Indication Directive (98/6/EC, PID), Misleading and Comparative Advertising Directive (2006/114/EC, MCAD), Injunctions Directive (2009/22/EC, ID).

The study will also examine specific aspects of interplay between the listed directives and other horizontal and sectoral consumer law instruments which are based on EU legislation.

Information requirements are only covered by this study to the extent that they refer to the advertising stage (UCPD, MCAD), or to unit price indication (PID). The analysis of these information requirements includes the assessment of their coherence with the requirements of the Consumer Rights Directive. Obligations related to pre-contractual information requirements[1] and other issues covered by the CRD (such as the right of withdrawal) are not in the scope of the study and will be covered by a separate study on the CRD. Also, the Sales and Guarantees Directive as well as the recent Digital Contracts Package are subject or have been subject to separate evaluations and both are therefore not covered by this study.

In the following we provide questions relevant for the stakeholder group that your organisation represents,[2] grouped according to the following themes:

- Unfair commercial practices and marketing;
- Contract conclusion and performance;
- Injunctions;
- Cross-cutting issues.

[1] Pre-contractual information requirements in the context of this study are to be understood as information requirements that relate to the decision making process of a consumer with respect to conclusion of a contract, e.g. when the consumer visits a shop or looks at the product descriptions in an online shop.

[2] As not all questions are relevant for all stakeholder groups, there may be gaps in the numbering of questions.

1.1. Unfair commercial practices and marketing

1.1.1. Effectiveness of the UCPD in establishing a high level of consumer protection

a) How do you assess the effectiveness of the UCPD (the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive?
- The practical benefits for consumers of the black list of unfair commercial practices annexed to this Directive, in particular its application in practical cases? Please provide examples.
- The practical benefits for consumers arising from the Member States' use of the minimum harmonisation clauses for financial services and immovable property? Please provide examples.

b) Regarding the application of the UCPD in tackling misleading environmental claims / in addressing misleading practices in the energy market (e.g. concerning vehicle fuel at gasoline stations, provision of retail electricity):

- To what extent has the UCPD been applied in the context of environmental claims/in the energy market?
- How effective was it?
- What are the problems from a consumer perspective, if any?

c) Regarding the practical benefits for consumers of the "average consumer" as the reference point for assessing whether a commercial practice is likely to materially distort economic behaviour, and of the specific protection of "vulnerable consumers" introduced by the Directive:

- How does the concept of 'average consumer' work in practice? Is it applied rigidly?
- Have enforcement authorities/courts in your country recognised new categories of vulnerable consumers not listed in the UCPD (such as poor/indebted)?

d) In your view, to what extent have self- and co-regulation actions been effective in addressing unfair commercial practices? Which self/co-regulation actions work in practice? Which ones don't? Please provide examples.

e) Is there a need to extend or modify the black list of the UCPD? If so, please indicate the practice(s) to be added to the list. Should there be a mechanism for subsequent inclusion of new practices into the UCPD black list to respond to new developments?

f) Are there other measures that could improve the effectiveness of the UCPD in establishing a high level of consumer protection in your country? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.1.2. Effectiveness of the PID in establishing a high level of consumer protection

a) Do you think that consumers are effectively informed about the unit selling price? Please substantiate your reply.

b) Where a recognised measurement unit for a product's performance exists and is displayed to consumers (e.g. number of washloads for detergents), should the

"unit price" for such product be indicated per such "performance" measurement units rather than per 1 kg or 1 litre?

c) [*Note: This question is only relevant for countries that use the derogation for small businesses from the requirement to indicate the unit price on the basis of Article 6 of the Directive (AT, BE, EL, DE, FR, NL, SI, UK):*] Is the derogation relevant? To what extent do companies in your country make use of it? Are there consumer complaints because of this? If so, approximately how many per year?

1.1.5. Interplay amongst UCPD information requirements according to Article 7(4) with the information requirements in the horizontal consumer law instruments

a) In your experience, what is the level of awareness of traders as regards information requirements at the advertising stage according to Article 7(4) of the UCPD (which concerns the "invitation to purchase")?

b) How are these rules applied in practice? To what extent do traders implement these rules?

c) Are these information requirements under the UCPD useful in view of the more comprehensive pre-contractual information requirements of the CRD? Please substantiate your reply.

1.1.7. Relevance of contractual consequences of unfair commercial practices

a) Are you aware of any national law provisions providing contractual consequences in case of breaches to the UCPD or national provisions on the avoidance of the contract e.g. in cases of usury or other immoral behaviour? Is there any case law (enforcement decisions, court rulings) providing for such consequences?

b) Based on past experience, do you think there is a need and potential to develop contractual consequences linked to the use of unfair commercial practices? Please substantiate your reply.

1.2. Contract conclusion and performance

1.2.1. Effectiveness of the current rules in establishing a high level of consumer protection

a) How do you assess the effectiveness of the UCTD (the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive?
- The practical effectiveness of the indicative list of unfair terms annexed to the Directive, in particular whether the indicative list of the Directive works in practice or whether there are problems in this respect?

b) In case a "black" and/or "grey" list of unfair contract terms was adopted in your country:

- How does the black/grey list work in practice?
- Does it make a difference to have such a list? Does this represent an advantage for consumer protection compared to the purely indicative list of the Directive?

c) Typically, a court decision establishing the unfairness of an unfair term is limited to the individual relationship between the specific trader and the consumer, rather than, for example, applying to all contracts concluded with a given trader, or to all contracts containing the same contract term. With this respect, please indicate:

- In your country, have the effects of court decisions establishing the unfairness of an unfair term been extended to all contracts of the trader concerned or to the contracts of any other trader containing such a term?
- If so, how does this work in practice? What are the impacts on businesses?
- If there are no such effects of court decisions on unfair terms: what are the effects of this situation?

d) How do you assess the overall effectiveness of the contractual transparency requirements under the Directive?

e) [*Only if your country has extended the application of the UCTD:*] In your experience, does the extension of the application of this Directive to individually negotiated terms or to terms on the adequacy of the price and the main subject-matter put in place in certain Member States represent an advantage for consumers?

f) The sanction foreseen by the UCTD for unfair contract terms is that the term is not binding. In this respect, what are your experiences:

- Does this sanction work in practice?
- Does it help consumers?
- Do the national courts take up the active role imposed by the Court of Justice (invoking unfairness *ex officio*, taking measures of instruction)?
- Is it sufficient to have CJEU guidance in this regard?
- Is there administrative remedy in this area for consumers?

g) In a forward looking perspective: Are there other measures that could improve the effectiveness of the UCTD in establishing a high level of consumer protection in your country? Would a graphical presentation model improve the readability and comprehension by consumers of the Terms and Conditions? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.3. Injunctions [ONLY FOR CONSUMER ASSOCIATIONS THAT ARE QUALIFIED ENTITIES]

1.3.1. Effectiveness of the current rules in establishing a high level of consumer protection

When answering the questions below, please differentiate between the type of qualified entity (consumer organisations vs. public authorities/bodies) and between injunction actions regarding national infringements and injunction actions regarding infringements originating in another EU country.

a) To what extent is the use of the injunction procedure in your country contributing to the reduction in the number of infringements to consumer protection rules and reduction in consumers' detriment?[3]

b) What measures in your national legislation on injunction procedure do you find particularly effective: measures regarding the cost of the procedure, the summary

[3] Consumers' detriment should be understood as consumers' financial loss caused or that could have been caused by the infringements as defined by article 1(2) of the Injunctions Directive.

procedure, the publication of the decision and/or the publication of a corrective statement, the sanctions for non-compliance with the injunction order (Art. 2(1) of the Injunctions Directive), the prior consultation (Article 5 of the Injunctions Directive), and the effects of the injunction order? Please explain what exactly those measures are and why they are effective.

c) Has your country extended the scope of application of the injunction procedure beyond the pieces of EU legislation listed in the Annex I to the Injunction Directive? If yes, what are the additional consumer rights covered?

d) In your experience, what are the most relevant obstacles to the effective use of the injunctions procedure? What progress has been made in removing obstacles and which new difficulties have emerged in your country since 2012?

e) In a forward looking perspective: Should the coverage of the Injunctions Directive be extended (by including additional legislation into Annex I to the Directive)? If so, which EU legislation should be included? Are there other measures that could improve the effectiveness of the ID in establishing a high level of consumer protection? Are there best practices in your country that could be relevant for other EU countries and considered as a model for the injunction procedure at EU level?

[Note for the interviewer: Please explain that statistics on injunctions will be collected through a survey of qualified entities, for which the organisation will be separately contacted. It is therefore not the aim of the interview to collect statistical data on injunctions]

1.3.2. Effectiveness of the current rules in eliminating obstacles to the Internal Market

Infringements originating in another EU country can in principle be addressed through three different approaches: a) injunction actions by qualified entities in your country against traders from other EU countries in your jurisdiction; b) injunction actions by qualified entities in your country against traders from other EU countries in the trader's jurisdiction; and c) the cooperation between qualified entities in your country and other country/ies, where each qualified entity brings an injunction action in its own jurisdiction. Please differentiate between these approaches in your answers.

a) According to your experiences, how effective is the injunction procedure in addressing infringements originating in another EU country?

b) How effective is it to address infringements originating in another EU country that qualified entities in your country are enabled to seek injunctions in the other Member State (Article 4 of the ID)?

c) In a forward looking perspective: Are there non-legislative or/and legislative measures that could improve the effectiveness of the injunction procedure in addressing infringements originating in another EU country? Are there best practices in your country that could be relevant for other EU countries and could be considered as model for the injunction procedure at EU level?

1.3.3 Interplay between the Injunctions Directive and other enforcement instruments of consumer law

a) Is the injunction procedure as designed by the Injunctions Directive regulated separately in your country (in a separate legal act or as a separate procedure regulated within the same legal act)) from the enforcement procedures foreseen by other EU Consumer Law Directives (UCPD, UCTD and by the Consumer Rights Directive)?

- If these procedures are regulated separately: What are the main differences between them? How is the coherence between these procedures ensured?

- If these procedures are regulated in a single legal act (possibly as a single procedure): In which way do these procedures (or this procedure) go beyond measures foreseen by the Injunctions Directive?

1.4. Cross-cutting issues

1.4.1. Cost and benefits of the directives covered by the study

In your answers, please specify the different types of costs or benefits that you consider relevant, and quantify them as much as possible (if relevant data is available).

a) What is your view as to the benefits for consumers from the protection provided by the directives covered by the study, e.g. in terms of protection against unfair commercial practices and unfair standard terms in contracts?

b) What is your view as to the costs for consumers in exercising their rights under these directives?

c) Are there indications that the directives covered by the study are not implemented in your country in a cost-effective manner? If relevant, please provide examples.

d) Could the costs for implementing and enforcing the rules of the directives covered by the study be reduced without lowering the level of protection for consumers? If so, how?

1.4.2 Interplay with EU sector-specific consumer protection legislation

The following questions concern the interplay of the horizontal EU consumer legislation subject to this study – mainly the UCPD and UCTD - with EU sector-specific consumer protection legislation in the areas of electronic communications, passenger transport, energy and consumer financial services.

a) In your experience, to what extent are i) businesses, ii) consumers and iii) the specific public enforcement bodies in the relevant sectors aware of the requirements of the UCPD and UCTD? Are these Directives applied in practice by national authorities and courts as a legal basis to combat unfair commercial practices and unfair standard terms in contracts in the regulated sectors? Please provide examples.

b) In your country, is the same authority responsible for the enforcement of the horizontal EU consumer law and the sector specific rules, or are different authorities responsible for these two sets of rules?

c) [*Only if different authorities are responsible in your country for the enforcement of the horizontal EU consumer law and the sector specific rules:*] Is there an institutionalised cooperation between these authorities? Does the institutional arrangement for enforcement affect the use of UCPD/UCTD in the regulated sectors, as specified in the previous question?

d) How do the horizontal consumer provisions of the UCPD and the UCTD work together with the sector-specific rules? Does the combination provide for a clear and coherent legal framework concerning contractual fairness, unfair commercial practices, and information obligations regarding advertising? Are there any overlaps and conflicting rules?

e) In your view, what are the benefits of the complementary application of the UCPD and UCTD in the regulated sectors? What are the costs due to the complementary application? Please specify and provide quantitative information, if available.

f) Is there any need for clarification of the interplay between the EU sector-specific rules and horizontal EU consumer law, especially the UCPD and the UCTD?

1.4.3. Relevance of consumer law directives for consumer-to-business transactions

a) Do you see a need to apply the UCPD and the UCTD in consumer to-business (C2B) relations? This concerns situations where the consumer sells goods or provides services to a trader (e.g. where the consumer sells gold jewellery to a trader or supplies digital content to business against remuneration).

1.4.4. Specific protection for vulnerable consumers

a) To what extent do you consider the concepts of "consumer", "vulnerable consumer" and "average consumer" as currently defined in the consumer law directives and relevant jurisprudence, and as applied by national authorities and courts in your country, to be valid and fit for purpose?

b) To what extent do you consider the existing rules under the UCPD to be adequate for protecting vulnerable consumers? Why? Based on the experiences in your country, should specific provisions regarding vulnerable consumers be introduced in other directives concerned, in particular the UCTD?

1.4.5. EU added value

a) Overall, would you consider that protection of consumers against unfair commercial practices and unfair standard terms in contracts has improved in your country since the implementation of the UCPD and the UCTD in national legislation?

b) Overall, would you consider that the information of consumers regarding unit prices has improved since the implementation of the PID in national legislation?

c) Overall, would you consider that it has become easier for consumers in your country to directly purchase cross-border from traders located in other EU countries in recent years?

d) To what extent are these improvements, if any, due to the mentioned directives?

Study to support the Fitness Check of EU Consumer law (main study): Interview guide for responsible ministries and authorities

Background

This study to support the Fitness Check of EU Consumer law analyses consumer and marketing law in all 28 Member States, focusing on the national transposition, as well as on relevant national provisions going beyond the minimum harmonisation requirements of the following five Directives: Unfair Contract Terms Directive (93/13/EEC, UCTD), Unfair Commercial Practices Directive (2005/29/EC, UCPD), Price Indication Directive (98/6/EC, PID), Misleading and Comparative Advertising Directive (2006/114/EC, MCAD), Injunctions Directive (2009/22/EC, ID).

The study will also examine specific aspects of interplay between the listed directives and other horizontal and sectoral consumer law instruments which are based on EU legislation.

Information requirements are only covered by this study to the extent that they refer to the advertising stage (UCPD, MCAD), or to unit price indication (PID). The analysis of these information requirements includes the assessment of their coherence with the requirements of the Consumer Rights Directive. Obligations related to pre-contractual information requirements[1] and other issues covered by the CRD (such as the right of withdrawal) are not in the scope of the study and will be covered by a separate study on the CRD. Also, the Sales and Guarantees Directive as well as the recent Digital Contracts Package are subject or have been subject to separate evaluations and both are therefore not covered by this study.

In the following we provide questions relevant for the stakeholder group that your organisation represents,[2] grouped according to the following themes:

- Unfair commercial practices and marketing;
- Contract conclusion and performance;
- Injunctions;
- Cross-cutting issues.

[1] Pre-contractual information requirements in the context of this study are to be understood as information requirements that relate to the decision making process of a consumer with respect to conclusion of a contract, e.g. when the consumer visits a shop or looks at the product descriptions in an online shop.

[2] As not all questions are relevant for all stakeholder groups, there may be gaps in the numbering of questions.

1.1. Unfair commercial practices and marketing

1.1.1. Effectiveness of the UCPD in establishing a high level of consumer protection

a) How do you assess the effectiveness of the UCPD (the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive?
- The practical benefits for consumers of the black list of unfair commercial practices annexed to this Directive, in particular its application in practical cases? Please provide examples.
- The practical benefits for consumers arising from the Member States' use of the minimum harmonisation clauses for financial services and immovable property? Please provide examples.

b) Regarding the application of the UCPD in tackling misleading environmental claims / in addressing misleading practices in the energy market (e.g. concerning vehicle fuel at gasoline stations, provision of retail electricity):

- To what extent has the UCPD been applied in the context of environmental claims/in the energy market?
- How effective was it?
- What are the problems from a consumer perspective, if any?

c) Regarding the practical benefits for consumers of the "average consumer" as the reference point for assessing whether a commercial practice is likely to materially distort economic behaviour, and of the specific protection of "vulnerable consumers" introduced by the Directive:

- How does the concept of 'average consumer' work in practice? Is it applied rigidly?
- Have enforcement authorities/courts in your country recognised new categories of vulnerable consumers not listed in the UCPD (such as poor/indebted)?

d) In your view, to what extent have self- and co-regulation actions been effective in addressing unfair commercial practices? Which self/co-regulation actions work in practice? Which ones don't? Please provide examples.

e) Is there a need to extend or modify the black list of the UCPD? If so, please indicate the practice(s) to be added to the list. Should there be a mechanism for subsequent inclusion of new practices into the UCPD black list to respond to new developments?

f) Are there other measures that could improve the effectiveness of the UCPD in establishing a high level of consumer protection in your country? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.1.2. Effectiveness of the PID in establishing a high level of consumer protection

a) Do you think that consumers are effectively informed about the unit selling price? Please substantiate your reply.

b) Where a recognised measurement unit for a product's performance exists and is displayed to consumers (e.g. number of washloads for detergents), should the

"unit price" for such product be indicated per such "performance" measurement units rather than per 1 kg or 1 litre?

c) [*Note: This question is only relevant for countries that use the derogation for small businesses from the requirement to indicate the unit price on the basis of Article 6 of the Directive (AT, BE, EL, DE, FR, NL, SI, UK):*] Is the derogation relevant? To what extent do companies in your country make use of it? Are there consumer complaints because of this? If so, approximately how many per year?

1.1.3. Effectiveness of the current rules in providing protection for businesses [ONLY BUSINESS ASSOCIATIONS AND RELEVANT AUTHORITIES]

a) How do you assess the effectiveness of the MCAD (the national laws transposing it) in terms of:

- The scope of protection under the Directive, in particular to what extent the scope limited to the notion of 'advertising' provides effective protection for businesses.
- The overall effectiveness of the principle-based approach to misleading advertising under this Directive.

b) How do you assess the effects of the minimum harmonisation provisions on misleading advertising? Which national rules that go beyond the MCDA, if any, have been providing a higher level of protection? If so, how?

c) How do you assess the effects of the full harmonisation provisions on comparative advertising? Have comparative advertising rules provided an effective legal framework for modern types of marketing?

d) Do the current rules on enforcement set in the MCAD provide an effective enforcement framework, especially in the context of cross-border transactions? Please substantiate your reply.

e) Are there measures that could improve the effectiveness of the MCAD in providing protection for businesses (see also 1.1.6 below)? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.1.5. Interplay amongst UCPD information requirements according to Article 7(4) with the information requirements in the horizontal consumer law instruments

a) In your experience, what is the level of awareness of traders as regards information requirements at the advertising stage according to Article 7(4) of the UCPD (which concerns the "invitation to purchase")?

b) How are these rules applied in practice? To what extent do traders implement these rules?

c) Are these information requirements under the UCPD useful in view of the more comprehensive pre-contractual information requirements of the CRD? Please substantiate your reply.

d) Do you see any overlap with the provisions of the Services Directive and the E-commerce Directive that apply to advertising? If so, do you consider that any costs arise for public authorities and/or businesses due to this multiplicity of information obligations?

1.1.6. Relevance for business-to-business transactions

a) Based on your experiences, do you see a need for the following potential measures in the area of unfair commercial practices/marketing? Please provide reasons and

indicate potential practical benefits of the listed measures, if any. Please give examples.

- Extending the Unfair Commercial Practices Directive to B2B transactions or revising/extending the Misleading and Comparative Advertising Directive
- Aligning the legal regimes for B2B and B2C transactions in the area of commercial practices
- Extending the scope of the protection in B2B transactions to cover also unfair commercial practices during and after the transaction
- Having a black-list of practices in the business-to-business marketing area
- Having a cross-border enforcement cooperation mechanism in the business-to-business marketing area
- Developing contractual consequences linked to the breaches of the Misleading and Comparative Advertising Directive
- Adapting the rules on comparative advertising of the current Misleading and Comparative Advertising Directive

1.1.7. Relevance of contractual consequences of unfair commercial practices [ALL]

a) Are you aware of any national law provisions providing contractual consequences in case of breaches to the UCPD or national provisions on the avoidance of the contract e.g. in cases of usury or other immoral behaviour? Is there any case law (enforcement decisions, court rulings) providing for such consequences?

b) Based on past experience, do you think there is a need and potential to develop contractual consequences linked to the use of unfair commercial practices? Please substantiate your reply.

1.2. Contract conclusion and performance

1.2.1. Effectiveness of the current rules in establishing a high level of consumer protection

a) How do you assess the effectiveness of the UCTD (the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive?
- The practical effectiveness of the indicative list of unfair terms annexed to the Directive, in particular whether the indicative list of the Directive works in practice or whether there are problems in this respect?

b) In case a "black" and/or "grey" list of unfair contract terms was adopted in your country:

- How does the black/grey list work in practice?
- Does it make a difference to have such a list? Does this represent an advantage for consumer protection compared to the purely indicative list of the Directive?

c) Typically, a court decision establishing the unfairness of an unfair term is limited to the individual relationship between the specific trader and the consumer, rather than, for example, applying to all contracts concluded with a given trader, or to all contracts containing the same contract term. With this respect, please indicate:

- In your country, have the effects of court decisions establishing the unfairness of an unfair term been extended to all contracts of the trader concerned or to the contracts of any other trader containing such a term?
- If so, how does this work in practice? What are the impacts on businesses?
- If there are no such effects of court decisions on unfair terms: what are the effects of this situation?

d) How do you assess the overall effectiveness of the contractual transparency requirements under the Directive?

e) [*Only if your country has extended the application of the UCTD:*] In your experience, does the extension of the application of this Directive to individually negotiated terms or to terms on the adequacy of the price and the main subject-matter put in place in certain Member States represent an advantage for consumers?

f) The sanction foreseen by the UCTD for unfair contract terms is that the term is not binding. In this respect, what are your experiences:

- Does this sanction work in practice?
- Does it help consumers?
- Do the national courts take up the active role imposed by the Court of Justice (invoking unfairness *ex officio*, taking measures of instruction)?
- Is it sufficient to have CJEU guidance in this regard?
- Is there administrative remedy in this area for consumers?

g) In a forward looking perspective: Are there other measures that could improve the effectiveness of the UCTD in establishing a high level of consumer protection in your country? Would a graphical presentation model improve the readability and comprehension by consumers of the Terms and Conditions? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.2.3. Relevance for business-to-business transactions [ONLY BUSINESS ASSOCIATIONS AND RELEVANT AUTHORITIES]

a) Do you think there is a need to strengthen the protection of businesses in your country, especially SMEs and in particular micro enterprises, with regard to unfair contract terms? If so, would the system of protection established by the Directive, based on the concept of good faith and the significant imbalance in the parties' rights and obligations, be appropriate for B2B transactions?

b) What would be an appropriate scope of B2B protection against unfair contract terms in your country? Should the protection, if at all needed, extend to individually negotiated terms, the main subject-matter of the contract and the adequacy of the price?

c) According to your experiences, are there specific contractual terms often used in B2B transactions which could be regarded as unfair in all circumstances or presumed to be unfair?

d) According to your experiences, is there a need for contractual transparency requirements in B2B transactions, similar to the requirement of plain, intelligible language in the Directive?

e) Do you expect that an extension of the UCTD to B2B transactions could bring benefits for cross-border trade for companies located in your country? Would the consequences of such an extension likely have an effect on innovation by or market opportunities for SME providers/suppliers?

f) In your view, would the benefits of extending the scope to business-to-business transactions exceed the negative consequences of such an extension?

1.3. Injunctions

1.3.1. Effectiveness of the current rules in establishing a high level of consumer protection

When answering the questions below, please differentiate between the type of qualified entity (consumer organisations vs. public authorities/bodies) and between injunction actions regarding national infringements and injunction actions regarding infringements originating in another EU country.

a) To what extent is the use of the injunction procedure in your country contributing to the reduction in the number of infringements to consumer protection rules and reduction in consumers' detriment?[3]

b) What measures in your national legislation on injunction procedure do you find particularly effective: measures regarding the cost of the procedure, the summary procedure, the publication of the decision and/or the publication of a corrective statement, the sanctions for non-compliance with the injunction order (Art. 2(1) of the Injunctions Directive), the prior consultation (Article 5 of the Injunctions Directive), and the effects of the injunction order? Please explain what exactly those measures are and why they are effective.

c) Has your country extended the scope of application of the injunction procedure beyond the pieces of EU legislation listed in the Annex I to the Injunction Directive? If yes, what are the additional consumer rights covered?

d) In your experience, what are the most relevant obstacles to the effective use of the injunctions procedure? What progress has been made in removing obstacles and which new difficulties have emerged in your country since 2012?

e) In a forward looking perspective: Should the coverage of the Injunctions Directive be extended (by including additional legislation into Annex I to the Directive)? If so, which EU legislation should be included? Are there other measures that could improve the effectiveness of the ID in establishing a high level of consumer protection? Should the scope of the Injunctions Directive be extended to the protection of collective business' interests? Are there best practices in your country that could be relevant for other EU countries and considered as a model for the injunction procedure at EU level?

[Note for the interviewer: Please explain that statistics on injunctions will be collected through a survey of qualified entities, for which the organisation will be separately contacted. It is therefore not the aim of the interview to collect statistical data on injunctions]

1.3.2. Effectiveness of the current rules in eliminating obstacles to the Internal Market

Infringements originating in another EU country can in principle be addressed through three different approaches: a) injunction actions by qualified entities in your country against traders from other EU countries in <u>your jurisdiction</u>; b) injunction actions by qualified entities in your country against traders from other EU countries in the <u>trader's jurisdiction;</u> and c) the <u>cooperation between qualified entities</u> in your country and other EU country/ies, where each qualified entity brings an injunction action in its own jurisdiction. Please differentiate between these approaches in your answers.

[3] Consumers' detriment should be understood as consumers' financial loss caused or that could have been caused by the infringements as defined by article 1(2) of the Injunctions Directive.

a) According to your experiences, how effective is the injunction procedure in addressing infringements originating in another EU country?

b) How effective is it to address infringements originating in another EU country that qualified entities in your country are enabled to seek injunctions in the other Member State (Article 4 of the ID)?

c) In a forward looking perspective: Are there non-legislative or/and legislative measures that could improve the effectiveness of the injunction procedure in addressing infringements originating in another EU country? Are there best practices in your country that could be relevant for other EU countries and could be considered as model for the injunction procedure at EU level?

1.3.3 Interplay between the Injunctions Directive and other enforcement instruments of consumer law

a) Is the injunction procedure as designed by the Injunctions Directive regulated separately in your country (in a separate legal act or as a separate procedure regulated within the same legal act) from the enforcement procedures foreseen by other EU Consumer Law Directives (UCPD, UCTD and by the Consumer Rights Directive)?

- If these procedures are regulated separately: What are the main differences between them? How is the coherence between these procedures ensured?
- If these procedures are regulated in a single legal act (possibly as a single procedure): In which way do these procedures (or this procedure) go beyond measures foreseen by the Injunctions Directive?

1.4. Cross-cutting issues

1.4.1. Cost and benefits of the directives covered by the study

In your answers, please specify the different types of costs or benefits that you consider relevant, and quantify them as much as possible (if relevant data is available).

a) What is your view as to the benefits for consumers from the protection provided by the directives covered by the study, e.g. in terms of protection against unfair commercial practices and unfair standard terms in contracts?

b) What is your view as to the costs for consumers in exercising their rights under these directives?

c) What is your view as to the benefits for traders from the consumer rules of the directives covered by the study, e.g. in terms of creating a level playing field for honest traders by providing a legal basis to eliminate or at least constrain dishonest market practices, such as the use of unfair standard terms in contracts or unfair commercial practices, including through the application of the Injunctions Directive?

d) What is your view as to the costs for traders due to the need to respect the requirements under the directives covered by the study (such as costs of research, legal advice and compliance)?

e) How would you assess the costs involved in the public enforcement of these rules?

f) Are there indications that the directives covered by the study are not implemented in your country in a cost-effective manner? If relevant, please provide examples.

g) Could the costs for implementing and enforcing the rules of the directives covered by the study be reduced without lowering the level of protection for consumers? If so, how?

1.4.2 Interplay with EU sector-specific consumer protection legislation

The following questions concern the interplay of the horizontal EU consumer legislation subject to this study – mainly the UCPD and UCTD - with EU sector-specific consumer protection legislation in the areas of electronic communications, passenger transport, energy and consumer financial services.

a) In your experience, to what extent are i) businesses, ii) consumers and iii) the specific public enforcement bodies in the relevant sectors aware of the requirements of the UCPD and UCTD? Are these Directives applied in practice by national authorities and courts as a legal basis to combat unfair commercial practices and unfair standard terms in contracts in the regulated sectors? Please provide examples.

b) In your country, is the same authority responsible for the enforcement of the horizontal EU consumer law and the sector specific rules, or are different authorities responsible for these two sets of rules?

c) [*Only if different authorities are responsible in your country for the enforcement of the horizontal EU consumer law and the sector specific rules:*] Is there an institutionalised cooperation between these authorities? Does the institutional arrangement for enforcement affect the use of UCPD/UCTD in the regulated sectors, as specified in the previous question?

d) How do the horizontal consumer provisions of the UCPD and the UCTD work together with the sector-specific rules? Does the combination provide for a clear and coherent legal framework concerning contractual fairness, unfair commercial practices, and information obligations regarding advertising? Are there any overlaps and conflicting rules?

e) In your view, what are the benefits of the complementary application of the UCPD and UCTD in the regulated sectors? What are the costs due to the complementary application? Please specify and provide quantitative information, if available.

f) Is there any need for clarification of the interplay between the EU sector-specific rules and horizontal EU consumer law, especially the UCPD and the UCTD?

1.4.3. Relevance of consumer law directives for consumer-to-business transactions

a) Do you see a need to apply the UCPD and the UCTD in consumer-to-business (C2B) relations? This concerns situations where the consumer sells goods or provides services to a trader (e.g. where the consumer sells gold jewellery to a trader or supplies digital content to business against remuneration).

1.4.4. Specific protection for vulnerable consumers

a) To what extent do you consider the concepts of "consumer", "vulnerable consumer" and "average consumer" as currently defined in the consumer law directives and relevant jurisprudence, and as applied by national authorities and courts in your country, to be valid and fit for purpose?

b) To what extent do you consider the existing rules under the UCPD to be adequate for protecting vulnerable consumers? Why? Based on the experiences in your country, should specific provisions regarding vulnerable consumers be introduced in other directives concerned, in particular the UCTD?

1.4.5. EU added value

a) Overall, would you consider that protection of consumers against unfair commercial practices and unfair standard terms in contracts has improved in your country since the implementation of the UCPD and the UCTD in national legislation?

b) Overall, would you consider that the information of consumers regarding unit prices has improved since the implementation of the PID in national legislation?

c) Overall, would you consider that the protection of businesses against unfair marketing in your country has improved since the implementation of the MCAD in national legislation?

d) Overall, would you consider that it has become easier for businesses in your country to directly trade cross-border to final consumers located in other EU countries in recent years? Has it become easier for consumers in your country to directly purchase cross-border from traders located in other EU countries?

e) To what extent are these improvements, if any, due to the mentioned directives?

Annex. Please provide the following data [ONLY AUTHORITIES]

a) Please indicate how many B2C disputes have been decided in your country on the basis of consumer law directives covered by this study (UCPD, UCTD, PID) as a proportion of the total number of B2C disputes decided on the basis of other national consumer legislation (based on statistics, where such data is available, or based on your estimates, where this is not the case).

Table 1: B2C disputes decided on the basis of consumer law directives covered by this study in comparison with total B2C disputes decided on the basis of other legislation (most recent year for which data is available)

Year	Type of data	Total number of B2C disputes (num-ber of cases)	Share of B2C disputes decided on basis of …					Comments
			UCPD	UCTD	PID	other EU consumer protection legislation (e.g. CRD, Sales Directive, sectoral legislation)	national consumer legislation not based on EU directives	
###	Court statistics	### cases	… %	… %	… %	… %	… %	Total of percentages should add up to 100%

Note: *Please provide data for the last available year, and indicate the year above. Add new rows, if you have more sources of statistics/estimates

b) Please estimate how often court and ADR procedures are used in your country for invoking the unfairness, and thereby the non-binding character of standard contract terms (i.e. the number of cases per year)?

Study to support the Fitness Check of EU Consumer law – Interview guide for sectoral regulatory authorities

Background

This study to support the Fitness Check of EU Consumer law analyses consumer and marketing law in all 28 Member States, focusing on the national transposition, as well as on relevant national provisions going beyond the minimum harmonisation requirements of the following five Directives: Unfair Contract Terms Directive (93/13/EEC, UCTD), Unfair Commercial Practices Directive (2005/29/EC, UCPD), Price Indication Directive (98/6/EC, PID), Misleading and Comparative Advertising Directive (2006/114/EC, MCAD), Injunctions Directive (2009/22/EC, ID).

The study will also examine specific aspects of interplay between the listed directives and other horizontal and sectoral consumer law instruments which are based on EU legislation.

Information requirements are only covered by this study to the extent that they refer to the advertising stage (UCPD, MCAD), or to unit price indication (PID). The analysis of these information requirements includes the assessment of their coherence with the requirements of the Consumer Rights Directive. Obligations related to pre-contractual information requirements[1] and other issues covered by the CRD (such as the right of withdrawal) are not in the scope of the study and will be covered by a separate study on the CRD. Also, the Sales and Guarantees Directive as well as the recent Digital Contracts Package are subject or have been subject to separate evaluations and both are therefore not covered by this study.

In the following we provide questions relevant for sectoral regulatory authorities:

[1] Pre-contractual information requirements in the context of this study are to be understood as information requirements that relate to the decision making process of a consumer with respect to conclusion of a contract, e.g. when the consumer visits a shop or looks at the product descriptions in an online shop.

1.1. Questions

The following questions concern the interplay of the horizontal EU consumer legislation subject to this study – mainly the UCPD and UCTD - with EU sector-specific consumer protection legislation in the areas of electronic communications, passenger transport, energy and consumer financial services. The sector regulated by your authority is referred to hereafter as 'your sector'.

1. In your experience, to what extent are i) businesses, ii) consumers and iii) the specific public enforcement bodies in your sector aware of the requirements of the UCPD concerning unfair commercial practices and of the UCTD concerning standard contract terms and contractual transparency? [1.4.2.][2]

2. In your experience, what is the level of awareness of traders as regards information requirements at the advertising stage according to Article 7(4) of the UCPD (which concerns the "invitation to purchase")? [1.1.5.]

3. How are these rules applied in practice? To what extent do traders implement these rules? [1.1.5.]

4. Are the UCPD and the UCTD applied in practice by national authorities and courts as a legal basis to combat unfair commercial practices and unfair standard terms in contracts in the regulated sectors (including in your sector)? In case this is available, could you provide statistics on the application of UCPD/ UCTD in the regulated sectors (including in your sector)? [1.4.2.]

5. In your country, is the same authority responsible for the enforcement of the horizontal EU consumer law and the sector specific rules, or are different authorities responsible for these two sets of rules (in your sector)? [1.4.2.]

6. [*Only if different authorities are responsible in your country for the enforcement of the horizontal EU consumer law and the sector specific rules:*] Is there an institutionalised cooperation between these authorities? Does the institutional arrangement for enforcement affect the use of UCPD/UCTD in your sector? [1.4.2.]

7. How do the horizontal consumer provisions of the UCPD and the UCTD work together with the sector-specific rules? To what extent does the combination provide for a clear and coherent legal framework concerning contractual fairness, unfair commercial practices, and information obligations regarding advertising?[3] Are there any overlaps and conflicting rules? [1.4.2.]

8. In your view, what are the benefits of the complementary application of the UCPD and UCTD in your sector? What are the costs due to the complementary application? Please specify and provide quantitative information, if available. [1.4.2.]

9. Is there any need for clarification of the interplay between the EU sector-specific rules and horizontal EU consumer law, especially the UCPD and the UCTD? [1.4.2.]

10. How relevant is the injunctions procedure (as foreseen by the Injunctions Directive 2009/22/EC) in your sector? To what extent is it used? Is it effective? Should its coverage be extended (by including additional legislation into Annex I to the

[2] Numbering in brackets for internal purposes only.

[3] For example, the Unfair Commercial Practices Directive (UCPD) could come into play to protect consumers in cases where traders provide information, which although based on EU sector-specific legislation, could be considered as misleading from the UCPD perspective.

Directive)? Why? If you consider that its coverage should be extended: Which additional EU consumer rights legislation should it include? [1.3.]

11. In your view, to what extent have self- and co-regulation actions been effective in addressing unfair commercial practices in your sector? Which self/co-regulation actions work in practice? Which ones don't? Please provide examples. [1.1.1.]

12. Are there any specific measures that could improve the effectiveness of the UCPD and the UCTD in establishing a high level of consumer protection in your sector? Are there best practices or lessons learnt in your country that could be relevant for other countries? [1.1.1. and 1.2.1.]

13. Based on past experience, do you think there is a need and potential in your sector to develop contractual consequences linked to the use of unfair commercial practices? Please substantiate your reply. [1.1.7.]

14. To what extent do you consider the concepts of "consumer", "vulnerable consumer" and "average consumer" as currently defined in the consumer law directives and relevant jurisprudence, and as applied by national authorities and courts in your country, to be valid and fit for purpose? [1.4.4.]

15. To what extent do you consider the existing rules under the UCPD to be adequate for protecting vulnerable consumers? Why? Based on the experiences in your country, should specific provisions regarding vulnerable consumers be introduced in other directives concerned, in particular the UCTD? [1.4.4.]

16. Overall, would you consider that protection of consumers against unfair commercial practices and unfair standard terms in contracts has improved in your country since the implementation of the UCPD and the UCTD in national legislation? To what extent are these improvements, if any, due to the mentioned directives? [1.4.5.]

17. Do you have any other comments regarding the effectiveness, efficiency, coherence or relevance of the five consumer and marketing law directives subject to this study in your sector?

Study to support the Fitness Check of EU Consumer law (main study): Interview guide for business associations

Background

This study to support the Fitness Check of EU Consumer law analyses consumer and marketing law in all 28 Member States, focusing on the national transposition, as well as on relevant national provisions going beyond the minimum harmonisation requirements of the following five Directives: Unfair Contract Terms Directive (93/13/EEC, UCTD), Unfair Commercial Practices Directive (2005/29/EC, UCPD), Price Indication Directive (98/6/EC, PID), Misleading and Comparative Advertising Directive (2006/114/EC, MCAD), Injunctions Directive (2009/22/EC, ID).

The study will also examine specific aspects of interplay between the listed directives and other horizontal and sectoral consumer law instruments which are based on EU legislation.

Information requirements are only covered by this study to the extent that they refer to the advertising stage (UCPD, MCAD), or to unit price indication (PID). The analysis of these information requirements includes the assessment of their coherence with the requirements of the Consumer Rights Directive. Obligations related to pre-contractual information requirements[1] and other issues covered by the CRD (such as the right of withdrawal) are not in the scope of the study and will be covered by a separate study on the CRD. Also, the Sales and Guarantees Directive as well as the recent Digital Contracts Package are subject or have been subject to separate evaluations and both are therefore not covered by this study.

In the following we provide questions relevant for the stakeholder group that your organisation represents,[2] grouped according to the following themes:

- Unfair commercial practices and marketing;
- Contract conclusion and performance;
- Injunctions;
- Cross-cutting issues.

[1] Pre-contractual information requirements in the context of this study are to be understood as information requirements that relate to the decision making process of a consumer with respect to conclusion of a contract, e.g. when the consumer visits a shop or looks at the product descriptions in an online shop.

[2] As not all questions are relevant for all stakeholder groups, there may be gaps in the numbering of questions.

1.1. Unfair commercial practices and marketing

1.1.1. Effectiveness of the UCPD in establishing a high level of consumer protection

a) How do you assess the effectiveness of the UCPD (the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive?
- The practical benefits for consumers of the black list of unfair commercial practices annexed to this Directive, in particular its application in practical cases? Please provide examples.
- The practical benefits for consumers arising from the Member States' use of the minimum harmonisation clauses for financial services and immovable property? Please provide examples.

b) Regarding the application of the UCPD in tackling misleading environmental claims / in addressing misleading practices in the energy market (e.g. concerning vehicle fuel at gasoline stations, provision of retail electricity):

- To what extent has the UCPD been applied in the context of environmental claims/in the energy market?
- How effective was it?
- What are the problems from a business perspective, if any?

c) Regarding the practical benefits for businesses of the "average consumer" as the reference point for assessing whether a commercial practice is likely to materially distort economic behaviour, and of the specific protection of "vulnerable consumers" introduced by the Directive:

- How does the concept of 'average consumer' work in practice? Is it applied rigidly?
- Have enforcement authorities/courts in your country recognised new categories of vulnerable consumers not listed in the UCPD (such as poor/indebted)?

d) In your view, to what extent have self- and co-regulation actions been effective in addressing unfair commercial practices? Which self/co-regulation actions work in practice? Which ones don't? Please provide examples.

e) Is there a need to extend or modify the black list of the UCPD? If so, please indicate the practice(s) to be added to the list. Should there be a mechanism for subsequent inclusion of new practices into the UCPD black list to respond to new developments?

f) Are there other measures that could improve the effectiveness of the UCPD in establishing a high level of consumer protection in your country? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.1.2. Effectiveness of the PID in establishing a high level of consumer protection

a) Do you think that businesses effectively inform consumers about the unit selling price? Please substantiate your reply.

b) Where a recognised measurement unit for a product's performance exists and is displayed to consumers (e.g. number of washloads for detergents), should the

"unit price" for such product be indicated per such "performance" measurement units rather than per 1 kg or 1 litre?

c) [*Note: This question is only relevant for countries that use the derogation for small businesses from the requirement to indicate the unit price on the basis of Article 6 of the Directive (AT, BE, EL, DE, FR, NL, SI, UK):*] Is the derogation relevant? To what extent do companies in your country make use of it? Are there consumer complaints because of this? If so, approximately how many per year?

1.1.3. Effectiveness of the current rules in providing protection for businesses

a) How do you assess the effectiveness of the MCAD (the national laws transposing it) in terms of:

- The scope of protection under the Directive, in particular to what extent the scope limited to the notion of 'advertising' provides effective protection for businesses.
- The overall effectiveness of the principle-based approach to misleading advertising under this Directive.

b) How do you assess the effects of the minimum harmonisation provisions on misleading advertising? Which national rules that go beyond the MCDA, if any, have been providing a higher level of protection? If so, how?

c) How do you assess the effects of the full harmonisation provisions on comparative advertising? Have comparative advertising rules provided an effective legal framework for modern types of marketing?

d) Do the current rules on enforcement set in the MCAD provide an effective enforcement framework, especially in the context of cross-border transactions? Please substantiate your reply.

e) Are there measures that could improve the effectiveness of the MCAD in providing protection for businesses (see also 1.1.6 below)? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.1.4. Effectiveness of current rules in eliminating obstacles to the Internal Market

a) In your view, how effective has the UCPD (i.e. the national laws transposing it) been in eliminating obstacles to the Internal Market, specifically in terms of the principle based approach and the black list of unfair commercial practices? Has the application of the principle-based approach under this Directive shown disparities in the understanding of its principles in different Member States, and, if so, do these disparities have an impact on cross-border trade for businesses located in your country?

b) Do you consider that national differences due to the minimum harmonisation derogation of the UCPD for financial services and immovable property are a barrier to cross-border trade? Have they caused problems? If yes, please provide examples.

c) In your view, how effective has the MCAD (i.e. the national laws transposing it) been in eliminating obstacles to the Internal Market, specifically in terms of the principle based approach? Has the application of the principle-based approach under this Directive shown disparities in the understanding of its principles in different Member States, and, if so, do these disparities have an impact on cross-border trade?

d) Do you consider that national differences due to the minimum harmonisation derogation character of the provisions on misleading advertising are a barrier to cross-border trade? Have they caused problems?

e) In your view, are the fully harmonised provisions on comparative advertising providing an appropriate legal framework in cross-border trade for advertising where a competitor or a product offered by a competitor can be identified?

f) In your experience, does the lack of cross-border enforcement mechanism in B2B relations constitute a barrier to cross-border trade? Provide examples, if any.

1.1.5. Interplay amongst UCPD information requirements according to Article 7(4) with the information requirements in the horizontal consumer law instruments

a) In your experience, what is the level of awareness of traders as regards information requirements at the advertising stage according to Article 7(4) of the UCPD (which concerns the "invitation to purchase")?

b) How are these rules applied in practice? To what extent do traders implement these rules?

c) Are these information requirements under the UCPD useful in view of the more comprehensive pre-contractual information requirements of the CRD? Please substantiate your reply.

d) Do you see any overlap with the provisions of the Services Directive and the E-commerce Directive that apply to advertising? If so, do you consider that any costs arise for businesses due to this multiplicity of information obligations?

1.1.6. Relevance for business-to-business transactions

a) Based on your experiences, do you see a need for the following potential measures in the area of unfair commercial practices/marketing? Please provide reasons and indicate potential practical benefits of the listed measures, if any. Please give examples.

- Extending the Unfair Commercial Practices Directive to B2B transactions or revising/extending the Misleading and Comparative Advertising Directive
- Aligning the legal regimes for B2B and B2C transactions in the area of commercial practices
- Extending the scope of the protection in B2B transactions to cover also unfair commercial practices during and after the transaction
- Having a black-list of practices in the business-to-business marketing area
- Having a cross-border enforcement cooperation mechanism in the business-to-business marketing area
- Developing contractual consequences linked to the breaches of the Misleading and Comparative Advertising Directive
- Adapting the rules on comparative advertising of the current Misleading and Comparative Advertising Directive

1.1.7. Relevance of contractual consequences of unfair commercial practices

a) Are you aware of any national law provisions providing contractual consequences in case of breaches to the UCPD or national provisions on the avoidance of the contract e.g. in cases of usury or other immoral behaviour? Is there any case law (enforcement decisions, court rulings) providing for such consequences?

b) Based on past experience, do you think there is a need and potential to develop contractual consequences linked to the use of unfair commercial practices? Please substantiate your reply.

1.2. Contract conclusion and performance

1.2.1. Effectiveness of the current rules in establishing a high level of consumer protection

a) How do you assess the effectiveness of the UCTD (the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive?
- The practical effectiveness of the indicative list of unfair terms annexed to the Directive, in particular whether the indicative list of the Directive works in practice or whether there are problems in this respect?

b) In case a "black" and/or "grey" list of unfair contract terms was adopted in your country:

- How does the black/grey list work in practice?
- Does it make a difference for businesses to have such a list? Does it help with the practical application of the rules on fairness of contract terms?

c) Typically, a court decision establishing the unfairness of an unfair term is limited to the individual relationship between the specific trader and the consumer, rather than, for example, applying to all contracts concluded with a given trader, or to all contracts containing the same contract term. With this respect, please indicate:

- In your country, have the effects of court decisions establishing the unfairness of an unfair term been extended to all contracts of the trader concerned or to the contracts of any other trader containing such a term?
- If so, how does this work in practice? What are the impacts on businesses?
- If there are no such effects of court decisions on unfair terms: what are the effects of this situation?

d) How do you assess the overall effectiveness of the contractual transparency requirements under the Directive?

e) [*Only if your country has extended the application of the UCTD:*] What is the effect on businesses of the extension of the application of this Directive to individually negotiated terms or to terms on the adequacy of the price and the main subject-matter put in place in certain Member States?

f) The sanction foreseen by the UCTD for unfair contract terms is that the term is not binding. In this respect, what are your experiences:

- Does this sanction work in practice?
- Do the national courts take up the active role imposed by the Court of Justice (invoking unfairness *ex officio*, taking measures of instruction)?
- Are there administrative authorities in your country dealing with unfair contract terms?

g) In a forward looking perspective: Are there other measures that could improve the effectiveness of the UCTD in your country? Would a graphical presentation model improve the readability and comprehension by consumers of the Terms and Conditions? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

1.2.2. Effectiveness of the current rules in eliminating obstacles to the Internal Market

a) In your view, how effective has the UCTD (i.e. the national laws transposing it) been in eliminating obstacles to the Internal Market? Has the application of the general fairness clause in different Member States shown disparities in the understanding of this principle, and, if so, do these disparities have an impact on cross-border trade for businesses located in your country?

b) Do you consider any of the extended indicative lists, "black" and/or "grey" lists of unfair contract terms adopted in certain Member States represent a barrier to cross-border trade? Are other extensions of the application of this Directive (i.e. to individually negotiated terms and to terms dealing with the adequacy of price and main subject matter) in certain Member States a barrier to cross-border trade? Have these extensions caused problems for businesses in your country in practice? If yes, please provide examples.

1.2.3. Relevance for business-to-business transactions

a) Do you think there is a need to strengthen the protection of businesses in your country, especially SMEs and in particular micro enterprises, with regard to unfair contract terms? If so, would the system of protection established by the Directive, based on the concept of good faith and the significant imbalance in the parties' rights and obligations, be appropriate for B2B transactions?

b) What would be an appropriate scope of B2B protection against unfair contract terms in your country? Should the protection, if at all needed, extend to individually negotiated terms, the main subject-matter of the contract and the adequacy of the price?

c) According to your experiences, are there specific contractual terms often used in B2B transactions which could be regarded as unfair in all circumstances or presumed to be unfair?

d) According to your experiences, is there a need for contractual transparency requirements in B2B transactions, similar to the requirement of plain, intelligible language in the Directive?

e) Do you expect that an extension of the UCTD to B2B transactions could bring benefits for cross-border trade for companies located in your country? Would the consequences of such an extension likely have an effect on innovation by or market opportunities for SME providers/suppliers?

f) In your view, would the benefits of extending the scope to business-to-business transactions exceed the negative consequences of such an extension?

1.3. Injunctions

a) Should in your view the scope of the Injunctions Directive be extended to the protection of collective business' interests? If yes, what specific business' interests should be covered by the Injunctions Directive?

1.4. Cross-cutting issues

1.4.1. Cost and benefits of the directives covered by the study

In your answers, please specify the different types of costs or benefits that you consider relevant, and quantify them as much as possible (if relevant data is available).

a) What is your view as to the benefits for traders from the consumer rules of the directives covered by the study, e.g. in terms of creating a level playing field for honest traders by providing a legal basis to eliminate or at least constrain dishonest market practices, such as the use of unfair standard terms in contracts or unfair commercial practices, including through the application of the Injunctions Directive?

b) What is your view as to the costs for traders due to the need to respect the requirements under the directives covered by the study (such as costs of research, legal advice and compliance)?

c) Are there indications that the directives covered by the study are not implemented in your country in a cost-effective manner? If relevant, please provide examples.

d) Could the costs for implementing and enforcing the rules of the directives covered by the study be reduced without lowering the level of protection for consumers? If so, how?

1.4.2 Interplay with EU sector-specific consumer protection legislation

The following questions concern the interplay of the horizontal EU consumer legislation subject to this study – mainly the UCPD and UCTD - with EU sector-specific consumer protection legislation in the areas of electronic communications, passenger transport, energy and consumer financial services.

a) In your experience, to what extent are i) businesses, ii) consumers and iii) the specific public enforcement bodies in the relevant sectors aware of the requirements of the UCPD and UCTD? Are these Directives applied in practice by national authorities and courts as a legal basis to combat unfair commercial practices and unfair standard terms in contracts in the regulated sectors? Please provide examples.

b) In your country, is the same authority responsible for the enforcement of the horizontal EU consumer law and the sector specific rules, or are different authorities responsible for these two sets of rules?

c) [*Only if different authorities are responsible in your country for the enforcement of the horizontal EU consumer law and the sector specific rules:*] Is there an institutionalised cooperation between these authorities? Does the institutional arrangement for enforcement affect the use of UCPD/UCTD in the regulated sectors, as specified in the previous question?

d) How do the horizontal consumer provisions of the UCPD and the UCTD work together with the sector-specific rules? Does the combination provide for a clear and coherent legal framework concerning contractual fairness, unfair commercial practices, and information obligations regarding advertising? Are there any overlaps and conflicting rules?

e) In your view, what are the benefits of the complementary application of the UCPD and UCTD in the regulated sectors? What are the costs due to the complementary application? Please specify and provide quantitative information, if available.

f) Is there any need for clarification of the interplay between the EU sector-specific rules and horizontal EU consumer law, especially the UCPD and the UCTD?

1.4.3. Relevance of consumer law directives for consumer-to-business transactions

a) Do you see a need to apply the UCPD and the UCTD in consumer to-business (C2B) relations? This concerns situations where the consumer sells goods or provides services to a trader (e.g. where the consumer sells gold jewellery to a trader or supplies digital content to business against remuneration).

1.4.4. Specific protection for vulnerable consumers

a) To what extent do you consider the concepts of "consumer", "vulnerable consumer" and "average consumer" as currently defined in the consumer law directives and relevant jurisprudence, and as applied by national authorities and courts in your country, to be valid and fit for purpose?

b) To what extent do you consider the existing rules under the UCPD to be adequate for protecting vulnerable consumers? Why? Based on the experiences in your country, should specific provisions regarding vulnerable consumers be introduced in other directives concerned, in particular the UCTD?

1.4.5. EU added value

a) Overall, would you consider that protection of consumers against unfair commercial practices and unfair standard terms in contracts has improved in your country since the implementation of the UCPD and the UCTD in national legislation?

b) Overall, would you consider that the information of consumers regarding unit prices has improved since the implementation of the PID in national legislation?

c) Overall, would you consider that the protection of businesses against unfair marketing in your country has improved since the implementation of the MCAD in national legislation?

d) Overall, would you consider that it has become easier for businesses in your country to directly trade cross-border to final consumers located in other EU countries in recent years?

e) To what extent are these improvements, if any, due to the mentioned directives?

Annex V Workshop document

European Commission

Study to support the Fitness Check of EU Consumer Law

Workshop document

CIVIC CONSULTING

Civic Consulting
December 2016

Justice and Consumers

Study to support the Fitness Check of EU Consumer law – Workshop on the concepts of "consumer", "average consumer" and "vulnerable consumer" with experts for behavioural economics and psychology

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1. Introduction

The Directorate-General for Justice and Consumers (DG JUST) of the European Commission has commissioned Civic Consulting to conduct a Study to support the Fitness Check of EU consumer law. This document is intended as a basis for discussion during the expert workshop on the concepts of "consumer", "average consumer" and "vulnerable consumer" to be conducted in the framework of this study.

1. The aim of the workshop is to discuss whether the concepts of "consumer", "average consumer" and "vulnerable consumer" as currently defined in the consumer law directives and relevant jurisprudence of the CJEU continue to be valid and fit for purpose based on initial study results and other sources of evidence.

2. This document is structured as follows:

Section 2 presents an overview of the study;

Section 3 presents the legal background and initial study conclusions;

Section 4 presents results of relevant behavioural research; and

Section 5 presents possible options for improvement.

3. The annex presents the background of the Fitness Check and contains the relevant list of literature reviewed for this workshop.

2. Overview of the study

In this section we provide an overview of the objectives and scope of the study, the tasks to be performed and the thematic coverage.

4. Fitness Checks are comprehensive evaluations aimed at assessing whether the regulatory framework for a particular policy sector is 'fit for purpose'. Fitness Checks provide an evidence-based critical analysis of whether EU actions are proportionate to their objectives and delivering as expected. Fitness Checks are part of the Commission's Regulatory Fitness and Performance Programme (REFIT). REFIT aims at making sure that EU laws deliver their intended benefits for citizens, businesses and society while removing red tape and lowering costs. It also aims to make EU laws simpler and easier to understand.

5. The Commission is performing a Fitness Check of EU Consumer and Marketing legislation which covers the following directives:

- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive);
- Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees (Sales and Guarantees Directive);
- Directive 93/13/EEC on unfair terms in consumer contracts (Unfair Contract Terms Directive).
- Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers (Price Indication Directive);
- Directive 2006/114/EC concerning misleading and comparative advertising (Misleading and Comparative Advertising Directive);
- Directive 2009/22/EC on injunctions for the protection of consumers' interests (Injunctions Directive).

6. This Fitness Check will evaluate if EU consumer law is fit for purpose on the basis of the criteria of effectiveness, efficiency, coherence, relevance and EU added value of the existing EU legislation. The Fitness Check will also aim at identifying excessive regulatory burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time, as well as cumulative impact of the relevant instruments. The Fitness Check will explore ways to improve the application of the current EU legislation, and its results will determine if there is a need for further legislative action at EU level. Further details on the background of the Fitness Check and the Directives covered are provided in Annex I.

7. The evaluation of the Sales and Guarantee Directive is carried out through a separate study, due to requirements linked to the adoption of the Commission proposal on online and other distance sales of goods on 9 December 2015. As indicated in the TOR, the present study also addresses the interplay between the directives subject to this study with the existing sector-specific consumer protection rules in passenger transport, electronic communications, energy and consumer financial services and the relevant rules in the e-Commerce Directive 2000/31/EC and Services Directive 2006/123/EC.

8. The evaluation study covers the EU 28 and its methodology ensures a geographically balanced representation of Member States' authorities, businesses and consumers, while providing (insofar as possible) quantifiable and representative results.

9. The evaluation covers the current situation, also considering developments in the recent past that are relevant for the assessment.

10. The TOR set out 17 general evaluation questions for the Fitness Check which serve as a basis for the 99 specific evaluation questions for the study, grouped into 14 evaluation themes under the five evaluation criteria effectiveness, efficiency, coherence, relevance and EU added value. The specific evaluation questions refer to the five directives covered by the study or are cross-cutting in nature and form the overall structure for the evaluation. For an overview of general and specific evaluation questions, please refer to the following table.

Table 1: Overview of general and specific evaluation questions for the Study to support the Fitness Check of EU Consumer law

Evaluation criteria	General Evaluation Questions in the Terms of Reference	Evaluation themes	Specific Evaluation Questions in the Terms of Reference
Effectiveness	▪ What progress has been made over time towards achieving the objectives of the directives subject to Fitness Check? Is this progress in line with the initial expectations? ▪ What is the level of compliance of businesses with their provisions? ▪ Which main factors (e.g. implementation by Member States, action by stakeholders) have contributed to or stood in the way of achieving these objectives? ▪ Beyond these objectives, have these instruments led to any other significant changes, both positive and negative?	Practical effectiveness of current rules: Rules for consumer protection	UCTD: 6 Evaluation Questions (EQs) UCPD: 8 EQs PID: 2 EQs ID: 6 EQs
		Practical effectiveness of current rules: Rules for business protection	MCAD: 7 EQs
		Practical effectiveness of the current rules in eliminating obstacles to the Internal Market	Cross-cutting: 2 EQs UCTD: 3 EQs UCPD: 3 EQs MCAD: 4 EQs ID: 3 EQS
Efficiency	▪ What are the costs and benefits (monetary and non-monetary) associated with the application of these legal instruments in the Member States? ▪ What good practices in terms of their cost-effective application can be identified? ▪ What, if any, specific provisions in these instruments can be identified that make a cost-effective implementation more difficult and hamper the maximisation of the benefits? In particular, what is the (unnecessary/cumulative) regulatory burden identified? ▪ What are the specific challenges to SMEs, in particular micro enterprises, with respect to the implementation of these instruments?	Costs and benefits for consumers	2 EQs
		Costs and benefits for traders	6 EQs
Coherence	▪ To what extent have the general principles and requirements set out in these legal instruments contributed to the coherence of consumer protection policy? To what extent have they proved	Interplay amongst the information requirements in the horizontal consumer law instruments	5 EQs

	complementary to other Union initiatives in the area of consumer protection? ▪ What, if any, specific inconsistencies and unjustified overlaps, obsolete provisions and/or gaps can be identified in relation to the entire EU regulatory framework in this policy area, including the forthcoming rules on online and other distance sales of goods under the DSM Strategy, and other pieces of Union legislation? How do they affect the application/performance of these instruments? ▪ How do the general EU regulatory framework and the interactions between the different instruments subject to Fitness Check affect their separate and overall impacts?	Interplay between the Injunctions Directive and other enforcement instruments of consumer law	4 EQs
		Interplay with other EU horizontal legislation with a consumer dimension	2 EQs
		Interplay with EU sector-specific consumer protection legislation	4 EQs
Relevance	▪ To what extent are the objectives of these instruments still relevant and valid? Are there any other objectives that should be considered in view of current needs and trends in consumer behaviour and in the markets?	Relevance for transactions other than business-to-consumer (B2C)	UCPD/MCAD: 7 EQs UCTD: 8 EQs Cross-cutting: 3 EQs
		Potential codification or recast	3 EQs
		Relevance of the Injunctions procedure	ID: 2 EQs (with a total of 11 sub-questions/items)
		Contractual consequences of unfair commercial practices	3 EQs
		Specific protection for vulnerable consumers	3 EQs
EU added value	▪ What has been the EU added value of the consumer law directives in the context of national horizontal and sector-specific, both substantive and procedural consumer law, and civil and commercial law?		3 EQs
Total	*17 general EQs*		*99 specific EQs*

Source: Civic Consulting, based on TOR. While this table reflects the EQs and their structure provided in the TOR, the issue of whether a single horizontal EU instrument could bring added clarity, remove overlaps and fill the identified gaps in the existing rules will be presented separately in the evaluation due to its general nature and importance for simplification and legal certainty. It has also been clarified that the discussion of coherence will consider the issue of cross-border enforcement co-operation, and that information regarding administrative burdens/compliance costs reported in the business interviews will be considered in the discussion of efficiency and resulting recommendations.

11. The TOR define six main tasks, of which several consist of multiple sub-tasks, and relate to the general and specific evaluation questions presented in the next section. The six tasks are:

- Legal analysis (Task 1);
- Literature review (Task 2);
- Consultation – interviews, surveys, stakeholder events and case study interviews (Task 3);
- Costs and benefits analysis (Task 4);
- Recommendations for future action (Task 5);
- Establishing problem definition and baseline scenario (Task 6).

12. We are currently in the final phase of the study, focused on finalising the country level legal analysis in all Member States, completing the cross-cutting analysis of evidence based on the full body of evidence, refining conclusions and recommendations, and developing the full problem definition and baseline scenario. Results will be presented in the Scene setting report (due in December 2016) and the Final report (due in February 2017).

3. Legal background and initial conclusions of the study

In this section, we present the concepts of "consumer", "vulnerable consumer" and "average consumer" as defined in EU consumer law directives and relevant jurisprudence of the CJEU. We also present initial conclusions of the cross-cutting analysis, which combines evidence collected to date from all methodological tools, with a particular focus on the legal analysis conducted in the Member States.

3.1. The concepts of "consumer", "vulnerable consumer" and "average consumer" as defined in EU consumer law directives and relevant jurisprudence of the CJEU

3.1.1. The concepts as defined in the UCPD

3.1.1.1. Average consumer

13. The general provisions of the UCPD include the "average consumer" benchmark (previously developed by the CJEU) as the reference point for assessing whether a commercial practice is likely to materially distort economic behaviour (i.e. the "transactional decision" test).

14. The "average consumer" is defined as a "reasonably well-informed and reasonably observant and circumspect" consumer, "taking into account social, cultural and linguistic factors", as emphasised in Recital 18 of the Directive.

15. Article 5(2)(b) of the Directive also specifies that when a commercial practice is directed at a particular group of consumers, its impact should be assessed from the perspective of the average member of the group.

Recital 18 UCPD

It is appropriate to protect all consumers from unfair commercial practices; however the Court of Justice has found it necessary in adjudicating on advertising cases since the enactment of Directive 84/450/EEC to examine the effect on a notional, typical consumer. In line with the principle of proportionality, and to permit the effective application of the protections contained in it, this Directive takes as a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice, but also contains provisions aimed at preventing the exploitation of consumers whose characteristics make them particularly vulnerable to unfair commercial practices. Where a commercial practice is specifically aimed at a particular group of consumers, such as children, it is desirable that the impact of the commercial practice be assessed from the perspective of the average member of that group. It is therefore appropriate to include in the list of practices which are in all circumstances unfair a provision which, without imposing an out- right ban on advertising directed at children, protects them from direct exhortations to purchase. The average consumer test is not a statistical test. National courts and authorities will have to exercise their own faculty of judgment, having regard to the case - law of the Court of Justice, to determine the typical reaction of the average consumer in a given case.

Article 5(2) UCPD

A commercial practice shall be unfair if:

(a) it is contrary to the requirements of professional diligence, and

(b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.

3.1.1.1. Vulnerable consumer

16. Article 5(3) UCPD provides for special protection of consumers who are particularly vulnerable because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. In its 2013 Communication on the application of the Unfair Commercial Practices Directive, the Commission announced that "further efforts need to be made to strengthen the enforcement of the Directive in relation to these categories of vulnerable consumers [children and elderly targeted by aggressive practices] who find themselves in a situation of weakness".

Recital 19 UCPD

Where certain characteristics such as age, physical or men- tal infirmity or credulity make consumers particularly sus- ceptible to a commercial practice or to the underlying product and the economic behaviour only of such con- sumers is likely to be distorted by the practice in a way that the trader can reasonably foresee, it is appropriate to ensure that they are adequately protected by assessing the practice from the perspective of the average member of that group.

Article 5(3) UCPD

Commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee, shall be assessed from the perspective of the average member of that group. This is without prejudice to the common and legitimate advertising practice of making exaggerated statements or statements which are not meant to be taken literally.

3.1.1. CJEU case law

17. The "average consumer" is defined in CJEU case law as a "reasonably well-informed and reasonably observant and circumspect" consumer, "taking into account social, cultural and linguistic factors".

18. In the Mars case,[1] which will be further looked into in Section 4, the Court relied on the normative notion of a 'reasonably circumspect consumer' as the benchmark in its judgment: 'Reasonably circumspect consumers may be deemed to know that there is

[1] ECJ Case C-470/93, 1995.

not necessarily a link between the size of publicity markings relating to an increase in a product's quantity and the size of that increase.'

19. In prior case law related to food labelling,[2] the Court had found consumers to be adequately protected if they had the possibility to gather the respective information from the list of ingredients.

20. However, the CJEU recently shown some inclination towards understanding the "average consumer" in a way that is more rooted in consumer behaviour. In its judgment in Teekanne, the Court of Justice of the European Union held that the labelling of foodstuffs may not give the impression that an ingredient is present in a product where it is in fact not present, and this is apparent solely from the list of ingredients on the packaging. The Court stipulated that information of the ingredients list is not able to "correct" a "consumer's erroneous or misleading impression" created by the "overall labelling" taken as a whole.[3]

3.1.2. Clarifications in the UCPD Guidance document

21. The 2016 revised UCPD Guidance document[4] contains examples of national courts applying the "average consumer" benchmark, and provides further clarifications. The guidance emphasises that the average consumer under the UCPD is "not somebody who needs only a low level of protection because he/she is always in a position to acquire available information and act wisely on it […] the average consumer concept under the UCPD should always be interpreted having in mind Article 114 of the Treaty, which provides for a high level of consumer protection. At the same time, the UCPD is based on the idea that, for instance, a national measure prohibiting claims that might deceive only a very credulous, naive or cursory consumer […] would be disproportionate and create an unjustified barrier to trade".

22. In 2016, the Commission paid particular attention to the "vulnerable consumer" benchmark in the revised UCPD Guidance document. As clarified in the UCPD Guidance document, while Article 5(3) appears to exclusively qualify consumers as vulnerable because of their 'mental or physical infirmity, age or credulity', recital 19 provides a non-exhaustive list of characteristics that make a consumer 'particularly susceptible'.

3.2. Initial conclusions of the study

3.2.1. The practical benefits for consumers of the "average consumer" as the reference point for assessing whether a commercial practice is likely to materially distort economic behaviour

23. It is notable that CJEU case law and the UCPD had changed the consumer model in marketing law in some Member States, as these countries applied previously stricter benchmarks. For example, traditionally in Polish law average consumers were often

[2] See e.g. Case C-239/02 (Douwe Egberts NV) and Case C-465/98 (Adolf Darbo AG).

[3] See press release available at http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-06/cp150064en.pdf and reflections on the case in Schebesta, Hanna and Purnhagen, Kai P., The Behaviour of the Average Consumer: A Little Less Normativity and a Little More Reality In CJEU's Case Law? Reflections on Teekanne (June 6, 2016). European Law Review (Forthcoming). Available at SSRN: https://ssrn.com/abstract=2790994 and provided in the Annex.

[4] European Commission, Guidance on the implementation/application of Directive 2005/29/EC on Unfair Commercial Practices, 2016.

seen as not careful and forgetful, Austrian law also protected the careless consumer, and in Germany, historically, the consumer model applied was based on an uncritical and superficial consumer. If 10-15% of consumers were misled, this was deemed sufficient in order to regard a commercial practice as misleading.

24. However, the country research for this evaluation indicates that the benchmark of the average consumer allows in practice a significant degree of flexibility in its application. As pointed out in the UCPD guidance document with reference to Recital 18 of the Directive, the "average consumer test is not a statistical test. This means that national authorities and courts should be able to determine whether a practice is liable to mislead the average consumer exercising their own judgment by taking into account the general presumed consumers' expectations, without having to commission an expert's report or a consumer research poll". In practice, the assessment whether a commercial practice is unfair vis-à-vis the "average consumer", as defined in CJEU case law, is very often at the heart of the dispute. In that assessment due account has to be taken of the factual context of the commercial practices. For example, the Polish Supreme Court refers to the need to look first to the type of consumer product or service being advertised, and second to the type of medium used for this advertisement. Together, these criteria will allow defining the intended and actual recipients of the advertisement. The model of an average consumer will then be created based on the qualities that a consumer to whom the advertisement is directed, and whom it reaches, should have. For example, in Slovakia, it was held that the "average consumer" on the internet does not materially differ from the average consumer in the "brick and mortar" or "walk-in" shops nowadays, as the great number of consumers use the online sales and online services without any special education.

25. The country research provides a number of examples how the "average consumer" benchmark allows national enforcement authorities and courts to consider the specific circumstances in their Member States. For example, Polish courts, taking into account the possibility to account for social, cultural and linguistic factors as per Recital 18 of the UCPD, held that average Polish consumers due to cultural and social factors have a low awareness of law; as well as, that Polish average consumers are not comparable with regard to their knowledge, carefulness and awareness to Western European average consumers, who for decades have been exposed to consumer education. In the same vein, when cheap and mass-consumption goods are involved, Portuguese case law defines the average consumer as hasty and distracted or absent-minded and it also takes into account the targeted population group. The use of the "average consumer" benchmark allows authorities and courts to render a flexible decision, specifying the content of this concept in a manner that is best suited for the specific case. This is an obvious advantage given to the authorities and courts that are not bound by formalistic and overly rigorous rules, when evaluating the nature of the supposedly unfair practice, which can be clearly to the benefit of consumers. The disadvantage is that nuances of that evaluation often remain unknown to those who read the decision, since the precise limits of the concept are usually not uncovered. It is noted that for a bystander it may be difficult to grasp how the concept of "average consumer" is applied in a particular case by a competent enforcement authority or court, as highlighted in the country report Latvia. Sometimes this ambiguity is used against consumer protection authorities, as is reported from Estonia, where there is currently an administrative procedure pending against an Estonian mobile phone operator who is claiming that the regulator is not able to show who is an "average consumer" of their services. The regulator had relied on statistics concerning what services an average mobile service client is using and what price he or she is ready to pay for that.

26. Based on the country research it appears that in a significant number of countries the "average consumer" benchmark is considered to work in practice and no major problems are reported, at least in the perspective of consumer protection authorities (e.g. Austria, Bulgaria, Germany, Italy, Latvia, Lithuania, Netherlands, Sweden). On the other hand, from other countries it is reported that authorities and courts are

unfamiliar with the concept of "average consumer" or apply it rather implicitly than explicitly, with no or only few examples of case law or (explicit) relevant administrative decisions (e.g. regarding Croatia, Estonia, Denmark, Greece, Malta). Few problems with an overly rigid application of the concept are reported, although the country report France concludes that some interviewees indicated that the concept is applied in the country in a flexible, rather protective way, whereas other interviewees (mainly consumer organisations) consider the application to be rather strict.

27. The results of the open public consultation illustrate that stakeholders are divided in their general assessment of the appropriateness of the benchmark. While most business organisations (70%) either 'tended to disagree' or 'strongly disagreed' with the statement that "the notion of "average consumer" should be reviewed/updated", most public authorities (68%) and consumer associations (70%) either 'strongly agreed' or 'tended to agree' that there is need for a review. In the interviews conducted as part of the country research, consumer organisations in several Member States elaborated their concerns. For example, it was noted by the Danish Consumer Council that the average consumer in real life is not reasonably well informed and reasonably observant and circumspect – and it is usually acting under time constraints. It is argued that the many consumer protection rules primarily benefit "stronger" consumers and not more vulnerable consumers who really need the protection, suggesting that a lower standard for the average consumer should be applied. Other consumer organisations often shared a critical view of the "average consumer" benchmark in our country research (reported e.g. from Czech Republic, Italy, Malta, Netherlands, Poland, Slovenia), and position papers submitted by some consumer organisations in the framework of the open public consultation further elaborated: They put into question whether the "'average consumer-model' is adequate to serve as a standard of consumer protection" (BEUC), suggested that the rational and utility-maximising consumer is more "fiction than reality" (VZBV, Germany), and proposed to "modernise the UCPD in line with the way that consumers behave in the real world" (Which?, UK).[5]

28. The discussion concerning the appropriateness of the "average consumer" benchmark is also led in academic literature, with a number of authors voicing concerns that this benchmark does not provide sufficient protection to consumers that are less capable and more careless than the average.[6] In addition, results of behavioural research – to which some of the consumer organisations refer – have significantly put into question the model of consumers as rational decision-makers, which to some extent underlies the notion of an "average consumer" that is "reasonably well-informed and reasonably observant and circumspect". Consumers' behavioural biases are widely documented in the academic literature[7] and have been confirmed by a wide range of behavioural

[5] Position papers submitted by consumer organisations in the framework of the open public consultation in the framework of the Fitness Check of EU consumer and marketing law.

[6] See inter alia Jorge Morais Carvalho, Manual de Direito do Consumo, 2016, p. 85; H.-W. Micklitz, "The Expulsion of the Concept of Protection from the Consumer Law and the Return of Social Elements in Civil Law: A Bittersweet Polemic", J. Consum Policy 2012, 283; Lisa Waddington, "Vulnerable and confused: the protection of "vulnerable" consumers under EU law", European Law Review 2013, 765; Eliza Mik, "The erosion of autonomy in online consumer transactions", Law, Innovation and Technology 2016, 1-38.

[7] E.g. For an overview of relevant results of behavioural economics research see Kahneman,D., Slovic, P., and Tversky, A. (Eds.) (1982). Judgement Under Uncertainty: Heuristics and Biases. Cambridge University Press); Kahneman, D., 'Maps of Bounded Rationality: Psychology for Behavioral Economics', American Economic Review, 93 (2003), 1449; for a summary treatise see Dowling, J., and Chin-Fang, Y., Modern Developments in Behavioral Economics, Singapore World Scientific, 2007; with a specific view to law see Sunstein, C., (ed.), Behavioral Law and Economics, Cambridge University Press, 2000; Lunn, P. and Lyons, S. (2010); 'Behavioural Economics and „Vulnerable Consumers": A Summary of Evidence', Economic and Social Research Institute (ESRI).

experiments, including those commissioned by the European Commission in its recent study on consumer vulnerability.[8] They are also acknowledged in the above quoted UCPD guidance document, which refers to the relevance of behavioural biases such as consumer overconfidence when considering self-reported assessments of "well-informed", "observant" and "circumspect" as indicators for establishing the characteristics of the average consumer.

29. With regards to unfair terms in consumer contracts, the "average consumer" notion, was used for the first time in the context of unfair terms control by the CJEU in Kásler[9]. In this case the benchmark of the "average consumer" was also introduced in the interpretation of the UCTD and more specifically of the transparency criterion: in order to be transparent, terms should not merely be grammatically intelligible, but they should enable the (average) consumer to foresee, on the basis of clear, intelligible criteria, which economic consequences derive for him from the term. However, the consumer model from the UCPD is designed for questions about procedural fairness (misleading practices, aggressive practices, transparency of terms), not for questions as to the substantive fairness of terms.

3.2.2. The practical benefits for consumers of the specific protection of "vulnerable consumers" introduced by the directive

30. On the basis of the country research for this evaluation, the following conclusions can be drawn:

31. First of all, the vulnerable consumer benchmark is considered to be of limited relevance in practice, as appear to be the practical benefits of this provision for consumers so far. By and large, national courts and enforcement authorities seem rather reluctant to apply the special rules of Article 5(3) UCPD for consumers needing more protection.

32. Second, when the commercial practice is targeted at a specific group of consumers (for instance, children or elderly people), national courts and enforcement authorities tend to apply the so-called *modulated* "average consumer" benchmark, i.e. the "average consumer" of the target group (as set out in Article 5(2) UCPD), instead of the "vulnerable consumer" benchmark of Article 5(3) UCPD. The explicit use of Article 5(3) in the decisions of relevant authorities and courts in connection to UCPD seems not to be frequent, but on the other hand, all relevant circumstances of the case and the vulnerability of the concerned person is often taken into account.

33. Third, there is little indication that new categories of vulnerable consumers not listed in the UCPD (such as poor/indebted) have been recognised by administrative practice or case law within the scope of the UCPD. This should not come as a surprise since the list of specific vulnerabilities in Article 5(3) is traditionally considered to be exhaustive. However, it should be noted that the new UCPD Guidance document states that, in the Commission's understanding, that list is exemplary only.

34. The country research also indicates that in a broader context (i.e. not necessarily regarding unfair commercial practices) the concept of "vulnerable consumers" has been used in Member States most notably in respect of persons with mental or physical diseases, elderly people, children and young persons, but also in respect of unemployed persons, migrants and poor and indebted people. For example in Greece,

[8] European Commission, Study on consumer vulnerability across key markets in the European Union Final Report, 2016.

[9] Case C-26/13.

there have been many legislative initiatives for the protection of vulnerable consumers during the last years in response to the financial crisis, e.g. related to over-indebted households, which has generated a great influx of cases both for courts, consumer associations, and relevant authorities (however, this legislation is not related to the vulnerability of consumers to unfair practices). In several instances the issue of vulnerable customers in the energy sector was highlighted in the country research, i.e. households that receive allowances for electricity, heating or natural gas under certain social law provisions. Taking into account these provisions (having their origin in EU law) as well as the fact that e.g. in Bulgaria a significant part of the population is below the threshold of "energy poverty" (meaning facing difficulties to keep their homes warm in the winter and cool in the summer), it is considered likely that the new category of "energy poor" consumer will be recognized in national administrative practice and case law in the coming years.

Section 3 – Q&A

4. Insights from behavioural research

In this section, we present relevant insights from behavioural research on the use of the concepts of "vulnerable consumer" and "average consumer".

35. In the behavioural science literature, deviations from rationality are well documented, following the original work of Kahneman and Tversky on decision making, cognitive biases and heuristics. In light of this research, criticism has been raised as the interpretation of the concepts by the CJEU does not sufficiently take into account insights from behavourial economics and consumer psychology. The concepts have also been looked into in behavioural experiments.

4.1. Views on the concepts of "vulnerable consumer" and "average consumer" from the literature

36. The concept of the average consumer as defined in CJEU case law is regarded as a normative abstraction that does not correspond to actual consumer behaviour as understood by behavioural science, thus overstating the abilities of consumers. Two main aspects are referred to in the literature: consumers' deviations from rationality in decision-making and consumers' bounded attention and ability to process information.

37. '*The real average consumer might more aptly be described as reasonably overwhelmed, distracted and impatient.*'[10]

38. '*In the light of research in human decision making, a consumer who is reasonably well informed and reasonably observant and circumspect should more correctly be referred to as some kind of "expert consumer".*'[11]

39. Furthermore, authors criticised the fact that the average consumer benchmark assumes typical or standard decision making, not taking into account personality, knowledge and situation differences among consumers of the same product.

40. '*Behavioural studies show that not all consumers are prone to fall into the same traps, not to the same degree and not in all circumstances. Meanwhile, the law as it stands requires courts to assess whether a given practice distorts the choice pattern of the (unitary) average consumer.*'[12]

41. '*Consumers are different from one another and enter decision-making processes differently in many ways, for example because of differences in pre-existing knowledge, different degrees of involvement with the product or service, but also because of different personalities and cultural backgrounds. These differences influence consumer decision making in many ways. What is to be regarded as 'typical' consumer behaviour is difficult to determine in this context.*'[13]

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[10] Sibony, Can EU Consumer Law Benefit From Behavioural Insights? An Analysis of the Unfair Practices Directive, 2014.

[11] Trzaskowski, The Unfair Commercial Practices Directive and Vulnerable Consumers, 2013.

[12] See footnote 10.

[13] Duivenvoorde, The consumer benchmarks in the Unfair Commercial Practices Directive, 2014.

4.2. The *Mars* case tested

42. In this section we focus on a study that shows how the use of behavioural insights could work in the area of unfair commercial practices.[14] The study focuses on consumer perceptions of bonus packs containing an oversized indication of the 'extra' volume in the package and provides an empirical assessment of the Mars Judgment in the area of the "average consumer".[15]

43. In 1993, the Mars company launched a European-wide marketing campaign during which the content of the Mars ice cream bar was increased by 10% for the regular price. The Mars ice cream bars were then packaged with an indication of the increase of 10% on the product packaging. However, the underlying coloured area of the 10% increase took up nearly 30% of the total surface area of the wrapping. The European Court of Justice had to answer the question whether this oversized area would induce consumers into believing that the increase is larger than the actual 10% increase and therefore would mislead them.

44. The Court answered in the negative by relying on the normative notion of a 'reasonably circumspect consumer' as the benchmark: 'Reasonably circumspect consumers may be deemed to know that there is not necessarily a link between the size of publicity markings relating to an increase in a product's quantity and the size of that increase.'

45. Purnhagen and van Herpen (2014) conducted a behavioural experiment that staged a similar marketing practice using four different bonus packs on coffee packages, to test whether the coloured area on the pack can mislead consumers (see the packages used in the experiment provided in the research paper). Two types of potential *anchors* were mixed on the packages to indicate the 10% bonus:[16] the text on the package and the size of the coloured area.

Table 2: Four different packages used in the experiment

Condition	Text on package	Size of coloured area
Oversized area	10% free	28%
Correct area	10% free	10%
Percentage only	10% free	No coloured area indicated
Area only	Extra volume	28%

Source: Purnhagen & van Herpen (2014). Can Bonus Packs Mislead Consumers? An Empirical Assessment of the ECJ's Mars Judgment and Its Potential Impact on EU Marketing Regulation.

46. Participants were asked for their perception of the bonus volume by assessing the following statement "This coffee pack offered me a lot of bonus volume" on a 7-point scale (ranging from completely disagree to completely agree). Results are presented in the figure below and show that 'participants' estimates of the additional volume in the package were affected by both the area that was indicated and the

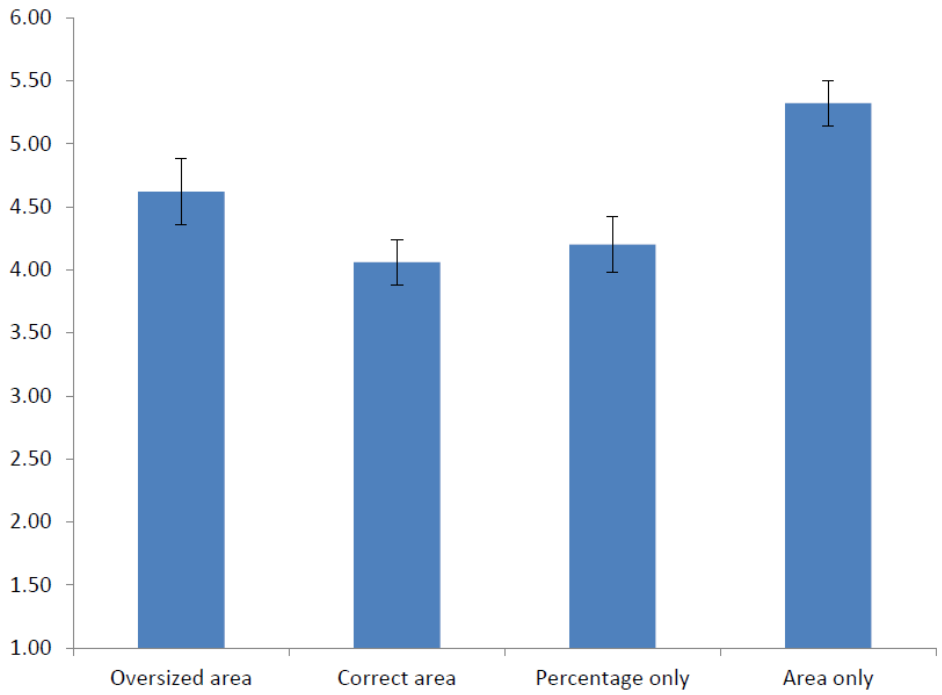
[14] Purnhagen & van Herpen, Can Bonus Packs Mislead Consumers? An Empirical Assessment of the ECJ's Mars Judgment and Its Potential Impact on EU Marketing Regulation, 2014.

[15] ECJ Case C-470/93, 1995.

[16] 'The notion of the anchoring effect is that people often make estimates by starting from an initial value (the 'anchor'), with estimates being biased towards this initial value.' (Purnhagen & van Herpen, 2014)

When presented with a pack with an oversized area indication and a percentage, they perceived more bonus volume than in a package with the correct area indication, even though they perceived less bonus volume than in a package with only an oversized area.'

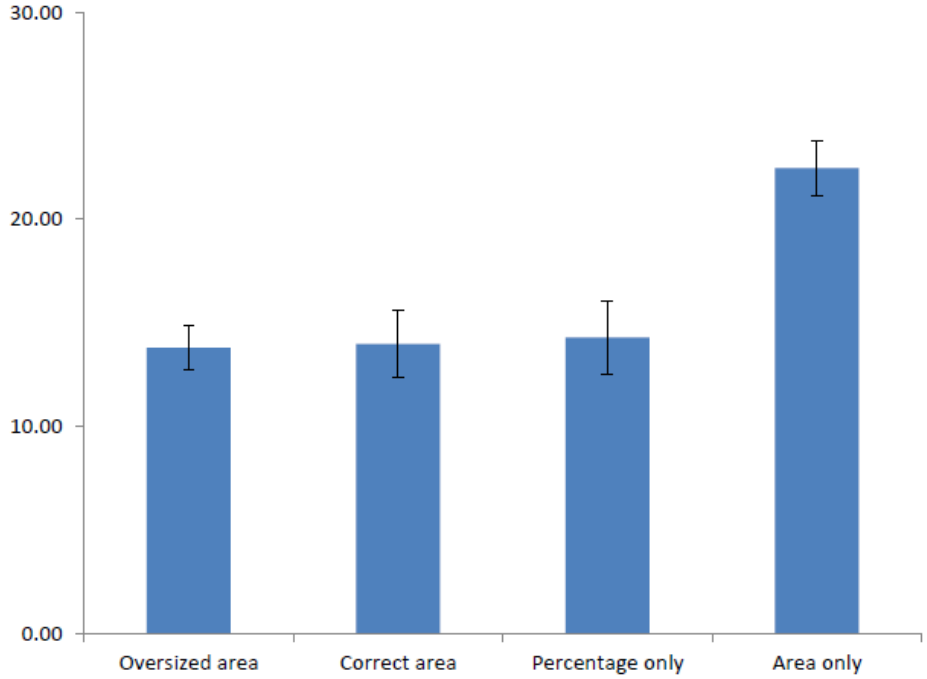
Figure 1: Effects on the perception of bonus volume



Source: Purnhagen & van Herpen (2014). Can Bonus Packs Mislead Consumers? An Empirical Assessment of the ECJ's Mars Judgment and Its Potential Impact on EU Marketing Regulation.

47. Participants were also asked to indicate the (numerical) percentage of the bonus volume. Results are presented in the figure below and show that 'in the 'area only' condition, where no percentage was indicated on the package itself and the indicated area was large, participants reported a larger percentage than in the other conditions. More interesting is that [the authors] did not find significant differences between the other three conditions. Thus, participants appeared equally aware of the percentage in these conditions, even though they had indicated more bonus volume in the 'oversized area' condition. It was also noteworthy that [the authors] did not find any differences between the condition in which the 10% area was indicated with a correct area (the 'correct area' condition) and the condition in which only the percentage was shown without an area indication (the 'percentage only' condition). This indicates that participants were able to interpret the percentage. In other words, the results that [the authors] found did not appear due to a misinterpretation of the percentage number.'

Figure 2: Effects on the estimated volume percentage



Source: Purnhagen & van Herpen (2014). Can Bonus Packs Mislead Consumers? An Empirical Assessment of the ECJ's Mars Judgment and Its Potential Impact on EU Marketing Regulation.

48. The authors concluded that 'Our results indicate that the oversized area misleads consumers. When estimating the additional volume visually, consumers estimate that the additional volume is larger when the package contains an oversized area than when it contains the correct area on package. Moreover, they estimate this area as significantly larger than the objectively correct area. Even though a correct anchor was provided on the package (it contained the indication "10 % free"), this did not stop consumers from also relying in part on the visually indicated area. Importantly, when the area on pack was correctly indicated at 10% of the actual package size, such an overestimation did not occur. This implies that the oversized area on the label increases the perceived additional volume that the package contained.'

4.3. European Commission's study on consumer vulnerability across key markets in the EU

49. Taking stock of various existing definitions and understandings of the concept of consumer vulnerability, the recent study on consumer vulnerability established a broad definition and developed indicators to conceptualise consumer vulnerability.[17]

50. The study defines the "vulnerable consumer" as: 'A consumer, who, as a result of socio-demographic characteristics, behavioural characteristics, personal situation or market environment:

- Is at higher risk of experiencing negative outcomes in the market;
- Has limited ability to maximise his/her well-being;

[17] European Commission, Consumer vulnerability across Key Markets in the EU: Final Report, 2016.

- Has difficulty in obtaining or assimilating information;
- Is less able to buy, choose or access suitable products; or
- Is more susceptible to certain marketing practices.'

51. In the consumer survey conducted in all EU Member States in the context of the study, most consumers show signs of vulnerability in at least one dimension, while a third of consumers show signs of vulnerability in multiple dimensions. Less than a fifth of the consumers interviewed show no signs of vulnerability. As consumer vulnerability is multi-dimensional, so is the impact of personal characteristics on the likelihood of being vulnerable as a consumer. For example, characteristics like age and gender can increase vulnerability in some dimensions, but not in others.

52. The study looked into the concepts of "average consumer" and "vulnerable consumer", as developed by the Court of Justice, with a particular focus on the UCPD. The study investigated the concept of the average consumer in two ways – in relation to the indicators developed by the study to conceptualise consumer vulnerability and in relation to the definition of the average consumer in the UCPD, i.e. referring to the average consumer as reasonably "well informed", "observant" and "circumspect".

53. On whether the average consumer is "well informed", the study found that the average consumer, as represented by the median consumer response per indicator, feels quite informed about prices, declares that he/she reads communication from the internet, banking and energy providers (but admits to have only glanced over it or skim read it), and states that he/she does not rely on information from advertisements only.

54. As regards the concept of being "observant" and "circumspect", the study found that the median consumer sees him/herself as quite careful in dealing with people and in making decisions, as not very willing to take risks and that he/she disagrees that advertisements report objective facts.

55. Most of the above indicators reflect the self-reported average – as opposed to objective measures – of the concepts of being "well-informed", "observant" and "circumspect" and should hence be interpreted with caution, as they are likely to be influenced – at least in part – by behavioural biases such as consumer overconfidence. This is underpinned by the fact that, when presented with complex offers in behavioural experiments, the median consumer was actually not able to select the best deal in the experiments.

56. The four behavioural experiments were designed to examine whether and to what extent consumer vulnerability, in the form of suboptimal product choices, is linked to problematic marketing practices or simply socio-demographic characteristics, and whether the impact of marketing practices is dependent on the consumer's own characteristics. The treatments in the experiments were designed to reflect both 'problematic' marketing practices reflecting current marketing practices in the energy sector (complex pricing), the online sector (bundling of offers) and across sectors (teaser rates - initial rates below market rates that will be in effect for only a short time, following which the rate will gradually increase), and, conversely, 'remedied' marketing practices.

57. Respondents in all groups performed better under the remedy treatments than under the marketing practice treatments. This suggests that marketing practices are an issue for all consumer groups, and it should not be considered that the effects of marketing practices are confined to particular types of consumers. However, some consumer groups are more susceptible to marketing practices than others.

Section 4 - Questions for workshop participants

a) Do the concepts of "consumer", “vulnerable consumer” and “average consumer” as currently defined in the consumer law directives and relevant jurisprudence, and as applied by national authorities and courts, continue to be valid and fit for purpose? Is there a need for improvements in the definitions of the concepts? What are the implications of the behavioural research presented above?

b) What is the added value of a specific provision for vulnerable consumers? Is it not sufficient to work with a concept of average consumer of a targeted group?

5. Possible options for improvements

The aim of this section is to reflect on the evidence presented in this document and to discuss possible options for improvements.

58. Sibony (2014) argues that if behavioural insights are to be taken into consideration in consumer law in Europe, it must be at EU level: 'The national level would be the wrong place to instil behavioural wisdom into the law because the internal market arguments against diversity of consumer protection measures apply exactly in the same way irrespective of whether these measures are behaviourally informed or not.'

59. Trzaskowski (2016) suggests that research on consumer behaviour may be applied in Court cases either: by testing the actual commercial practice or by extracting general trends in human decision making.[18] He cites the example of the *Gut Springenheide* case,[19] where the Court allowed—in the context of the Misleading Advertising Directive—that national courts could order an expert's opinion or commission a consumer research poll for the purpose of clarifying whether a promotional description or statement is misleading or not. Trzaskowski also suggests that experts' opinions relying on e.g. behavioural economics could be equally helpful as well as less costly.

60. The reference to the average consumer in recital 18 of the UCPD could be amended in order to make it clear that in the interpretation of the benchmark of the average consumer, insights from behavioural studies and available empirical data on the actual behaviour of an average consumer can be taken into account.

61. Other suggestions for action include providing guidelines for traders or introducing per se prohibitions of practices that are known to cause material economic distortion in the Annex, in order to make it easy for traders to understand and apply the UCPD and thus increase foreseeability, or establishing an EU consumer protection authority that could enforce EU marketing law in the Internal Market.[20]

[18] Trzaskowski, Lawful Distortion of Consumers' Economic Behaviour – Collateral Damage Under the Unfair Commercial Practices Directive, 2016.

[19] Case C-210/96.

[20] See footnote 17.

Section 5 - Questions for workshop participants

a) What options (legal and non legal) for redefining these concepts would appear reasonable? Both in a behavioural perspective and considering (best) practices identified in our research (either at Member State level or in third countries)?

b) How could this be considered in a recast of the UCPD?

c) What would be the potential impact of (re)defining the concepts of the average consumer, and of various categories of vulnerable consumers, including young consumers, in EU consumer legislation?

d) Should specific provisions be introduced in the UCTD to protect vulnerable consumers with regards to standard terms and conditions? Should specific provisions be introduced in other (e.g. sector-specific) Directives?

e) Is it possible to work with a static definition? Can e.g. vulnerable consumers be categorised according to specific criteria (age, income, etc.)? Can't all consumers be vulnerable at some point in time / in certain situations?

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