



# Study to support the Fitness Check of EU consumer law on digital fairness and the report on the application of the Modernisation Directive (EU) 2019/2161

Final Report - Part 2

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Centre for  
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# **Study to support the Fitness Check of EU consumer law on digital fairness and the report on the application of the Modernisation Directive (EU) 2019/2161**

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# 1 Modernisation Directive transposition and application

This section begins with an overview of the state of transposition of the Modernisation Directive ('MD'), followed by an analysis of the application of the MD.

## 1.1 Analysis of transposition

On 28 May 2022, Directive (EU) 2019/2161 on the better enforcement and modernisation of Union consumer protection rules, entered into application at Member States' level.<sup>1</sup> The MD amends existing legislation to better align EU consumer law with digital developments and provide stronger tools to enforce consumer rights. The four Directives that are amended by the MD were the Unfair Commercial Practices Directive ('UCPD'), the Consumer Rights Directive ('CRD'), the Unfair Contract Terms Directive (UCTD'), and the Price Indication Directive ('PID').

On 17 December 2021, the European Commission ('EC') published its updated guidance notices on the interpretation and application of the UCPD, the CRD and the new guidance on Article 6a of the PID, while the 2019 guidance on the UCTD was not updated. The updated guidance documents provide additional legal interpretation on, for instance, obligations of online platforms and marketplaces, influencer marketing, consumer reviews, data-driven personalisation, dark patterns, personalized prices, consumer's right of withdrawal, and on price reductions and 'prior' prices. The notices *inter alia* aimed to support national lawmakers in the transposition of the revised rules into their respective national law, as well as to help businesses adapt to the new rules.

Here the analysis focuses on the transposition of **selected articles** of the MD into the national laws of the Member States, based on the results of the country analysis of national legal frameworks and interviews with national enforcement authorities and ministries responsible for consumer protection. It also examines the available data about the state of the enforcement (case law) of the UCTD, UCPD, CRD and PID after the transposition of the MD by the Member States.<sup>2</sup>

The study confirms that the Member States have generally transposed the MD into their national legislation. As Slovakia notified transposition laws in May 2024, the analysis on particular MD issues that follows does not include Slovakia, with some exceptions.<sup>3</sup> According to Article 6 of the MD, the Commission must prepare and submit the application Report to the European Parliament and to the Council by 28 May 2024.

The following sections provide an analysis of desk research and findings regarding specific provisions of the MD dealing with **penalties applicable to infringements of the national provisions transposing the relevant provisions of the UCTD, UCPD, CRD and PID, price reduction announcements (PID), remedies for victims of unfair commercial practices (UCPD), doorstep selling and commercial excursions (UCPD and CRD), transparency on the online marketplaces issues, ranking of offers and disclosure of paid-for advertising for achieving higher ranking, and consumer reviews**. The investigation shows that, because of their recent transposition into national laws, national authorities have had limited opportunities to apply the new provisions examined in the following sections. In short, the case law is absent or limited in most cases.

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<sup>1</sup> Directive (EU) 2019/2161 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (Modernisation Directive), OJ L 328, 18.12.2019, p. 7. In some Member States, directive was transposed with the delay.

<sup>2</sup> It should be noted that the data was collected and the research was conducted in 2023.

<sup>3</sup> See the text of transposition laws of the Member States, when made available, at: <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L2161>.

## 1.1.1 Penalties

### 1.1.1.1 Overview on penalties

The MD aims to assure that consumer protection law is applied effectively throughout the Union by enhancing, inter alia, the public enforcement of consumer rights. The strengthened rules on penalties for breaches to EU consumer law are thus now provided in [Art. 8b UCTD](#), [Art. 8 PID](#), [Art. 13 UCPD](#) and [Art. 24 CRD](#).

In particular, the MD provided additional, more prescriptive rules (compared to the general rule) regarding penalties (in UCPD, CRD and UCTD) that must be available under national law for widespread infringements or widespread infringements with a Union dimension that are subject to [coordinated actions under Art. 21 CPC](#) Regulation.<sup>4</sup>

For this category of infringements, Member States have to provide, under all three directives, for the possibility of imposing fines and the maximum amount of fine must be at least 4 % of the trader's annual turnover, and if information on the trader's annual turnover is not available - for the possibility of imposing a maximum fine of at least EUR 2 million (Art. 8b(4) and (5) UCTD, Art. 13(3) and (4) UCPD and Art. 24(3) and (4) CRD).

The power to impose such fines lies with the consumer protection authorities (CPAs) or the courts depending on national systems. Member States can provide for higher maximum fines and, as further detailed below, some Member States apply even higher thresholds (than 4% / EUR 2 million).

The section provides an overview of the transposition of these provisions in the Member States.

### 1.1.1.2 Art. 8b(4) and (5) UCTD – fines in the context of CPC coordinated enforcement actions

Following transposition of Art. 8b(4) and (5) of the Unfair Contract Terms Directive in the Member States, national authorities or courts now have the power to impose effective, proportionate and dissuasive penalties in a coordinated manner when they work together under CPC Regulation on major cross-border infringements (Art. 21 CPC Regulation) that affect consumers in several Member States. Article 8b(2) UCTD gives some specific regulatory choices to the Member States in relation to penalties in general, which are analysed in section 1.1.1.13 below.

The study highlights that the Member States have generally transposed those provisions with respect to the application of fines in the context of the CPC Regulation with some exceptions as indicated in the table below, which shows the state of the art with respect to the maximum amount of fines in [cross-border cases falling under Art. 21 of the CPC Regulation](#).

**Table 1-1: Maximum amount of fines in cross-border cases falling under the CPC Regulation (Art. 8b(4) UCTD)**

Maximum amount of the fines in cross-border cases (falling under the CPC Regulation)	Member States
10% of the sellers or suppliers' annual turnover	Poland
6 % of the sellers' or suppliers' annual turnover	Belgium (only in cases of intentional breach)
5% of the sellers' or suppliers' annual turnover	Cyprus, Croatia (widespread infringements with a Union dimension; for other widespread infringements it is 4%),

<sup>4</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004, OJ L 345, 27.12.2017, p. 1.

Maximum amount of the fines in cross-border cases (falling under the CPC Regulation)	Member States
	Slovenia (widespread infringements with a Union dimension)
<b>4% of the sellers' or suppliers' annual turnover</b>	Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Germany (for traders with a turnover of up to EUR 1.250.000, the fine is up to EUR 50,000), Hungary (for repeated breaches), Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Spain, Sweden, Slovenia (widespread infringements), The Netherlands
<b>EUR 400,000</b>	Estonia

The table below shows the state of the art with respect to the maximum amount of penalties in **cross-border cases falling under Art.21 of the CPC Regulation** - Art. 8b(5) UCTD, in case the information on annual turnover is not available.

**Table 1-2: Maximum amount of fines in cross-border cases falling under the CPC Regulation - in absence of turnover information (Art. 8b(5) UCTD)**

Maximum amount of fines in cross-border cases (falling under the CPC Regulation) when turnover cannot be determined	Member States <sup>5</sup>
<b>EUR 5 million</b>	Greece
<b>EUR 3 million</b>	Cyprus
<b>EUR 2 million</b>	Austria, Belgium, Bulgaria, Croatia, Czech Republic (EUR 2,103,400), Denmark, Finland, France, Germany, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Spain, Sweden, Slovenia, The Netherlands

### 1.1.1.3 Art 13(3) and (4) UCPD - fines in the context of CPC coordinated enforcement actions

Similar to Art. 8b(4) and (5) UCTD, under Art 13(3) and (4) of the Unfair Commercial Practices Directive (UCPD), national authorities or courts can impose fines in cross-border cases (of unfair commercial practices) subject to the CPC coordinated enforcement, which can be at least 4% of the trader's annual turnover, or at least EUR 2 million when information on turnover is not available. Most Member States apply the maximum caps of 4% / EUR 2 million. However, as can be seen from the two tables below, other maximum caps exist in some Member States, for instance, a cap of 10 % of the turnover in Poland and the Netherlands (Table 1-3) and the maximum amount of fines, equal to, for example, EUR 5 million in Greece, that can be issued if the information on the trader's annual turnover is not available (Table 1-4).

<sup>5</sup> In Estonia, the maximum fine is EUR 400 000.

**Table 1-3: Maximum amount of fines in cross-border cases falling under the CPC Regulation for unfair commercial practices (Art. 13(3) UCPD)**

Maximum amount of fines in cross-border cases for unfair commercial practices falling under the CPC Regulation	Member States <sup>6</sup>
10% of the sellers or suppliers' annual turnover	Poland, The Netherlands
6 % of the sellers' or suppliers' annual turnover	Belgium
5% of the sellers' or suppliers' annual turnover	Cyprus, Croatia (for widespread infringements with a Union dimension), Slovenia (for widespread infringements with a Union dimension)
4% of the sellers' or suppliers' annual turnover	Austria, Bulgaria, Croatia (for widespread infringements), Czech Republic, Denmark, Finland, France (only for Article 13(3)(b) UCPD), Greece, Germany (for traders with a turnover of up to EUR 1 250 000, the fine is up to EUR 50,000), Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Spain, Sweden, Slovenia (widespread infringements)

In addition, as can be seen from the table below, other maximum caps, between EUR 5 million and EUR 2 million, exist in some Member States with respect to fines that can be issued if the information on the trader's annual turnover is not available.

**Table 1-4: Maximum amount of fines in cross-border cases for unfair commercial practices - in absence of turnover information (Art. 13(4) UCPD)**

Maximum amount of fines in cross-border cases for unfair commercial practices in absence of turnover information	Member States <sup>7</sup>
EUR 5 million	Greece
EUR 4 million	Denmark
EUR 3 million	Cyprus
EUR 2 million	Austria, Belgium, Bulgaria, Croatia (EUR 1,991,000), Czech Republic (EUR 2,103,400), Finland, France (only for unfair commercial practices under Article 13(3)(b) UCPD), Germany, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Spain, Sweden, Slovenia, The Netherlands

#### 1.1.1.4 Art. 24(3) and (4) CRD - fines in the context of CPC coordinated enforcement actions

The following tables show the state of the art of the transposition of Art. 24(3) and (4) of the Consumer Rights Directive.

**Table 1-5: Maximum amount of fines in cross-border cases falling under the CPC Regulation (Art. 24 (3) CRD)**

Maximum amount of fines in cross-border cases falling under the CPC Regulation	Member States <sup>8</sup>
10% of the sellers or suppliers' annual turnover	Poland
6 % of the sellers' or suppliers' annual turnover	Belgium (only in cases of intentional breach)

<sup>6</sup> In Estonia, the maximum amount of fine is EUR 400 000.

<sup>7</sup> In Estonia, the maximum amount of fine is EUR 400 000.

<sup>8</sup> In Estonia, the maximum amount of fine is EUR 400 000.



Maximum amount of fines in cross-border cases falling under the CPC Regulation	Member States <sup>8</sup>
5% of the sellers' or suppliers' annual turnover	Cyprus, Croatia, Slovenia (for widespread infringements with a Union dimension)
4% of the sellers' or suppliers' annual turnover	Austria, Belgium, Bulgaria, Czech Republic, Denmark, Finland, France, Greece, Germany (for traders with a turnover of up to EUR 1 250 000, the fine is up to 50,000), Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Spain, Sweden, The Netherlands, Slovenia (widespread infringements)

**Table 1-6: Maximum amount of fines in cross-border cases for violation of the Consumer Rights Directive - in absence of turnover information (Art. 24(4) CRD)**

Maximum amount of fines in cross-border cases for violation of the CRD in absence of turnover information	Member States <sup>9</sup>
EUR 5 million	Greece (widespread infringements or widespread infringements with a Union dimension)
EUR 3 million	Cyprus
EUR 2 million	Austria, Belgium, Bulgaria, Croatia (EUR 1,991,000), Czech Republic (EUR 2,103,400), Denmark, Finland, Greece, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Spain, Slovenia, Sweden, The Netherlands

According to the analysis, this harmonisation (in cross-border cases falling under Art. 21 CPC Regulation) offers a consistent approach to consumer protection across various Member States, with some limited variations. For example, the maximum fine in case the information about turnover is unavailable can amount up to EUR 4 million in **Denmark** (for UCPD cases); the maximum fine in **Croatia** can amount up to 5% of the trader's annual turnover (for UCTD cases relating to widespread infringements with Union dimension). In **Slovenia**, if an offense is considered a widespread infringement with a Union dimension (Art. 21 CPC Regulation), the fine imposed will range between 1.5% and 5% of the offender's annual turnover in Slovenia or in the EU Member States concerned for the previous business year (for UCTD, UCPD and CRD cases). This applies to legal persons, sole proprietors, and self-employed individuals. However, as regards EUR 2 million rule in absence of turnover information, our analysis shows that there is no provision in France for that fine of EUR 2 million, for the CRD cases.

However, the study indicates that while there is a harmonised system for maximum fines (in cross-border cases falling under Art. 21 CPC Regulation), the minimum penalties are not standardised across the Member States. This allows for some level of discretion and adaptability in how each Member State enforces consumer protection laws, which could be influenced by factors such as the gravity of the infringement, past behaviour of the trader, and specific circumstances of each case. For example, in **Romania**, in compliance with Article 21 of the CPC Regulation, fines for widespread infringements with Union dimension can range from 0.1% (minimum) to 4% of the trader's annual turnover generated in Romania in the financial year prior to the sanction. If the trader's turnover information is unavailable, fines can range between EUR 200,000 and EUR 2 million, converted to Romanian Lei at the exchange rate provided by the National Bank of Romania.

<sup>9</sup> In Estonia, the maximum amount of fines is EUR 400 000.

The findings show that the MD has indeed been effective in certain areas, particularly in potentially increasing the dissuasiveness of public enforcement through fines for consumer law violations. This is a welcome development, as it strengthens the deterrent effect of these specific penalties (CPC context), making violations of consumer law less appealing to traders.

However, in **domestic cases** there is a disparity in **levels of fines** (which are not harmonised by the MD) among Member States.

#### 1.1.1.5 Overview of fines for **domestic cases** (Art. 8b UCTD, Art. 8 PID, Art. 13 UCPD, Art. 24 CRD)

Before the adoption of the MD, national rules about penalties were significantly different across the EU (Recital 5 of the MD). In addition to specific rules on fines in the coordinated actions under the CPC Regulation (whose transposition was analysed above), the MD made other amendments relating to penalties.

The analysis confirms that the Member States have transposed into their national laws the MD provisions amending existing rules on penalties in PID, UCPD and CRD (namely **Art. 8 PID, Art. 13 UCPD and Art. 24 CRD**), and the new rules on penalties introduced by the MD in UCTD (**Art. 8b UCTD**). The analysis also highlights that, to date, most Member States have granted their CPAs the competence to monitor the compliance with UCTD, UCPD, CRD and to issue (**administrative**) **fin**es in cases of breaches.

Generally, CPAs have competence to impose fines. In few Member States, the courts have the power to issue such penalties (this is the case of **Sweden**, for example, where the fines relating to UCTD infringements are issued by the Patent and Market Court, **Estonia**, and **Malta**).

In some Member States, **criminal penalties** can be applied for the specific consumer law infringements (for example, Denmark, Belgium, Estonia, Ireland, Luxembourg, Poland).

In **Ireland**, for example, criminal penalties for breaches of the UCTD may include a fine or imprisonment. In **Poland**, the legal nature of these fines has been debated. In particular, the question arises whether they constitute administrative sanctions or have a penal nature. In **Estonia**, the breach of the UCTD is considered a misdemeanour (i.e. subject to criminal sanctions).

#### 1.1.1.6 Quantification of penalties in domestic and other cross-border cases

This section examines the quantification of the penalties available under national laws for the three directives concerned, i.e., UCTD, UCPD, CRD, with respect to **domestic and other cross-border cases** i.e., **other than those** that are subject to CPC coordinated enforcement. It also includes overview in relation to the PID.

With respect to **the cross-border infringement of UCTD, UCPD, CRD subject to CPC coordinated enforcement**, as presented above, the country analysis confirms that the CPAs or the courts in the Member States (with very limited exceptions, Estonia) have the power to impose a fine of up to 4% of the trader's annual turnover, or up to EUR 2 million when information on turnover is not available and, as was explained above, some Member States go beyond these levels. **Estonia** represents an exception in this respect. In fact, it has been reported that the above-mentioned provision of the Modernisation Directive (4%/EUR 2 million) was not fully transposed into domestic law, as the fines remain at the lower level.

Thus, overall, fines are harmonised - to a certain extent - in the EU for this specific category of cross-border cases, while the picture about the quantification of the fines is more fragmented regarding **domestic cases and other cross-border cases that are not subject to CPC coordinated enforcement**, as will be presented below.

### 1.1.1.7 Maximum amount of fines - Art. 8b UCTD

The table below shows the state of the art with respect to the maximum amount of fines **in domestic cases and other cross-border cases that are not subject to CPC coordinated enforcement - Art. 8b UCTD.**

**Table 1-7: Maximum amount of fines in domestic cases and other cross-border cases (i.e. other than those that are subject to CPC coordinated enforcement)- Art. 8b UCTD**

Maximum amount of fines in domestic and other cross-border cases	Member States
<b>10% of the sellers and suppliers' annual turnover</b>	Poland, the Netherlands <sup>10</sup>
<b>6% of the sellers' or suppliers' annual turnover</b>	Belgium (only in cases of intentional breach), Lithuania (6% only for repeated infringement, capped at EUR 200,000; otherwise - 3%, capped at EUR 100 000).
<b>5% of the sellers' or suppliers' annual turnover</b>	Cyprus
<b>4% of the sellers' or suppliers' annual turnover</b>	Austria (EUR 1450 for individuals), Belgium, Croatia, Denmark, Finland, Greece, Germany (for traders with a turnover of up to EUR 1.2 mil, the fine is up to EUR 50,000), Ireland, Latvia (capped at EUR 300,000), Sweden, Slovenia
<b>EUR 10,000,000</b>	Italy
<b>EUR 1,000,000 or eight times the illicit profit obtained</b>	Spain
<b>EUR 5,050,000 – EUR 40</b>	Hungary
<b>EUR 400,000</b>	Estonia
<b>EUR 210,340</b>	Czech Republic
<b>Between EUR 90,000 and EUR 2,000</b>	France (EUR 15,000 for natural persons and EUR 75,000 for legal persons), Portugal
<b>EUR 47,000</b>	Malta
<b>Between EUR 10,000 and EUR 300</b>	Luxembourg
<b>Between EUR 5,000 and EUR 470</b>	Italy
<b>Fines are determined without reference to turnover, but different cap levels defined, depending on type of infringement</b>	Bulgaria, Romania

Some Member States have also stipulated the **minimum amount** of (administrative) fines. In **Malta**, for example, the minimum amount of the fine is EUR 470, in **Italy** it is EUR 5,000. In **Portugal**, administrative fines depend on the classification of offenses as low, serious, and very serious, considering the relevance of the protected legal interests. The amount of the fine for each category corresponds to a fine applicable in accordance with a set of general criteria. Sweden has a minimum fine of 10,000 SEK, approximately EUR 870.

The **maximum available fines** for the infringements of the UCTD vary significantly in the EU outside the specific context of the infringements subject to the CPC coordinated enforcement. The fines range from a modest administrative fine to criminal sanctions. For example, Italy has a maximum fine of EUR 10 million in domestic cases. Few jurisdictions have introduced fines that go beyond 4% turnover and, precisely, **Poland, Lithuania**<sup>11</sup> (but

<sup>10</sup> 10% of the turnover or EUR 900,000, whichever is higher.

<sup>11</sup> Lithuanian **Law on Consumer Rights Protection**, in Art. 40, provides as follows: The State Consumer Rights Protection Authority may impose on a trader a fine of **up to 3% of their annual income** for the preceding financial year, up to **a maximum of EUR 100 000**, for the continued application of terms of consumer contracts which have been declared unfair by a final court ruling or by decision of the State Consumer Rights Protection Authority after the court ruling in question has taken effect or the decision of the State Consumer Rights Protection Authority has been published, and for failure to comply with the trader's written undertakings. A trader who **repeats** within one year an

only in the case of two or more infringements) and **Cyprus. Lithuania** is an interesting case as, effectively, there is a dual approach, with a maximum turnover fine of 3% (up to a ceiling of 100,000 EUR) for a first offence, whereas for repeated infringements, the penalty can be up to 6% (subject to a maximum cap of EUR 200,000).

Clearly, the deterrent effect of the above-mentioned fines also depends on the type of trader on which these are imposed, i.e., SMEs or a multinational company.

#### 1.1.1.8 Maximum amount of fines – Art. 13 UCPD

Art. 13 of the UCPD provides that the Member States shall lay down penalties for infringements of national provisions adopted in application of the UCPD and shall take all necessary measures to ensure that these are enforced. These penalties must be effective, proportionate and dissuasive.

The situation in the Member States with respect to the maximum fines for cross border infringements of the UCPD that are subject to the CPC coordinated actions was presented above.

There is a variation regarding fines applied in **domestic cases and other cross-border breaches** of the UCPD that are not subject to CPC coordinated enforcement. The following table shows the levels of the fines in the Member States for domestic and those other cross-border cases under Art. 13 UCPD.

**Table 1-8: Maximum amount of fines in domestic cases and other cross-border cases (i.e. other than those that are subject to CPC coordinated enforcement) - Art. 13 UCPD**

Maximum amount of fines in domestic and other cross-border cases	Member States
<b>10% of the annual turnover (EUR 2 million if turnover is not available)</b>	Poland, the Netherlands <sup>12</sup>
<b>6% of the annual turnover</b>	Belgium
<b>5% of the turnover and, where information on the annual turnover of the offender is not available, a fine not exceeding EUR 3,000,000 may be imposed</b>	Cyprus
<b>4% of the annual turnover</b>	Austria, Finland, France (in most cases maximum fine is EUR 300 000), <sup>13</sup> Ireland, Latvia (with a cap of EUR 300,000), Sweden
<b>3% of the sellers' or suppliers' annual turnover, with a cap of EUR 100,000 (up to 6% in case of repeated infringements, with a cap of EUR 200,000)</b>	Lithuania
<b>Between EUR 10,000,000 and EUR 5,000</b>	Italy
<b>EUR 3 million in case of repeated infringement within 5 years. Generally, EUR 5,000 to EUR 1,500,000</b>	Greece
<b>EUR 5,050,000</b>	Hungary
<b>EUR 1,000,000 or eight times the illicit profit obtained</b>	Spain
<b>EUR 400,000</b>	Estonia
<b>Between EUR 250,000 and EUR 1,000</b>	Germany

infringement referred to in this paragraph for which a fine has been imposed or a warning issued may be fined **up to 6% of their annual income** for the preceding financial year, up to a **maximum of EUR 200 000**.

<sup>12</sup> 10% of the turnover or EUR 900,000, whichever is higher.

<sup>13</sup> However, for unfair practices mentioned in Articles 6-9 UCPD, fines for domestic and other cross-border cases are EUR 300 000 (natural person)/ EUR 1 500 000 (legal person) or 10% turnover or 50% of expenditure on advertising or 80% of expenditure on advertising in case of misleading practices based on environmental claims. In addition, there are no fines for domestic unfair practices falling under Article 5 UCPD in France.

Maximum amount of fines in domestic and other cross-border cases	Member States
EUR 210,340	Czech Republic <sup>14</sup>
EUR 120,000	Luxembourg
Between EUR 90,000 and EUR 2,000	Portugal
EUR 47,000	Malta
Fines are determined according to different cap levels defined, depending on type of infringement	Bulgaria <sup>15</sup> , Croatia <sup>16</sup> , Denmark <sup>17</sup> , Romania <sup>18</sup> Slovenia <sup>19</sup>

<sup>14</sup> The number may vary slightly due to the possible exchange rate variations between CZK and EUR.

<sup>15</sup> **Art. 210a of the Consumer Protection Act:** For violation of Art. 68c, Art. 68, Art. 68g, items 1 - 11, 13, 15, 18 - 27 and Art. 68k, items 3 - 6, a fine in the amount of BGN 1,000 to BGN 30,000 is imposed on guilty persons, and a pecuniary sanction in the amount of BGN 2,000 to BGN 50,000 is imposed on sole traders and legal entities. Art. 210b. For violation of Art. 68g, items 12, 14, 16 and 17 and on Art. 68k, items 1, 2, 7 and 8, a fine in the amount of BGN 2,000 to BGN 50,000 is imposed on guilty persons, and a pecuniary sanction in the amount of BGN 2,000 to BGN 70,000 is imposed on sole traders and legal entities. Art. 210c. Who does not comply with an order under Art. 68l, para. 1 or order under Art. 68l, para. 3 is punishable by a fine in the amount of BGN 2,000 to BGN 50,000, and sole traders and legal entities are subject to a pecuniary penalty in the amount of BGN 3,000 to BGN 70,000. Art. 226 (1) Whoever fails to comply with an effective decision of the court to take measures under Art. 187 for the cessation of infringements or who, despite an effective court decision, continues the application of an illegal commercial practice or a clause included in a contract with general terms and conditions with consumers, which has been declared unfair, shall be punished with a fine in the amount of 5000 to 20,000 BGN, and sole traders and legal entities are subject to a property sanction in the amount of BGN 10,000 to BGN 50,000.

<sup>16</sup> **Article 149 of the Consumer Protection Act:** (1) A trader - a legal entity will be fined for an infringement in the amount of HRK 10,000.00 to HRK 200,000.00 if: 49. it uses practice that is unfair within the meaning of Articles 34 to 40 of this Act 65. it conducts unsolicited visits to the consumer's home contrary to Article 71, paragraphs 1 to 5 of this Act (2) For infringements referred to in paragraph 1 of this article, the responsible person in the legal entity shall be fined in the amount of HRK 10,000.00 to HRK 15,000.00. (3) For infringements referred to in paragraph 1 of this article, a trader - natural person will be fined in the amount of HRK 5,000.00 to HRK 15,000.00.

<sup>17</sup> **Marketing Act of Denmark.** The amended Article 37(3) reads: Subsection 3. Infringement of the provisions of Article 5(1), Article 6 (1, 3 and 4), Articles 6 a and 6 b, Article 7(1), Articles 9-11, Article 11 a(1), Article 11 b(1), Article 14(1), Article 15, Article 16(3), Article 17(1, 2 and 4), Article 18 and Article 19, Article 20(1 and 3), and Article 21, and intentional violation of Article 22 is punishable by a fine, unless a higher penalty is due under Article 279 of the Criminal Code or other legislation. Subsection 5: When imposing fines pursuant to subsection 1-3 emphasis is placed on the seriousness of the infringement and the trader's turnover, cf. however subsection 6. Several new criteria for the imposition of penalties have been added, as per Article 13 of the UCPD, that take into account the gravity, duration and scale of the trader's infringement of unfair commercial practices rules, as well as his turnover (not required by the MD). Other new provisions determine the maximum ceiling of the fines that can be imposed. The new fining model introduced in January 2022 includes three levels of severity (reduced, normal and increased) and 8 different levels of turnover. The fine sizes range from DKK 25,000/EUR 3,380 (least severe/smallest turnover) to DKK 5 million/EUR 675,675 or 1% of turnover (most severe/turnover above DKK 500 million/EUR 67.5 mln). So far, no administrative fines have been issued under the new model.

<sup>18</sup> **Art. 15 of Law No. 363/2007**, as amended following the MD transposition: "(1) The use by traders of unfair commercial practices shall be prohibited, shall constitute an administrative offence and shall be punished as follows: a) a fine of between RON 10.000 and RON 100.000 for the use of unfair commercial practices as defined in Article 4 (1) and (2); b) a fine of between RON 20.000 and RON 100.000 for the use of misleading commercial practices as defined in Articles 6 and 7 and for the use of any of the practices listed in Annex 1 to the paragraph "Misleading commercial practices"; c) a fine of between RON 20.000 and RON 100.000 for failure to comply with the obligation of traders to inform consumers easily of the differentiation of goods due to legitimate and objective factors, in accordance with Article 61; (d) a fine of between RON 10.000 and RON 100.000 for the use of aggressive commercial practices as defined in Articles 8 and 9 and for the use of any of the practices listed in Annex 1 to the paragraph "Aggressive commercial practices". (2) where traders use unfair commercial practices affecting more than 100 consumers, the minimum and maximum limits of penalties laid down in paragraph (1) shall be doubled.' "

<sup>19</sup> **Consumer Protection Act, Article 240** (offences): (1) A legal person, a sole proprietor and an individual who carries out an activity independently shall be liable to a fine of between EUR 1,500 and EUR 5,000 if (enumerates 86 situations). (2) A fine of between EUR 400 and EUR 1 500 shall be imposed on the responsible person of a legal person, the responsible person of a sole proprietor or the responsible person of a self-employed individual who commits an offence referred to in the preceding paragraph. Article 241 (minor offences) (1) A legal person, a sole proprietor and an individual engaged in an independent activity shall be liable to a fine of EUR 500 if: (enumerates 16 situations). (2) A fine of EUR 300 shall be imposed on the responsible person of a legal person, the responsible person of a sole proprietor or the responsible person of a self-employed individual who commits an offence under the preceding paragraph.

Accordingly, the maximum fines for the unfair commercial practices (in domestic cases and other cross-border breaches of the UCPD that are not subject to CPC coordinated enforcement) vary in the Member States. In the **Czech Republic**, the cap is EUR 210,340. **Estonia** has a cap of EUR 400,000 for the fines imposed on legal persons.

**Finland has put in place a cap** of 4% of the turnover of the offender in the year preceding the year of the infringement,<sup>20</sup> while in the **Netherlands** and in **Poland**, the penalty can reach 10% of the annual turnover, with the possibility of a fine of EUR 900,000 in the Netherlands, whichever amount is higher.

In **Spain**, the cap is up to EUR 1 million or eight times the illicit profit obtained, in the case of offenses committed only in Spain. In **Sweden**, there are accessory sanctions such as confiscation of merchandise, the closure of establishments for a period of up to five years, and the publicity of the sanctions. The cap is up to a maximum of 4% of annual turnover.

The approaches of the Member States vary also with respect to the **list of criteria** for the imposition of fines (Art. 13(2) UCPD). Some countries have indicated that they will take into account any action taken by the trader to mitigate or remedy the damage suffered by consumers. For example, under Belgian<sup>21</sup> law, one has to consider any action taken by the trader to mitigate or remedy the damage suffered by consumers. Further information on the transposition of the list of criteria (as added to UCPD, UCTD, CRD and PID by the Modernisation Directive) is presented below in Section 1.1.1.11.

Overall, the fines and the caps applied by Member States for breaches of the UCPD vary significantly in domestic cases, with some imposing administrative sanctions, while others have both administrative and criminal sanctions (see above).

#### 1.1.1.9 Maximum amount of fines - Art. 24 CRD

The table below shows the state of the art about fines in the Member States under Art. 24 CRD, **in domestic cases and other cross-border cases** that are not subject to CPC coordinated enforcement (Table 1-5 and 1-6 above show the maximum amount of fines in cross-border cases in the context of CPC coordinated enforcement actions under Art.21 of the CPC Regulation).

**Table 1-9: Maximum amount of the fines in domestic cases and other cross-border cases - Art. 24 CRD**

Maximum amount of fines in domestic cases and other cross-border cases	Member States
<b>10% of annual turnover (cap EUR 2 million)</b>	Poland
<b>5% of annual turnover (cap EUR 3,000,000)</b>	Cyprus
<b>4% of annual turnover</b>	Belgium, <sup>22</sup> Finland, Latvia (with a cap of 300,000 EUR), , Sweden
<b>1% of annual turnover or EUR 900,000, whichever is higher</b>	The Netherlands
<b>EUR 10,000,000</b>	Italy
<b>Between EUR 5,050,000 and EUR 40</b>	Hungary
<b>Between EUR 1,500,000 (3,000,000 in case of several infringements) and EUR 5,000</b>	Greece

<sup>20</sup> In Finland, for example, an administrative fine may be imposed by the Finnish Market Court on a trader who, to the detriment of consumers, wilfully or negligently violates or neglects the obligation under national law to keep available information on key ranking parameters of the search query results, or an obligation to provide information on consumer reviews.

<sup>21</sup> **Economic Law Code of Belgium**, Art XV. 70.§3.

<sup>22</sup> 4% of the turnover or between EUR 26-10,000. In cases of intentional breach only, the fine is 6% of the total annual turnover or between EUR 26-25,000.

Maximum amount of fines in domestic cases and other cross-border cases	Member States
EUR 1,000,000 or eight times the illicit profit obtained	Spain
EUR 900,000 or 1% of turnover, whichever is higher	The Netherlands
EUR 400,000	Estonia
EUR 210,340	Czech Republic
Between EUR 90,000 and EUR 2,000	Portugal
EUR 75,000 or EUR 15,000	France <sup>23</sup>
EUR 60,000 or to imprisonment for a term not exceeding 18 months or to both	Ireland
EUR 50,000 (for traders with a turnover of up to EUR 1.250.000, the fine is up to 50,000)	Germany
EUR 47,000	Malta
Between EUR 15,000 and EUR 251	Luxemburg
Between EUR 5,000 and EUR 250	Lithuania
EUR 3,380 (least severe/smallest turnover) to EUR 675,675 or 1% of turnover (most severe)	Denmark
Fines are determined without reference to turnover, but different cap levels defined, depending on type of infringement	Bulgaria, Croatia, Slovenia, Romania

Thus, in domestic cases and other cross-border cases that are not subject to CPC coordinated enforcement, the level of the fines applicable for infringements of national provisions transposing CRD, as required under Art. 24 CRD, varies across Member States. Some Member States set caps on fines and others set specific amount of fines:

- Some Member States have set **a cap** on the fines, such as the Netherlands with a cap of 1% of the annual turnover and EUR 900,000 as the maximum fine and Poland with a cap of 10% of the annual turnover and EUR 2 million as the maximum fine.
- Other Member States have set **different amounts of the fines**, such as **Spain** with penalties up to one million euros or eight times the illicit profit obtained. For example, **Czech Republic** provides for a penalty of up to CZK 5,000,000 (approx. EUR 210,340), **Italy** of up to EUR 10,000,000.

#### 1.1.1.10 Overview of fines under Art. 8 PID

Before the MD, Art 8 PID already provided the general “standard” rule on penalties. Art. 2 of the MD amended Art. 8 PID to strengthen the provisions on the penalties applicable to infringements of national provisions adopted pursuant to the PID.

Art. 8(1) PID sets that the penalties shall be effective, proportionate, and dissuasive. Art. 8(2), as added by the MD, contains the list of non-exhaustive and indicative criteria that national authorities must take into consideration in imposing such penalties, where appropriate. While other directives analysed here (UCPD, UCTD, CRD, as amended by the MD) have a rule on maximum fines for **cross-border** infringements (CPC context), no such rule is provided in the PID.

The MD also added to the PID a new rule on price reduction claims (Art. 6a). In this respect, the country analysis has shown that the Member States have transposed Art. 8(1) PID by introducing provisions according to which a penalty may be imposed on a trader who, in announcements of price reductions, violates or neglects the obligation to indicate the lowest

<sup>23</sup> EUR 75,000 for legal persons and EUR 15,000 for natural persons.

price applied during a period not shorter than 30 days before the price reduction announcement for the goods.

The analysis shows that the minimum and maximum amount of the fines for the infringement of the PID, including new Article 6a, vary substantially in the Member States. In some cases, the penalties have to be determined according to “general consumer law” (Hungary). Some countries have provided a cap (Czech Republic, Estonia).

**Table 1-10: Different fines for infringements under the PID**

Member State	Fines
<b>Austria</b>	There is a cap of EUR 1,450.
<b>Belgium</b>	There is a minimum amount of EUR 26 to a maximum amount of EUR 10,000 or 4% of annual turnover total for the previous year, if it represents a higher amount. However, in case of intentional breach, penalties are from a minimum of EUR 26 to a maximum of EUR 25 000 or 6% of the total annual turnover - would be applicable.
<b>Bulgaria</b>	Fine of BGN 300 to BGN 5,000 (EUR 154 to EUR 2,559) is imposed on individuals, and a pecuniary sanction of BGN 500 to BGN 5,000 (EUR 256 to EUR 2,559) is imposed on sole traders and legal entities.
<b>Croatia</b>	Penalties are imposed in misdemeanour proceedings and range: for a legal entity HRK 10,000.00 - 200,000.00 (EUR 1,327 to EUR 26,550); for the responsible person in the legal entity HRK 10,000.00 - 15,000.00 (EUR 1,327 to EUR 1,990); for a natural person HRK 5,000.00 - 15,000.00 (EUR 664 to EUR 1,990).
<b>Czech Republic</b>	Fine up to 5,000,000 CZK (approx. EUR 210,340).
<b>Cyprus</b>	Administrative fine up to 5% of the turnover of the offender in the year immediately preceding the year of the infringement and, where information on the annual turnover of the offender is not available, a fine not exceeding EUR 3 million may be imposed.
<b>Denmark</b>	Penalties from DKK 25,000/EUR 3,380 (least severe/smallest turnover) to DKK 5 million/EUR 675,675 or 1% of turnover (most severe/turnover above DKK 500 million/EUR 67.5 million) <sup>24</sup> .
<b>Estonia</b>	Penalty up to 200 fine units or, if the same act is committed by a legal person, up to EUR 40,000. The law provides for criteria to quantify the penalties.
<b>Finland</b>	Indicative criteria for imposition of fines are provided, no cap. The amount of the fine shall not exceed 4% of the turnover of the year before the end of the infringement.
<b>France</b>	Administrative fine of up to EUR 3,000 for a natural person and EUR 15,000 for a legal person.
<b>Germany</b>	Violations of the provisions named in the new Sec. 20 of the Pricing Regulation <sup>25</sup> are subject to fines of up to EUR 25,000.
<b>Greece</b>	Depending of type of infringement and number of infringements within the specific period administrative fines vary from 1% of the annual turnover (not less than EUR 10,000) to 4% of the annual turnover.
<b>Hungary</b>	The amount of the fine is determined based on the provisions of the Consumer Protection Act.
<b>Ireland</b>	Fine should not exceed EUR 3,000 <sup>26</sup> .

<sup>24</sup> **Danish marketing Law** specifies the amounts used (type of offense and corresponding fines based on turnover). Available in Danish: <https://vidensbasen.anklagemyndigheden.dk/h/6dfa19d8-18cc-47d6-b4c4-3bd07bc15ec0/VB/295b6c26-4a82-4a62-bd8a-e748c6563552?showExact=true>

<sup>25</sup> *Preisangabenverordnung, PAngV.*

<sup>26</sup> S.I. No. 639/2002 - European Communities (Requirements To Indicate Product Prices) Regulation 2002 (<https://www.irishstatutebook.ie/eli/2002/si/639/made/en/print>), as amended by S.I. No. 597/2022 - European Union



Member State	Fines
Italy	Fines are from 516 EUR to 3.098 EUR <sup>27</sup> .
Latvia	Fines are up to 10% of the previous year's net financial year's turnover. Criminal sanctions are possible in certain circumstances <sup>28</sup> .
Lithuania	Fines up to 5,000 EUR.
Luxemburg	Fines of EUR 25 to EUR 1,000.
Malta	Regulation 9(3) of the Consumer Affairs Act (Price Indication) Regulations establishes fines between €150 and €1,500 in the case of a first conviction and between EUR 200 and EUR 2,000 in the case of a second or subsequent conviction, imposed by the Criminal Court.
The Netherlands	Fines or orders subject to a penalty amounting to a maximum of EUR 900,000 or, if higher, 1% of the turnover.
Poland	If an enterprise fails to perform the obligations referred to in Art. 4, the regional inspector of the Commerce (Inspekcja Handlowa) may impose a fine, by way of a decision, of up to PLN 20,000 (EUR 4,370).  If the enterprise has failed to comply with the obligations referred to in Art. 4 at least three times within 12 months from the date when the first violation of these obligations was found, The Inspekcja Handlowa (Trade Inspectorate) may impose a financial penalty of up to PLN 40,000 (EUR 8,739).
Portugal	Fines depend on the classification of offenses as low, serious, and very serious, considering the relevance of the protected legal interests. The amount of the fine for each category corresponds to a fine applicable in accordance with a set of general criteria and range from EUR 150 to EUR 90,000.
Romania	The applicable fines range between approx. EUR 200 to approx. EUR 6,000.
Slovenia	A fine of EUR 1,500 to EUR 5,000 for a legal person plus a fine of EUR 400 to EUR 1,500 for the responsible person.
Spain	The minimum fine is EUR 150 and the maximum is EUR 10 000, with the possibility of going beyond these amounts up to between two and four times the unlawful benefit obtained, if the infringement is considered 'minor', However, if the infringement is considered 'serious', taking into account the circumstances, the minimum fine is EUR 10,001 and the maximum is EUR 100,000, with the possibility of going beyond these amounts up to between four and six times the unlawful benefit obtained. If the infringement is considered 'very serious', the maximum fine may reach up to one million euro or eight times the illicit profit obtained, in the case of offenses committed only in Spain.
Sweden	Fines no less than SEK 10,000 (approx. EUR 870) <sup>29</sup> .

#### 1.1.1.11 List of criteria for the imposition of penalties: UCPD, CRD, UCTD and PID

The MD provides for a list of non-exhaustive and indicative criteria that are taken into account, both **domestically and in cross-border** situation, for the imposition of penalties (UCPD, CRD, UCTD, PID), where appropriate: (a) the nature, gravity, scale and duration of the infringement; (b) any action taken by the trader to mitigate or remedy the damage suffered by consumers; (c) any previous infringements by the trader; (d) the financial benefits gained or losses avoided by the trader due to the infringement, if the relevant data

(Requirements to Indicate Product Prices) (Amendment) Regulations 2022  
(<https://www.irishstatutebook.ie/eli/2022/si/597/made/en/print>).

<sup>27</sup> See Article 22, paragraph 3, Legislative Decree 114/1998.

<sup>28</sup> The **Consumer Protection Act** of Latvia refers to criminal liability for offenses in this area  
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002462>.

<sup>29</sup> Market disruption fines or conditional fines are fixed at no less than SEK 10,000 (EUR 1,000) and may not exceed 4% of the annual turnover. Similar fines may be issued for infringements of the Swedish Act on Contractual Terms and Conditions in Consumer Relations.

are available penalties imposed on the trader for the same infringement in other Member States in cross-border cases where information about such penalties is available through the mechanism established by the CPC Regulation and (f) any other aggravating or mitigating factors applicable to the circumstances of the case.

In transposing the MD, Belgium, Bulgaria, Croatia, Cyprus, Germany, Greece, Finland, France, Hungary, Ireland, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Italy, Slovenia, Spain, and Sweden have adopted, to a larger or lesser degree, the criteria provided for considering penalties for infringements both domestically and in cross border cases. In the Netherlands, for example, the fine can be doubled in case of previous infringements by the same trader. In some Member States, e.g., Estonia and Czech Republic, some of the criteria already existed under national law before the MD, so the transposition was limited. The latter (Czech Republic) includes in domestic law a list of aggravating and mitigating circumstances that are considered when determining the fines.<sup>30</sup>

Some Member States transposed all the MD criteria verbatim (e.g., Bulgaria).

Thus, when imposing penalties, national authorities and courts in the Member States are considering a variety of criteria that may differ between different national jurisdictions, such as: a) the extent, severity, and duration of the infringement, b) the trader's economic gain achieved by the infringement if this information is available, c) the actions of the trader to mitigate or repair the infringement, d) any previous infringements of the trader relating to consumer protection regulations.

#### 1.1.1.12 Procedural issues

Generally, the Member States provide for the above-mentioned penalties mainly by relying on a set of administrative procedures where national consumer protection authorities are responsible for investigating the case and imposing the above-mentioned penalties (for example, the market inspectors of the State inspectorate in Croatia, the President of the UOKiK, a central body within the public administration in Poland). From the desk research, it appears that, overall, there are no specific procedures outlined for imposing fines for cross-border infringements. It appears that the same procedural regime applies regardless of whether it is a domestic or cross-border case.

In some Member States – e.g. Malta, Estonia, Sweden, Ireland – also **the courts** issue fines in case of specific infringements by traders. In Estonia, the authority responsible for imposing penalties is the Consumer Protection and Technical Regulatory Authority. If dissatisfied with its decision, consumers and traders have the right to appeal to the County Court, which will then conduct a new procedure, starting from the beginning.

#### 1.1.1.13 Penalties: use of regulatory choices (Art 8b(2) UCTD and Art.13(3)(a) and (b) UCPD)

##### a. Art. 8b(2) UCTD

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<sup>30</sup> **Act No 250/2016**, Section 39. As a mitigating circumstance, the fact shall be taken into account that the offender a) committed the offense at an age close to the age of juveniles, b) committed the offence to prevent an attack or some other threat without the circumstances completely meeting the criteria to be considered self-defence or a last-resort act, or the offence took place under circumstances precluding criminal liability, c) helped to eliminate the harmful consequences of the offense or voluntarily replaced the damage caused, d) reported the offense to an administrative body and effectively assisted in its clarification, or e) committed the offense under the influence of threat or coercion or under the pressure of subordination or dependence on another. Act No 250/2016, Section 40. Aggravating circumstances As an aggravating circumstance, the fact shall be taken into account that the offender a) committed the offense by taking advantage of someone's vulnerability, subordination or dependence on another person, b) has committed multiple offences, c) committed the offense repeatedly, d) misused his employment, position or function to commit the offence, e) committed the offense as a member of an organized group, or f) has committed the offense against a child, a pregnant, sick, disabled, elderly or incapacitated person.

Art. 8b(2) UCTD provides that the Member States may restrict the penalties to situations where:

- a. the contractual terms are expressly defined as unfair in all circumstances in national law or
- b. where a seller or supplier continues to use contractual terms that have been found to be unfair by a final decision of the national authority for consumer protection or court.

The table below provides an overview of the use of the regulatory choice by the Member States under Art 8b(2) UCTD:

**Table 1-11: Directive 93/13/EEC (UCTD) - Article 8b(2) - regulatory choices**

Member State	Used this option	Comments
<b>AT</b>	Yes	
<b>BE</b>	No	
<b>BG</b>	Yes	Bulgaria has chosen to restrict the penalties only to situations where a seller or supplier continues to use contractual terms that have been found to be unfair in a final decision
<b>CY</b>	No	
<b>CZ</b>	Yes	Partially used (where the contractual terms are expressly defined as unfair in all circumstances in national law)
<b>DE</b>	Yes	Germany has made use of the optional limitation of penalties for infringements of consumer rights related to consumer contracts
<b>DK</b>	No	
<b>EE</b>	Yes	Estonia used the option under Art 8b(2), first alternative. Võlaõiguseadus (Law of Obligations Act), § 42 (3), lists unfair standard conditions. The Consumer Protection and Technical Regulatory Authority has the right to make the injunction to terminate the use of unfair contract term or request a ban on the use of the term through county court. If the order is not fulfilled it is possible to apply a non-compliance levy of up to EUR 9,600.
<b>EL</b>	No	
<b>ES</b>	No	
<b>FI</b>	Yes	Finland chose to adopt the option provided for in Article 8b(2) of UCTD to limit the fines nationally to situations where the terms of contract are defined in national law as expressly unreasonable in all circumstances, or where the seller or supplier continues to use the terms of contract which have been found to be unreasonable in a court order or in the prohibition of the Consumer Ombudsman.
<b>FR</b>	Yes	France has made use of this regulatory option to cover both cases. Article L. 241-1-1 of the French Consumer Code provides that the courts may impose a civil fine where a seller or supplier continues to use contractual terms that have been found to be unfair in a final decision. Article L. 241-2 of the same code provides that the authorities may impose an administrative fine where the contractual terms are expressly defined as unfair in all circumstances in article R. 212-1 of the same code.
<b>HR</b>	Yes	The Law on Consumer Protection expressly provides as per Art. 149(1)58 that penalties will apply in case of conclusion of a contract with the consumer containing one or more unfair contractual provisions. Finally, Article 153 lists all the criteria that may influence the type of penalty.

Member State	Used this option	Comments
HU	No	
IE	Yes	Ireland has exercised its regulatory discretion as permitted under Article 8b(2), although its national laws don't specifically outline penalties for the ongoing use of unfair contractual terms. Nonetheless, the Consumer Rights Act 2022, in Section 137(1)(b), allows courts to issue orders to prevent the use or ongoing use of such terms in consumer contracts. In addition, Section 133 of the same act includes guidelines on terms in consumer contracts that are assumed to be unfair. This section also grants the Minister the authority to designate additional contract terms as presumed unfair through regulatory means.
IT	No	
LU	Yes	The national measure did make use of this regulatory option as the national transposing measure does restrict such penalties to situations where a seller continues to use contractual terms that have been found to be unfair in a final decision taken in accordance with Article 7(2) (trader who relies on a clause or combination of terms which has been declared unfair and as such null and void by a final and binding court decision against a consumer).
LV	No	
LT	Yes	In Lithuania, the State Consumer Rights Protection Authority may impose on a trader a fine of up to 3% of their annual income for the preceding financial year, up to a maximum of EUR 100 000, for the <i>continued application</i> of terms of consumer contracts <i>which have been declared unfair</i> by a final court ruling or by decision of the State Consumer Rights Protection Authority after the court ruling in question has taken effect or the decision of the State Consumer Rights Protection Authority has been published, and for failure to comply with the trader's written undertakings, as referred to in Article 351(8), approved by the State Consumer Rights Protection Authority.
MT	No	
NL	No	
PL	No	
PT	Yes	Portugal has made use of this regulatory option. The first situation is foreseen in Article 34b of Decree Law 446/85, 25 October, while the second situation is foreseen in Article 33 of the same Decree Law.
RO	No	
SE	Yes	Article 9c of the Consumer Contracts Act allows for fines to be issued provided terms have been deemed unfair. For a fine to be issued, the use must have been intentional or negligent and the trader continued to use the term after being prohibited from doing so through a legally binding decision (such a decision is not required in cases covered by Article 3a, where a consumer is directed to use a telephone number with an increased rate to contact the trader). Such fines are issued following action from the Consumer Ombudsman or traders' association.
SI	No	

In particular, the following jurisdictions, [Austria](#), [Bulgaria](#), [Croatia](#), [Czech Republic](#), [Denmark](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Hungary](#), [Ireland](#), [Lithuania](#), [Luxembourg](#), [Portugal](#) and [Sweden](#) have made use of this regulatory option under Article 8b(2), both alternatives or one of them.

For example, [Bulgaria](#) applies a fine under Article 8b(2) where a seller or supplier continues to use contractual terms that have been found to be unfair in a final court decision. Czech Republic applies restriction to black list of unfair contractual terms. France has made use of this regulatory option to cover both cases referred in Article 8b(2) UCTD.

#### 1.1.1.14 Art. 13(3)(a) and (b) UCPD

The regulatory choices available under Article 13(3) (a) and (b) UCPD offer Member States flexibility to restrict the imposition of fines for infringements in cases relating to the unfair commercial practices. Member States may, for national constitutional reasons, decide not to apply the rules concerning fines for infringements subject to the CPC coordinated enforcement where the trader has infringed solely Article 5 of the UCPD on professional diligence for the first time.

The table below provides on overview of the use of the regulatory choice under Art. 13(3) (a) and (b) UCPD.

**Table 1-12: Directive 2005/29/EC (UCPD) – Article 13(3)(a) and (b) – regulatory choices**

Member State	Option Used	Comments
AT	Yes	
BE	No	
BG	No	
CY	No	
CZ	No	
DE	Yes	Germany has laid down the rules on penalties applicable for the infringement of consumer rights by unfair commercial practices (as indicated above: for traders with a turnover of up to EUR 1.2 mil, the fine is up to 50,000)
DK	No	
EE	Yes	In Estonia, the procedure is not administrative but rather misdemeanour. The penalties for the misdemeanours are imposed by the Consumer Protection and Technical Regulatory Authority whose decision can be appealed to County Court (which will then conduct the procedure above). <i>Tarbijakaitseseadus</i> (Consumer Protection Act) § 70 sets out a punishment of a fine up to 300 fine units or, if committed by a legal entity, a fine of up to EUR 400,000. § 70 of the Estonian Criminal Code stipulates a maximum penalty of EUR 400,000. This is the maximum possible fine that can be imposed in Estonia for a misdemeanour (Penal Code § 47(2)).
EL	No	
ES	No	
FI	Yes	
FR	Yes	France has made use of the regulatory option under Art. 13 (3)(a) for <b>domestic</b> infringements as there is no fine provided for infringements of Art. 5 UCPD in this case. However, article L. 132-1-A of French Consumer Code provides that the courts may impose a civil fine up to 4% of the turnover (or EUR 2 million if no information on turnover are available) for infringements covered by Article 13 (3) (b) when penalties are to be imposed <b>in accordance with Article 21 of Regulation (EU) 2017/2394</b> . Article L. 132-2 (penalties for infringements of Art. 6 and 7 UCPD) and L. 132-10 (infringements of Art. 8 and 9 UCPD) of French Consumer Code provide for fines

Member State	Option Used	Comments
		of up to EUR 300 000 (natural person) or EUR 1 500 000 (legal person, in accordance with article 131-38 of Criminal Code) or 10% of turnover or 50% of expenditure on advertising or 80% of expenditure on advertising in case of misleading practices based on environmental claims <b>for domestic infringements as well as widespread infringements and widespread infringement with a Union dimension</b> (Art. 21 of Regulation (EU) 2017/2394).
HR	Yes	Penalties are imposed in misdemeanour proceedings and range: <ul style="list-style-type: none"> <li>• for a legal entity HRK 10,000.00 - 200,000.00;</li> <li>• for the responsible person in the legal entity HRK 10,000.00 - 15,000.00;</li> <li>• for a natural person HRK 5,000.00 - 15,000.00.</li> </ul> The fine shall be 0.5 to 4% of the total turnover of the infringer (legal person) in the year in which the infringement occurred, as determined by the official financial reports for that year drawn up in accordance with the regulations governing accounting, and if there are no reports for that year, the last available official annual financial report prepared in accordance with the regulations governing accounting. If data on financial reports are not available, the infringer may be fined from HRK 1,000,000.00 - 15,000,000.00.
HU	No	
IE	No	
IT	No	
LT	No	
LU	No	
LV	Yes	Latvia has implemented the limit for fines in amount of EUR 300 000 if commercial practices take place only in the territory of Latvia. For cross border violations general maximum fine up to 4% of turnover applies.
MT	No	
NL	No	The fine is at most 4% of turnover. However, in line with Article 2.15 of Book 6 Civil Code, for unfair commercial practices of Annex I to the UCPD it can go up to 10% of turnover.
PL	No	
PT	No	
RO	No	
SE	Yes	The fines are administrative in nature (10 000 SEK - 4 % of turnover) and are issued by the Patent and Market Court.
SI	No	

In conclusion, more than half of the Member States do not use this regulatory option under the UCPD.

## 1.1.2 Art. 6a of the PID: price reduction announcements

### a. Overview

The PID establishes harmonised rules for consumer protection in the indication of the prices of products offered to consumers.

Article 6a of the PID, as added by the MD, addresses the issue of transparency of price reductions by introducing specific rules to ensure that they are genuine.<sup>31</sup> Article 6a aims at preventing traders from artificially inflating the reference price and/or misleading consumers about the amount of the discount. It increases transparency and ensures that consumers actually pay less for the goods when a price reduction is announced. The new provision on

<sup>31</sup> On 17 December 2021, the European Commission adopted a Commission Notice on the interpretation and application of Article 6a of the Price Indication Directive ('the PID Guidance'), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2806%29&qid=1640961745514>.

price reductions also enables the enforcement and market surveillance authorities to control more easily the fairness of price reductions, as it set clear rules on the reference prior price on which the announced reduction must be based.

Accordingly, Article 6a(1) and (2) provides that any announcement of a price reduction shall indicate the prior price applied by the trader for a determined period prior to the application of the price reduction. The prior price means the lowest price applied by the trader during a period not shorter than 30 days prior to the application of the price reduction. The “product” in the context of the PID are “goods”.

## b. Country analysis

All Member States have **transposed Art. 6a PID**. Accordingly, the analysis shows that the national provisions apply to movable goods (Art. 6a PID does not apply to services or to digital content) and with respect to price reduction announcements in all distribution channels, including online marketplaces. However, in some Member States the rules transposing the new MD provision on price reduction announcements seem to apply also to any announcements, including services, digital content and digital services (e.g. France).

Some national authorities have adopted **national guidelines** or Q&As published on the websites of the authorities to complement the European guidelines, although in several Member States traders have requested this due to confusion about how Art. 6a PID changes should be implemented. Countries that have developed guidelines include Belgium<sup>32</sup>, Denmark<sup>33</sup>, Estonia<sup>34</sup>, Finland<sup>35</sup>, France<sup>36</sup>, Ireland<sup>37</sup>, Italy<sup>38</sup>, Lithuania<sup>39</sup>, Poland<sup>40</sup> and Sweden<sup>41</sup>. In France, there was pressure for clarifications from independent trader associations as to how the calculation of prices changes applies under the PID. The Consumer Ombudsman in Denmark adopted a set of guidelines on price reductions announcements already in 2010 and, over time, the authority has gained a lot of experience in dealing with cases of price indication. In the light of such experience, the authority has established a clear practice in managing these cases, collected statistics, while cases are from different sectors. The updated Danish guidance on price marketing rules was published by the Danish Consumer Ombudsman on May 28<sup>th</sup>, 2022<sup>42</sup>, to reflect the MD coming into application, through which the amendments were made to the PID. A key change in the Danish legislation is that the product must have been offered to its normal price for at least 30 days before the price can be used as a reference in a price reduction. This is in line with the PID, but it should be noted that such legislation already existed but with a longer period of six weeks.

Interestingly, the CPA in Denmark has also confirmed that following the transposition of the Directive, traders are sometimes implementing practices that do not accord with the changes to the PID, such as applying pricing rules to services (whereas the pricing rules should only be applicable to products). These should not fall under the scope of Art. 6a PID. To provide an example, Article 6a PID is not applicable to cash-back announcements, whereby third parties, which are not sellers of the goods, such as manufacturers /

<sup>32</sup> <https://economie.fgov.be/fr/themes/entreprises/guidance/pratiques-commerciales/annoncer-des-reductions-de>

<sup>33</sup> <https://www.forbrugerombudsmanden.dk/longreads/forbrugerombudsmandens-retningslinjer-for-prismarkedsoering/>.

<sup>34</sup> <https://www.ttja.ee/sites/default/files/documents/2022-05/2022.05.04%20-%20Juhend%20-%20Hinna%20avaldamise%20juhend%20%281%29.pdf>

<sup>35</sup> <https://www.kkv.fi/en/consumer-affairs/marketing-sales-and-indicating-prices/discounts/>

<sup>36</sup> <https://www.economie.gouv.fr/dgccrf/lignes-directrices-relatives-a-lencadrement-des-promotions>.

<sup>37</sup> <https://www.ccpc.ie/business/help-for-business/guidelines-for-business/price-reductions/>

<sup>38</sup> <https://www.cpc.ie/business/help-for-business/guidelines-for-business/price-reductions/>

<sup>39</sup> <https://vvtat.lrv.lt/lt/#c-6/t-218>

<sup>40</sup> [https://stpubshop.blob.core.windows.net/publikationer/stallningstagande-angaende-information-om-prissankningar-konsumentverket\\_ae4f\\_202310240851.pdf](https://stpubshop.blob.core.windows.net/publikationer/stallningstagande-angaende-information-om-prissankningar-konsumentverket_ae4f_202310240851.pdf)

<sup>41</sup> [https://stpubshop.blob.core.windows.net/publikationer/stallningstagande-angaende-information-om-prissankningar-konsumentverket\\_ae4f\\_202310240851.pdf](https://stpubshop.blob.core.windows.net/publikationer/stallningstagande-angaende-information-om-prissankningar-konsumentverket_ae4f_202310240851.pdf)

<sup>42</sup> <https://www.lexology.com/library/detail.aspx?g=48f53a8f-f10a-4e21-a543-17c453ca94f1> . See also <https://www.forbrugerombudsmanden.dk/longreads/forbrugerombudsmandens-retningslinjer-for-prismarkedsoering/>.

distributors, promise the consumers who have purchased the good(s) in question, to refund part of the price paid, at the consumers' individual request and during a certain period.

The country analysis provides an overview of the transposition of Art. 6a(3), (4) and (5) PID in the Member States.

As a *general trend*, the preliminary analysis confirms that national laws now provide that price reduction announcements of a product should contain information on the prior price, meaning the lowest price at which the seller offered and sold that product in the 30 days prior to the application of the reduction. This general rule – Art. 6a, paras 1 and 2 PID - has been **transposed in all Member States**. All Member States adhere to the 30-day reference period for establishing the 'prior' price.

Regarding regulatory choices in Art. 6a(3), (4) and (5) allowing Member States to apply specific derogations:

- Article 6a (3): this option allows Member States to provide for different rules for goods that are liable to deteriorate or expire rapidly.
- Article 6a (4): this option enables Member States to allow price reduction announcements also in respect of goods ('new arrivals') that the trader has been selling for less than 30 days before announcing the price reduction. The option is formulated broadly and refers to 'a shorter period of time' (than the default period of at least 30 days).
- Article 6a (5): this options allows Member States to provide that, when the price reduction is progressively increased, the prior price is the price without the price reduction before the first application of the price reduction.

The table below provides an overview of the implementation of the regulatory options under Art. 6a (3)-(5) PID based on the analysis of the country fiches prepared in the course of the study.

**Table 1-13: Article 6a PID – Regulatory options**

	Option about perishable goods	Option about new arrivals	Option about progressive discounts
AT	YES	YES	YES
BE	YES	YES	YES
BG	YES	YES	YES
CY	YES	YES	YES
CZ	YES	YES	YES
DE	YES	NO	YES
DK	YES	NO	YES
EE	YES	YES	YES
EL	YES	YES	YES
ES	YES	NO	NO
FI	YES	NO	YES
FR	YES	NO	YES
HR	NO	NO	YES
HU	YES	YES	YES
IE	NO	NO	YES
IT	YES	YES	YES
LV	YES	YES	YES
LT	YES	YES	YES



	Option about perishable goods	Option about new arrivals	Option about progressive discounts
LU	NO	YES	YES
MT	YES	YES	YES
NL	YES	YES	YES
PL	YES	YES	NO
PT	YES	NO	YES
RO	YES	YES	YES
SE	YES	NO	YES
SI	YES	YES	YES

Each of these examples illustrates the ways in which Member States have used the regulatory options provided by the PID to tailor consumer protection measures to their specific market conditions and needs. The variety in approaches reflects the diversity of the European market and the need for flexible solutions to ensure fair and transparent pricing for consumers.

#### 1.1.2.1 Art. 6a(3) PID: Perishable Goods

Art. 6a(3) allows Member States to provide for different rules for goods that deteriorate or expire rapidly. Such rules may even completely exempt such goods from the scope of Article 6a or allow the seller to indicate as prior price the last price immediately before the price reduction.

Most Member States made use of this regulatory option, including, inter alia, **Austria, Czech Republic, Cyprus, Denmark, Estonia, Italy, Lithuania, Malta, Austria, Poland, and Portugal**,<sup>43</sup> either by applying *complete* exemption or by providing *different* rules.

National provisions implementing Article 6a PID do not apply to ‘perishable’ goods in Austria, Belgium, Czechia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Spain and Sweden. In Cyprus, Estonia, Malta, the Netherlands, Poland and Slovenia sellers have to indicate, as reference price in price reductions, the price applied before the reduction. Finally, some Member States apply Article 6a to perishable goods but have provided for reduced reference 10 periods for setting the ‘prior’ price, i.e. in Bulgaria (7 days), Romania (10 days), Denmark (14 days) and Portugal (15 days).

National authorities and ministries have reported concerns interpreting the national provisions implementing Art. 6a(3) PID. For instance, **Sweden** has used this regulatory option, and, in this respect, the Swedish Food Retailers Federation has reported gaps and difficulties in the practical application of such an option in the food sector (for example, in relation to food price changes due to factors like seasonal variation, supply chain disruptions, etc). This could make it challenging for retailers to continuously update unit pricing accurately. Moreover, the food industry frequently has promotional offers which might complicate the unit price display. The food sector encompasses a broad range of products, often packaged in diverse sizes and measures. Finally, according to the Swedish Food Retailers Federation, implementing a standardised price indication can be challenging, especially when considering items sold by weight, volume, count, or even sets.

<sup>43</sup> The exhaustive list of the Member States who used the regulatory option can be found in Table 1-13 above.

### 1.1.2.2 Art.6a(4) PID: New Arrivals

Art. 6a (4) PID enables the Member States to allow price reduction announcements also in respect of goods that the trader has been selling for less than 30 days before the announcement of the price reduction. Based on the table 1-13 above, it appears that a significant majority of Member States have chosen to implement this regulatory framework. Among the Member States using the regulatory choice, many define the 'prior price' as the lowest price applied by the trader since the goods have been on the market, without stipulating a minimum period, i.e. Austria, Cyprus, Czechia, Greece, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania and Slovenia. Minimum periods are stipulated in Belgium, Bulgaria, Estonia and Latvia (for all – 7 days) and Hungary (15 days).

Overall, it can be inferred that the allowance of price reduction announcements for goods that the trader has been selling for less than 30 days before the announcement of the price reduction varies across Member States. Member States have the discretion to provide for a shorter period than the 30-day prior price, and traders should be aware of the specific requirements in each country where they operate.

### 1.1.2.3 Art.6a(5): Progressive Discounts

Art. 6a(5) PID allows Member States to provide that when the price is gradually reduced, without interruptions, during the same sales campaign, the prior price is the lowest price during the 30 days before the application of the first price reduction announcement, and it remains the prior price for all subsequent price reduction announcements during the sales campaign. When the discount rate is incrementally increased, the original price refers to the cost before any discounts are applied for the first time. This option is applied by some Member States, except Spain and Poland. The representatives of the UOKiK (Office of Competition and Consumer Protection) in Poland pointed out that the latter choice was guided by consumer protection considerations, as the envisaged provision on progressive price increases could be confusing for consumers and cause more harm than good.

## 1.1.3 Remedies (Art. 11a UCPD)

According to the new Art 11a UCPD, consumers harmed by unfair commercial practices should have access to proportionate and effective remedies, including compensation for damage suffered by the consumer and, where relevant, a price reduction or the termination of the contract. The conditions for the application and effects of those remedies should be determined by Member States considering the gravity and nature of the unfair commercial practice, the damage suffered by the consumer and other relevant circumstances. Whilst the analysis indicates that overall, in the Member States consumers have the right to individual contractual and non-contractual remedies – such as terminating contracts, obtaining price reductions or seeking compensation for damages, as required by Art. 11a UCPD – the enforcement mechanisms vary depending on national laws.

One significant aspect of the MD is that it recognises the importance of providing consumers with access to proportionate and effective remedies in cases of unfair commercial practices. By allowing consumers to seek remedies via judicial or administrative procedures, the MD reinforces the principle that those who engage in unfair commercial practices should be held accountable for their actions. However, according to the findings, approaches in transposing the provision on the remedies vary in **domestic laws**.

Some examples from the research on remedies conducted within this study can be presented. In the **Czech Republic**, Sections 2894, 583, 587, and 588 of the Act No 89/2012 (the Civil Code), as amended, and Section 5d of Act No 634/1992 on consumer protection, as amended, offer insights into the mechanisms for addressing breaches under the UCPD. Czech Republic has very explicit and detailed UCPD remedies provisions, even providing

for a specific 90 day termination right, besides making explicit reference to common civil law remedies under the Civil Code.<sup>44</sup>

In **Bulgaria**, the Consumer Protection Act (CPA) grants consumers harmed by unfair commercial practices with rights to a price reduction, termination of the contract and to claim compensation for damages. The CPA sets out the conditions for the application and effects of those remedies. Thus, it appears that the consumers harmed by unfair commercial practices can claim remedies either under specific procedure under Article 68m of the CPA, or they can invoke the legal remedies provided for in UCPD in accordance with the general procedure under the Code of Civil Procedure (based on Article 124(1)) and in respect of commercial practices in breach of UCPD which have not been subject to a prohibition by the competent administrative authority.

In **Germany**, remedies for breaches of the UCPD are primarily implemented through references to the existing Civil Code (*Bürgerliches Gesetzbuch*, BGB). Additionally, a general article (Article 9(2) of the Unfair Competition Act) has been incorporated, which imposes an obligation to compensate for damage caused to individuals who have been persuaded to make a decision they would not otherwise have made..

Some other Member States provide for transposing measures that go beyond the protection offered in the Directive. For instance, in **Greece**, apart from compensation, price reduction and/or termination of the contract, any consumer or consumer association has the right to request a court for an order requiring cessation of any unfair commercial practice and abstention from using such a practice in the future. The national law in **Sweden** also goes beyond the protection offered by the Directive, as it is applicable to both consumers and traders.<sup>45</sup>

The above examples indicate that the approaches in the Member States can vary from exhaustive, detailed rules tackling various instances of unfair practices to a more direct, remedy-focused approach and to an integrated approach leveraging an existing civil code with a compensatory obligation clause for harm caused due to unfair commercial practices.

It is important to note that the transposition of Article 11a allows Member States determining the conditions for the application and effects of these remedies. This flexibility recognises the need to consider the gravity and nature of the unfair commercial practice, as well as the specific damage suffered by the consumer. As a result, there may be variations in the implementation and interpretation of remedies across different jurisdictions.

Thus, the study findings highlight some differing approaches and enforcement mechanisms across Member States. Factors such as the length of legal proceedings or national procedural aspects are of importance as well in private enforcement of consumer rights.

#### 1.1.4 Doorstep selling and commercial excursions

##### **Art. 3(5) UCPD, Art. 9(1a) and 16(2) CRD: doorstep selling and commercial excursions**

The following section examines the use by the Member States of the regulatory options provided for in Art. 3(5) UCPD, Art. 9(1a) and 16(2) CRD.

##### **- Art. 3(5) UCPD**

According to **Art. 3(5) UCPD** as modified by the MD, the Member States are not prevented from adopting provisions to protect the legitimate interests of consumers regarding

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<sup>44</sup> Specifically, Sections 2894 and 587, provide mechanisms for compensating both material and non-material damages resulting from unfair practices, reflecting UCPD's aim to offer redress to affected consumers. Additionally, the UCPD emphasises the need for transparency and informed consent in commercial transactions. This is mirrored in Section 583, which nullifies legal transactions based on significant errors, ensuring that all parties are fully informed and in agreement. Similarly, Section 587, which addresses coercion in legal transactions, align with UCPD's objective to protect consumers from practices that can distort their economic behaviour or decision-making process. Finally, Section 588 empowers the courts to autonomously declare a legal transaction null and void if it blatantly contradicts moral principles or legislation and poses a threat to public order, including cases involving unfair commercial practices under the UCPD.

<sup>45</sup> Article 37 of the **Act Amending the Marketing Act** (Lag (2014:16) om ändring i marknadsföringslagen (2008:486)).

aggressive or misleading marketing or selling practices in the context of **unsolicited visits** by a trader to a consumer's home or **excursions** organised by a trader with the aim or effect of promoting or selling products to consumers.

The country analysis shows that **most** Member States (**BG, CY, DK, EL, FI, HU, IT, LV, LT, LU, MT, NL, PL,<sup>46</sup> PT, RO, SE, SI, EE**) **have not used** the regulatory option provided for by Art. 3(5) UCPD, by adopting *specific and additional* provisions to protect the legitimate interests of consumers in cases of doorstep selling. In general, these practices may fall under the framework of the UCPD. Notably, in **Denmark**, as doorstep selling has been prohibited under Danish law, the country has not implemented the regulatory option. In addition, the use of commercial excursions in the country is so rare that the existing legislation in relation to 'off-premises contracts' was considered to provide sufficient protection of consumers. Similarly, a provision on this already existed in the **Luxembourgish** legislation.

Though, a number of the Member States used Art. 3(5) regulatory option: **AT, BE, CZ, DE, ES, FR, HR, IE**) In almost all of these Member States the transposing legislation of the regulatory choice applies to both unsolicited doorstep selling and excursions, with the exception of France, where the legislation applies only to unsolicited doorstep selling and Belgium (specific unsolicited visits). The European Commission published notifications of the Member States (available at: [https://commission.europa.eu/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive/regulatory-choices-under-unfair-commercial-practices-directive-200529ec\\_en](https://commission.europa.eu/law/law-topic/consumer-protection-law/unfair-commercial-practices-law/unfair-commercial-practices-directive/regulatory-choices-under-unfair-commercial-practices-directive-200529ec_en)).

For example, in **Spain**, the national legislation allows local authorities to prevent gas or electricity marketers from carrying out door-to-door contracting with domestic consumers, unless the visit has been expressly requested by them.<sup>47</sup> Yet, one of the most recurring practices remain electricity or gas sales through doorstep selling. Similarly, it has been reported that doorstep selling is prohibited in more than 330 municipalities in **the Czech Republic**. Nevertheless, it has been reported that a practice remains whereby merchants conduct unsolicited visits to consumers' houses (and, particularly, to the most vulnerable consumers) and manage to force them to buy something. It was noted during the stakeholder consultations that these are mostly fake locksmiths who can force a worthless lock on a consumer, as well as energy contract sellers. It should be noted that Czech municipalities can prohibit doorstep selling, however only with regard to activities listed in the Trade Act. Thus, this ban does not apply, for instance, to energy sellers. In Czech Republic, special "colling-off" rules (Section 20 to 20c of the Act 634/1992)<sup>48</sup> are provided for the 'organised events' that would seem to cover also '*commercial excursions*': a seller may not, in the course of that event or for a seven-day period following conclusion of a contract, either request or accept payment corresponding to the whole or part of the purchase price of a product or service offered.

In **France**, Article L. 221-10-1 of the Consumer Code creates a new offence of unsolicited visits by a trader to the home of a consumer for the purpose of selling products or providing services where the consumer has clearly and unambiguously indicated that he/she does not wish to be visited. In **Belgium**, two measures have recently been introduced by Royal Decree. The first one is a compulsory three-day waiting period before being allowed to conclude a contract for electricity provision following a commercial excursion. The second is the introduction of the possibility for all consumers to indicate that they do not wish to receive any unsolicited visits by a trader at their home for a period of one year.

The practice of doorstep selling seems to be important for vulnerable consumers who find it hard to physically visit shops or feel insecure about remote shopping. In this respect, most Member States have not deemed necessary to introduce specific provisions for unsolicited

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<sup>46</sup> The respondents in the interviews presented different interpretation of the MD and Polish rules in this regard.

<sup>47</sup> Article 19 of the **General Law on the Protection of Consumers and Users**. See also Community of Madrid (2022) Doorstep selling-protect your rights.

<https://www.comunidad.madrid/servicios/consumo/vendedores-domicilio-proteja-derechos>.

<sup>48</sup> See further info at: [CZ regulatory choices UCPD | European Commission \(europa.eu\)](#).

doorstep selling, having considered that the national provisions implementing the UCPD and the CRD apply to this case. Furthermore, in most Member States additional regulation is not deemed necessary by CPA's interviews to restrict the use of these methods, or to introduce an extended right of withdrawal.

- **Art. 9(1a) CRD**

The MD has also added a new paragraph 1a in **Art. 9 CRD** to allow Member States to adopt rules in accordance with which the withdrawal period of 14 days is extended to 30 days for contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader.

According to the country analysis, many of the Member States have not made use of this regulatory option of extending withdrawal period to 30 days in cases of unsolicited doorstep selling, commercial excursions<sup>49</sup>. There are a number of Member States that applied this regulatory option, such as: **Belgium<sup>50</sup>, Cyprus, Czech Republic, Greece, Ireland,<sup>51</sup> Italy<sup>52</sup>, Malta, Poland, Portugal, Romania and Spain**. Almost all of the latter Member States apply the regulatory choice to both doorstep selling and excursions. 13 Member States (**BG, DE, DK, EE, FI, FR, HR, HU, LV, LT, LU, NL, SE, SI**) reported not having applied the regulatory choice.

- **Art. 16(2) CRD: derogation from the exception to the right of withdrawal**

In terms of the use of **the regulatory choice set out in Article 16(2) CRD**, it should be mentioned that several Member States (**BE, BG, CZ, DK, DE, EE, ES, FR, HU, IE, LT, LU, NL, PT, SE, SI**) reported not having applied the regulatory choice. Nine Member States (**AT, CY, EL, FI, HR, IT, MT, PL, RO**) have made use of the regulatory option. All the nine Member States apply the regulatory choice to both doorstep selling and excursions. In addition, all the nine Member States seem to cover all the points (a), (b), (c) and (e) of the first paragraph of Article 16(2) CRD. No information on the use of the regulatory choice was identified for **LV**.

**Sales events**

With regards to sales events organised at places other than trader's premises, e.g. at restaurants, hotels, and which are not part of an excursion (recital 56 of the MD, also referred to in Art.6, review clause, of the MD), the country analysis shows that only few Member States (**Austria, Poland**) apply specific requirements for traders. The table below provides an overview of those provisions concerning **sales events**.

**Table 1-14 – Sales events**

Member States	Sales events
AT	AT has requirements for traders relating to <b>sale events</b> . Such events are prohibited in relation to the following goods: food supplements, poisons, medicines, medical accessories, arms or munitions, pyrotechnic articles, tombstones and funerary monuments or their accessories, or wreaths or other grave ornaments. For other goods, the trader must notify authorities about the promotional event no later than 6 weeks before the event and the notification must include

<sup>49</sup> The European Commission published notifications of the Member States (available at: [https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd\\_en](https://commission.europa.eu/law/law-topic/consumer-protection-law/consumer-contract-law/consumer-rights-directive/regulatory-choices-under-article-29-crd_en)).

<sup>50</sup> See Belgian notification, published at: [https://commission.europa.eu/document/download/0001718e-3d5c-4b59-99f1-6d804a6171d5\\_en?filename=Regulatory%20choices%20BE\\_CRD\\_EN.pdf](https://commission.europa.eu/document/download/0001718e-3d5c-4b59-99f1-6d804a6171d5_en?filename=Regulatory%20choices%20BE_CRD_EN.pdf).

<sup>51</sup> **The Consumer Rights Act 2022** Ireland (the Act) <https://data.oireachtas.ie/ie/oireachtas/act/2022/37/eng/enacted/a3722.pdf> was enacted on 7 November 2022 and has extended the RoW for unsolicited visits and excursions to 30 days.

<sup>52</sup> For Italy, see Article 59, additional paragraph 1-bis) of Legislative Decree No 206 of 6 September 2005, as amended by **Legislative Decree No 26 of 7 March 2023**: "1-bis. The exceptions from the right of withdrawal set out in paragraph 1, points a), b), c) and e) shall not apply to contracts concluded in the context of unsolicited visits by a trader to a consumer's home or excursions organised by a trader with the aim or effect of promoting or selling products to consumers".

	specific information, including information about date and location of event and what kind of goods/services are being advertised.
PL	Newly added national provisions distinguish between excursions and demonstrations. In addition, the newly added provisions set out that some of the exceptions from the right of withdraw do not apply to doorstep selling and excursions.

### Targeted consultation

The targeted consultation included questions on **perceived consumer detriment** and on the **measures that could be taken** to better protect consumers.

The consultation revealed that many respondents were unable to answer whether, in their opinion, consumers suffer **detriment** due to unfair commercial practices in the context of doorstep selling, commercial excursions or sales events. This indicates that many respondents were unfamiliar with business models relating to the above-mentioned practices and the extent to which there may be misleading practices.

As regards feedback on the **extent of detriment**, for unsolicited **doorstep selling**, there were 128 individual responses of which 87 expressed an opinion whereas a large share of respondents (41) replied 'don't know'. Among the total of 23 respondents from **national ministries and enforcement authorities** (representing 17 Member States) 17 (73.9%) of respondents (representing 12 Member States (FI, NL, PL, RO, SI, HU, IE, SK, SE, AT, BE, HR) viewed doorstep selling as causing consumer detriment 'to a great extent' or a 'moderate extent'.

There were 13 respondents from consumer associations to this question which included 2 at EU level and from 8 Member States (including 3 consumer associations in AT and 2 in DE and one each from HR, FR, IT, PT, RO and SK), 12 out of 13 considered that doorstep selling causes great (8/13) or moderate (4/13) levels of consumer detriment. In contrast, among the respondents from business associations (28), none considered that doorstep selling causes great or moderate levels of consumer detriment.

Turning to **commercial excursions**, 76 respondents expressed an opinion on detriment, with a further 52 stating 'don't know'. There were 25 respondents in total from **Ministries and national enforcement authorities** combined (representing 16 Member States (PL, RO, SI, IE, SK, SE, CY, HU, NL, BG, DK, FI, LT, AT, BE, HR)). 18 among these expressed an opinion, whilst there were 7 'don't knows' (4 among CPAs and 3 Ministries). This collectively represented 16 Member States as some countries were represented more than once across the Ministry and CPA responses.

12 out of 18 of these respondents combined (66.7%) (representing 10 MS) viewed commercial excursions as causing consumer detriment 'to a great extent' or a 'moderate extent'. This cohort was comprised of 4 Ministries and 8 CPAs. Among Ministries and CPAs, the 12 responses were disaggregated as follows: in SK (great extent) AT, BE, HR (moderate extent) and among CPAs PL, RO x 2, SI x 2 (great extent) whereas IE, SK and SE (moderate extent).

Among the 13 respondents from **consumer associations** (2 at EU level and the other 11 respondents representing 8 Member States (AT (3), DE (2), FR, HR, IT, PT, RO, SK), 9 considered that excursions causes consumer detriment 'to a great extent' and two 'to a moderate extent'.

Regarding **organised selling events**, among the total of 127 respondents 78 expressed an opinion while 49 replied 'don't know'. There were a combined total of 19 respondents from **national ministries and enforcement authorities (14 of the latter)**. Among CPAs, there were valid responses from CY, FI, HU, IE, NL, PL, RO x 2, SK, SI and SE. These represented 13 Member States in total. However, LT and SI x 1 were excluded from the analysis as they stated don't know, and BG and DK stated: not a selling technique in my country.

Among the 19 responses, 14 respondents among Ministries and CPAs representing 11 Member States +1 "other" country (PL, RO, SI, HU, IE, NL, SK, AT, BE, DK, HR,) viewed sales events as causing detriment to a great or moderate extent.

Among the total of 14 respondents from **consumer associations** (3 at EU level and 11 representing national consumers in 8 Member States), a total of 11/14 (78.5%) stated either 'to a great extent' or 'to a moderate extent'. More particularly, 8/14 (57.1%) stated 'to a great extent, and 3/14 (21.4%) 'to a moderate extent'.

Regarding the 27 **business associations** expressing a view, none said that selling events had led to either great or moderate detriment.

Regarding the measures needed to address the problem, **those respondents** that considered that these selling techniques cause **great or moderate** detriment were asked for their views as to which types of measures could be taken to better protect consumers<sup>53</sup>. There were 40 such responses for doorstep selling, 31 for commercial excursions and 34 for organised selling events. Most but not all of the stakeholders responded to the additional follow-up questions.

As regards unsolicited **doorstep selling** to the follow-up question about possible measures, there were a combined 16 respondents from **national ministries (5) and enforcement authorities (11)** (representing 10 Member States). 8 respondents (among Ministries, BE and HR and among CPAs, FI, RO Xx2, SK and SE + 1 "other" country) representing 6 Member States plus one "other" country supported **better enforcement** of the existing rules, 2 respondents (both from the Netherlands) supported **stronger customised national rules** and 4 respondents from 3 Member States (SI x 2, AT, SK) supported **stronger EU-wide rules**.

As regards **commercial excursions**, among the 16 respondents from the **national ministries (5) and enforcement authorities (11)** (representing 10 Member States (RO, SK, SE, NL, SI, AT, BE, HR; FI, PL)), there were 6 don't knows, so 10 responses expressing a view. 7 respondents (4 CPAs and 3 Ministries) supported **better enforcement** of the existing rules. The Member States concerned were: BE, HR and SK. One respondent supported **stronger customised national rules** (NL) and 2 respondents (representing 2 Member States) supported **stronger EU-wide rules** (AT and SI).

As regards **organised selling events**, among the 16 respondents from national ministries and enforcement authorities (representing 10 Member States: SE, NL, FI, PL, AT, BE, HR, SI, SK, RO +1"other" state), 4 respondents (from 4 Member States: RO x 2, SE, BE, SK) supported **better enforcement of existing rules**, 2 respondents (in 2 Member States: SK, NL) supported **stronger customised national rules** and 4 respondents supported **stronger EU-wide rules** (2 CPAs in NL and SK) and 2 Ministries (AT and HR).

It should be noted that no case law or specific enforcement issues were identified in the Member States on doorstep selling, commercial excursions or sales events.

### 1.1.5 Transparency in online marketplaces (Art. 6a CRD)

The MD has introduced an Art. 6a CRD specifically dealing with online marketplaces and the information that must be provided to consumers. Essentially, the goal of this article is to make sure consumers have all the necessary information to make informed decisions when shopping on online platforms.<sup>54</sup>

#### 1.1.5.1 Definitions

Article 6a deals with "Additional specific information requirements for contracts concluded on online marketplaces". The definition of "online marketplace" is added to another article, Article 2(17) of the CRD: "a service using software, including a website, part of a website or

<sup>53</sup> Question 23: "What measures are needed to protect consumers better in such cases".

<sup>54</sup> Jablonowska A., Tagiuri G., Rescuing transparency in the digital economy: in search of a common notion in EU consumer and data protection law, Yearbook of European Law, 2023 at <https://doi.org/10.1093/yell/yead005>.

an application, operated by or on behalf of a trader by or on behalf of a trader, which allows consumers to conclude distance contracts with other traders or consumers". This is an updated definition. Based on the above definition, the concept of transparency is addressed through the following paragraphs of the Article, which are analysed below.

#### 1.1.5.2 Traders and non-traders

The concept of transparency, as addressed in Article 6a(1)(b) and 6a(1)(c) CRD is fundamental to ensuring consumer trust and fair practices in online marketplaces within the European Union. Particularly:

- Article 6a(1)(b) (cf. also Article 7(4)(f) UCPD) requires online platforms to disclose whether the seller is a trader or a non-professional seller, on the basis of the declaration of that third party. Transparency in this aspect is crucial for consumers because it affects their rights and expectations. Dealing with non-professional seller entail fewer legal protection.
- Article 6a(1)(c) mandates that online platforms must clearly indicate that consumer rights stemming from Union consumer protection law does not apply to a transaction in cases involving a non-professional third party. In connection with the abovementioned, such a provision, essentially, ensures that consumers are aware of their rights (or the lack thereof).

In practice, the implementation of these transparency measures requires online platforms to have robust systems in place to gather accurate information from sellers and to display this information clearly to consumers. Overall, these provisions reinforce the principle that clear and honest communication is key to maintaining a fair and trustworthy online marketplace, which is essential for consumer confidence and the smooth functioning of the digital economy in the EU.

Those provisions were transposed by the Member States mostly verbatim.

#### 1.1.5.3 Country Analysis – Art. 6a(2) CRD

To establish a further understanding of the implementation of the abovementioned provisions, it is crucial to look at the use of the available regulatory option (or lack thereof) by Member States. In this regard, the table below provides an overview of the Member States which made use of the regulatory option provided for by Article 6a(2) of the CRD. This provision allows Member States to impose additional information requirements for online marketplaces taking into consideration the rules of the eCommerce Directive<sup>55</sup>.

**Table 1-15 - Directive (EU) 2011/83 on consumer rights (CRD) - Article 6a(2) - Regulatory option**

Member State	Option to impose additional information requirements for online marketplaces
AT	Yes
BE	Yes
BG	No
CY	No
CZ	No
DE	Yes
DK	Yes
EE	No
EL	No
ES	Yes

<sup>55</sup> [Directive - 2000/31 - EN - e-commerce directive - EUR-Lex \(europa.eu\)](#)



Member State	Option to impose additional information requirements for online marketplaces
FI	No
FR	Yes
HR	Yes
HU	No
IE	No
IT	No
LT	Yes <sup>56</sup>
LU	No
LV	No
MT	No
NL	No
PL	No
PT	Yes
RO	No
SE	No
SI	No

The country analysis shows that less than a third of Member States made use of the regulatory option set out in Article 6a(2) (e.g. **Austria, Belgium, Croatia, Denmark, France, Germany, Spain**). For instance, in **Croatia** the national law uses the possibility provided by the Directive to apply other additional information requirements with a limitation. More specifically, Art. 62 of the Law on Consumer Protection provides that besides the information obligation provided in this law, all information obligation in accordance with the regulations governing all services and the regulations governing electronic commerce apply, as long as they are in line with the Law on Consumer Protection. However, the law sets a limit by providing that if the provisions of other laws conflict with the provisions of the Law on Consumer Protection, the provisions of the Law on Consumer Protection shall be primarily applied.<sup>57</sup> In addition, Art. 61(2) stipulates that the information obligation following from Art. 6a CRD is not complied with if the information is provided in the general terms and conditions. This is another regulatory choice used in Croatia. **Denmark** did make use of the option to impose additional information requirements according to which the online market place provider must disclose the identity and registered office of the third party offering the product, service or digital content on the online marketplace.<sup>58</sup> **Spain** made use of the regulatory option provided for by Article 6a(2) including in the law two extra information requirements relating to the guarantees and insurance offered by the online market provider and conflict resolution methods.<sup>59</sup>

The variation in the application of Article 6a(2) CRD suggests that Member States may be balancing the benefits of additional consumer protection with other considerations, such as the regulatory complexity, as well as the potential burden on online platform providers.

<sup>56</sup> See **Civil Code** Article 6.228<sup>7</sup>, para 6, referring to “may impose”: ‘Other laws may impose additional information requirements for individual types of distance or off-premises contracts’.

<sup>57</sup> **Consumer Protection Law** (OG 19/22), Art. 62; in force as of 28 May 2022. Available at: <https://www.zakon.hr/z/193/Zakon-o-za%C5%A1titi-potro%C5%A1a%C4%8Da>.

<sup>58</sup> Article (§) 1(20) of **Act No. 2158** of 27 November 2021 amending the Consumer Contracts Act and the Contracts Act. The Act entered into force on 28 May 2022, and it is available at: <https://www.retsinformation.dk/eli/ta/2021/2158>.

<sup>59</sup> Article 82.9 **Royal Decree-Law 24/2021**, entered into force on 28/05/2022, available at <https://www.boe.es/boe/dias/2021/11/03/pdfs/BOE-A-2021-17910.pdf>.

## 1.1.6 Ranking of offers and disclosure of paid-for advertising for achieving higher ranking, and consumer reviews

This section addresses the transposition of several articles related to the **ranking of offers**. Particularly, Art. 6a(1)(a) CRD (discussed also above in relation to the transparency in online marketplaces), Art. 7(4a) and point 11a of Annex I of the UCPD. This section also addresses transposition of Art. 7(6) and points 23(b) and 23(c) of Annex I of the UCPD relating to **consumer reviews**.

### 1.1.6.1 Art. 6a(1)(a) CRD, Art.7(4a) and point 11 a of Annex I UCPD

The new information requirements included in the CRD cover ranking of offers (offered by other third parties) on online marketplaces (Art.6a(1)(a)). Information shall be communicated “before a consumer is bound by a distance contract, or any corresponding offer” on an online marketplace. So, these are pre-contractual information requirements. The information should be communicated “in a clear and comprehensible manner”. Also, and this is particularly relevant when apps are used: “in a way appropriate to the means of distance communication.”

A similar information obligation was also added by the MD to the UCPD, in Art. 7(4a) covering e.g. online marketplaces and comparison tools. Following the MD, ranking is defined in Article 2(1)(m) of the UCPD as: “the relative prominence given to products as presented, organised or communicated (...) the technological means used for such presentation, organisation or communication”. Recital 19 of the MD contains further clarification of ranking of offers.<sup>60</sup> The MD has also amended Annex I of the UCPD and, accordingly, in providing search results in response to a consumer’s online search query, traders shall clearly disclose to the consumer any paid advertisement or payment specifically for achieving higher ranking of products within the search results (point 11a of Annex I).

### Country Analysis

The country analysis shows that **all Member States have transposed mostly verbatim those provisions of the MD** and thus, traders are now required to inform consumers about the criteria regulating the ranking of offers.

The transposition of these MD provisions aligns national laws with the growing concern for transparency in online advertising practices and aims to ensure that consumers can easily identify paid advertising and distinguish it from organic search results. When traders disclose paid advertisements, consumers can make more informed decisions based on the nature of the content they encounter.

However, some scholars noted that the implementation of the new provisions may be problematic at least because the online platform does not want to give away business secrets, or patents, so it should present the information in a way that it informs but does not give too much away. Further, the more information that needs to be communicated “easily and directly”, the more difficult it becomes to accomplish this. If there is just one special section it becomes overloaded with information, but various special sections also make it difficult to find the necessary information.

### Art. 7(6), point 23b and 23c of Annex I of the UCPD - Transparency about consumer reviews

Recital 47 of the MD underlines that the reviews posted on a platform or a trader’s website are often influencing a consumer’s purchasing decision. Thus, the new para 6 in Art. 7 UCPD now states that “Where a trader provides access to consumer reviews of products,

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<sup>60</sup> Ranking refers to the relative prominence of the offers of traders or the relevance given to search results as presented, organised or communicated by providers of online search functionality, including resulting from the use of algorithmic sequencing, rating or review mechanisms, visual highlights, or other saliency tools, or combinations thereof.

information about whether and how the trader ensures that the published reviews originate from consumers who have actually used or purchased the product shall be regarded as material". In addition, point 23b of Annex I specifically addresses the issue of consumer reviews and includes in the list of the prohibited misleading practices "stating that reviews of a product are submitted by consumers who have actually used or purchased the product without taking reasonable and proportionate steps to check that they originate from such consumers". Point 23c prohibits submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products.

Also in this respect, all Member States **have transposed mostly verbatim Art. 7(6) UCPD and the mentioned provisions of Annex I** and, thus, traders should now grant more transparency about consumer reviews. The transposition of these provisions aims at ensuring transparency in the digital environment and prevent deceptive practices where businesses present reviews or endorsements as genuine consumer opinions when they are, in fact, fabricated or biased<sup>61</sup>.

### 1.1.7 Initial comments on the transposition of the MD

To conclude, some overall commentary on the transposition of the above analysed specific MD provisions is provided. It should be noted, however, that partially due to the MD being newly in application, this constitutes a preliminary assessment rather than a deeper evaluation of the transposition, which is not possible at this early stage.

With regard to penalties, the analysis suggests that most Member States have shown a synchronised approach, signifying a collective stride towards a harmonised penalty framework, within the *limited* scope of the changes on specific penalties (**maximum fines for cross-border infringements (CPC context)**) made by the MD. Overall, Member States have woven the directive's provisions, including those regarding **maximum fines for cross-border infringements (CPC context)**, into their legal tapestry. They've achieved this integration by refining their existing legislations on consumer protection and countering unfair commercial practices. However, the analysis currently indicates an absence of the case-law pertaining to these augmented legislations.

A closer examination also unravels some differences, e.g. **in the criteria for determining penalties**.

One must, however, consider the timing of these implementations. A salient revelation from the analysis is the recency with which numerous Member States have embraced the MD's transposition, with a significant convergence around the year 2022. Such a nascent transposition offers a plausible rationale for the limited case law on the subject. With regard to the case law, its lack on the topics discussed above should be mentioned. For instance, the analysis of our findings confirms that the case-law about Art. 6a of the PID is limited in the Member States. One case<sup>62</sup> identified in this regard concerns when the Amberg Regional Court in Germany has rejected an injunction brought by the Baden-Württemberg Consumer Advice Centre against Netto Marken-Discount.<sup>63</sup>

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<sup>61</sup> Grochowski, M., Jabłonowska, A., Lagioia, F. and Sartor, (2021), Algorithmic Transparency and Explainability for EU Consumer Protection: Unwrapping the Regulatory Premises, 8 Critical Analysis of Law, No. 1, 2021 (Special Issue: "Transparency in the Digital Environment"). Available at SSRN: <https://ssrn.com/abstract=3821735>.

<sup>62</sup> See <https://www.lebensmittelzeitung.net/politik/nachrichten/preiswerbung-netto-gewinnt-streit-um-prozentangaben-171690?crefresh=1>.

<sup>63</sup> The heart of the dispute revolved around the manner in which Netto Marken-Discount presented its price reductions, specifically, the use of percentages and whether they should refer to a "30-day best price". The EU guidelines, along with the official explanatory memorandum to Germany's Price Indication Ordinance (PAngV), seemingly suggest that price reductions should indeed reference this 30-day benchmark. However, in a surprising move, the Amberg Regional Court sided with Netto. First and foremost, the court has emphasised the PAngV's lack of an explicit mandate that price reduction percentages need to be anchored to the "30-day best price." This interpretation challenges the commonly held belief rooted in the EU's guidelines and the explanatory note of the PAngV. Furthermore, the court considered that the omission of a reference to the "30-day best price" in percentage-based price reductions does not

Article 11a of the UCPD, focusing on redress mechanisms for consumers, was aimed to improve uniformity of available remedies. The analysis has confirmed that Member States applied different approaches in transposing Article 11 UCPD, also given the **enforcement mechanisms and civil procedures** native to each country.

The transposition of the MD with regard to increasing **transparency in online marketplaces** is a crucial undertaking that is fundamental to safeguarding consumer rights and fostering trust in the digital economy. The MD aims to address these concerns by setting out clear rules and guidelines for online platforms, ensuring that consumers are fully informed, for example, about the third parties from whom they are purchasing products and services. Transparency requirements, particularly concerning traders and non-professional providers, are being integrated into online platform practices. However, more clarity may be needed in how this information should be communicated, with the aim to reduce the complexity for consumers, while maintaining their informed position.

The **transparency related to consumer reviews** is connected with the above, as it provides a protection from deceptive practices where businesses present fabricated or biased reviews or endorsements as genuine consumer opinions. In this regard, it should be noted that Article 7(6) UCPD has been transposed, overall, verbatim in all Member States. In addition, the provisions on the **ranking of offers in search results** have also been transposed mostly verbatim by all Member States. Such a uniformity in the transposition fosters a cross-border consistency in online business operations, which is particularly crucial given the borderless nature of digital trade. Furthermore, it provides all consumers throughout the EU with the same level of information and ensures a strong protection for consumers.

Considering these findings, it is crucial to continue providing guidance, monitoring and enforcing consumer protection laws, to ensure a fair and transparent digital marketplace. In conclusion, while the MD has made significant strides in promoting transparency in online marketplaces, the analysis on the practical application (see below, Part 1.2) indicates that there is a room for improvements on several issues.

## 1.1.8 Specific Issues in the transposition of the MD

### 1.1.8.1 “Dual quality” goods

#### a. Overview

“Dual quality” of goods refers to situations where goods are marketed as being the same in different Member States while having significantly different composition or characteristics. This issue gained attention, as public authorities and consumer organisations in certain Member States expressed concerns about being sold inferior products compared to those available in other Member States.<sup>64</sup> Whilst the term “dual quality” is commonly used to describe goods with different composition or characteristics, such differences do not necessarily imply differences in terms of quality.

The MD amended the UCPD adding new **Article 6(2)(c)** providing that any marketing of a good in one Member State as being identical to a good marketed in other Member States, despite that good having significantly different composition or characteristics, will be regarded as a misleading commercial practice, unless justified by legitimate and objective factors.

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mislead the average consumer. This decision, on the surface, might seem like a simple disagreement over pricing presentation. The Consumer Advice Centre plans to appeal the decision, and a similar case pending before the Düsseldorf Regional Court regarding percentages in an Aldi Süd brochure has been submitted to the CJEU to clarify whether the percentages for price reductions must necessarily refer to the “30-day price”.

<sup>64</sup> Some tests held at national level are reported by BEUC (2018) Dual Product Quality Across Europe: State of Play and the Way Forward, Providing all of Europe’s consumers with products of the fair quality they expect, at [https://www.beuc.eu/sites/default/files/publications/beuc-x-2018-031\\_beuc\\_position\\_paper\\_on\\_dual\\_quality.pdf](https://www.beuc.eu/sites/default/files/publications/beuc-x-2018-031_beuc_position_paper_on_dual_quality.pdf).

In December 2021, the EC updated its guidelines on the interpretation of the UCPD, addressing also the issue of dual quality. The UCPD guidelines clarify that the marketing of goods as identical or very similar in various Member States while their composition or characteristics differ could be considered a misleading practice where such a practice would lead consumers to take a transactional decision they would have not taken otherwise and where there are no objective justification for the differences. Where the objective justifications are accepted, the consumers must be explicitly informed of such difference in composition or characteristics when sold in different markets.<sup>65</sup>

The CPAs enforce the relevant “dual quality” national provisions following a case-by-case assessment of:<sup>66</sup>

- Whether the products are marketed as identical or similar in different Member States,
- Whether there are significant differences in the composition and characteristics of those products in different Member States,
- Whether the differences would affect the average consumers’ transactional decision to buy the product,
- Whether there are any legitimate and objective factors which could justify the difference in composition or characteristics. The results of the study confirm that variations in product characteristics or composition may include compliance with national product composition laws, utilisation of local or seasonal ingredients, or a trader's commitment to offering healthier food choices.<sup>67</sup> It has been noted in the interview with a coffee producer,<sup>68</sup> that there are many different national rules about the quality of food, which may necessitate some variations between countries in products that are branded identically. In this respect, the national authorities can determine if there are valid reasons for the significant differences in products marketed in the same manner.
- If the CPAs conclude that the legitimate and objective factors justify the differences, the traders have to transparently communicate these differences to consumers.<sup>69</sup> Traders can communicate such differences at the retailer premises, on online selling interfaces, product websites (that should be easily and directly accessible by, e.g. scanning a QR code on the packaging) or product advertising. In any case, the information should be easily and directly accessible for the average consumer, including for vulnerable consumers.<sup>70</sup>

The JRC has conducted several studies on the matter, including comparative studies on the differences in composition and presentation of food products in 2018/2019 and 2021/2023, respectively.<sup>71</sup> The latter study also compared the developments between 2018/2019 and 2021/2023 testing campaigns. The 2021/2023 study showed that among the tested products, 6% had a different composition but an identical front-of-pack appearance, 23% had a different composition but a similar front-of-pack appearance, and 71% had an identical or similar composition. Comparing the two testing campaigns, the JRC noted that there was a 7 percentage points decrease in the

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<sup>65</sup> EC, Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, C/2021/9320, OJ C 526, 29.12.2021, 1-129 at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29&qid=1640961745514>.

<sup>66</sup> European Parliament, Dual quality of products – State of play, 2019.

<sup>67</sup> Bartková, Lucia/Veselovska, Lenka (2023).

<sup>68</sup> Interview conducted with a representative of Lavazza.

<sup>69</sup> Bartková, Lucia/Veselovska, Lenka (2023). Does dual quality of products in the European Union truly bother consumers?. In: Marketing i menedžment inovacij 14 (1), S. 182 - 198. <https://armgpublishing.com/wp-content/uploads/2023/03/A666-2023-16> Bartkova-et-al..pdf. doi:10.21272/mmi.2023.1-016.

<sup>70</sup> Commission UCPD Guidance, Section 2.8.5.

<sup>71</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC117088> and <https://publications.jrc.ec.europa.eu/repository/handle/JRC130388>.

occurrence of cases where products were marketed as being similar or the same although they were different in composition or characteristics.<sup>72</sup>

Recently, in 2023, the JRC further published a number of other important studies and tools:

- an empirical testing of consumers' perceptions of differences in package and product versions of seemingly identical branded food products was completed;<sup>73</sup>
- a study on the personal and household care sector after adapting the existing methodology used previously for food products;<sup>74</sup>
- Food-Checker: A mobile-based crowdsourcing application for dual quality of food,<sup>75</sup> and the
- Feasibility analysis of using crowdsourcing to monitor dual quality of food in the EU single market.<sup>76</sup>

## Country analysis

The country analysis shows that in most Member States there is no literature or case law on the issue of dual quality of goods, and there is limited information on the prevalence of the problem. However, it is worth providing examples of Member States where the matter has been investigated. For instance, in **Croatia** the Food Agency (HAH), in 2017 published the results of a research on the dual quality of products which involved the analysis of 27 food and non-food products from the Croatian market, comparing them with those purchased on the German market at a comparable time of purchase. The analysis revealed significant compositional differences in 23.8% of the food products examined. HAH also concluded that 61.5% of products purchased on the Croatian market were more expensive compared to better quality products purchased on the German market.

In **Hungary**, the consumer protection authority focused on dual quality cases concerning children and family related products (such as cosmetic and home cleaning products). Precisely, the CPA has investigated in 2021 a case of differences in characteristics of such goods when they were marketed in Hungary compared to other countries, namely in Germany, Austria, and Italy.<sup>77</sup> The research found that at least 30% of the inspected products presented differences in composition and/or characteristics when they were sold in Hungary.<sup>78</sup>

In **Romania**, consumer associations and the CPA have addressed dual quality cases in the food sector since 2019. More recently, the Romanian Consumer Protection Authority (ANPC) has carried out an in-depth investigation about the composition of Fanta drinks (i.e., precisely: Fanta orange and other drinks under the Fanta's trademark) and found on a preliminary basis that there were differences in composition of Fanta drinks that were marketed as the same in various Member states (e.g. the percentage of orange juice in the Fanta drinks vary in various Member States from 20% to 5% (the percentage amounts to 5% in Romania). The authority preliminary considered that the company did not present

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<sup>72</sup> Nes, K., Antonioli, F., Di Marcantonio, F. and Ciaian, P., *EU-wide comparison of the characteristics and presentation of branded food products* (2021), Publications Office of the European Union, Luxembourg, 2023, at doi:10.2760/8399.

<sup>73</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC130388>.

<sup>74</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC134346>. The study was conducted in 15 Member States that expressed interest in participating and in a further 5 Member States where the JRC itself collected the data.

<sup>75</sup> Available at <https://publications.jrc.ec.europa.eu/repository/handle/JRC135723>.

<sup>76</sup> Available at: <https://publications.jrc.ec.europa.eu/repository/handle/JRC133821>.

<sup>77</sup> New legislation was also backed by research conducted by the Hungarian Authorities in early 2021. According to the new legislation implemented by Hungary in December 2021, if it is proven that a company applies dual quality, then the company in question can be fined up to 5% of their income, maximum HUF 500 million in case of multinationals (EUR 1,380,000). Companies can be exempted from the fine, if the difference of the product can be justified with circumstances that vary from place, time, season and local customs.

<sup>78</sup> <https://ceelegalmatters.com/hungary/18947-hungary-implemented-eu-legislation-to-fight-dual-quality>

sufficient evidence to objectively justify the differences, nor did it accurately inform the consumers about the existence of those differences. Fanta indicated on its website that “the juice content may differ from one country to another. In each country, the juice content is largely comparable to similar products available on the local market, but in line with the local legal requirements”.<sup>79</sup>

The study findings show that **limited case law** exists to date at the national level on Article 6(2)(c) of the UCPD.<sup>80</sup> For instance, at the time of writing of this report, only one case of violating the prohibition on the so-called “dual quality” of food products, has been pursued, namely in Czechia where a manufacturer marketed a product that exhibited significant differences in composition compared to equivalent products marketed in other Member States. At the time of collecting the information, no sanctions had been imposed in this case.

The interviewed authorities mentioned that it was too early to assess the impact of the prohibition of dual quality goods as provided for in Article 6(2)(c) UCPD. Some national authorities and consumer protection authorities, such as the Italian Ministry of Business and Made in Italy, confirmed that the issue of dual quality was not an issue in their country. In other cases, such as in Lithuania, it was mentioned that while this was a problem in the past, it appears to be less of a problem today, following the changes introduced by the MD. Such rules pertain to, for example, the need to use local production methods. Other factors leading to dual quality were indicated by the Czech Agriculture and Food Inspection Authority (*Státní zemědělská a potravinářská inspekce*, SZPI) and include, for instance, reformulation or voluntary strategies focusing on improving access to healthy and nutritious foods, requirement of national law valid in another Member State, availability/seasonality of raw materials, regional taste preferences of consumers, production technology, different packaging weight or size.

## **b. Consumer perceptions**

The survey responses indicate mixed perceptions and a high degree of uncertainty among consumers about the effects of the MD on dual quality practices.

Regarding the impact of the MD on strengthening consumer protection against dual quality practices, 132 responses were provided, which were almost evenly distributed.<sup>81</sup> 14.3% of the respondents noted that it has had a significant impact,<sup>82</sup> 10.6% said it had a moderate impact,<sup>83</sup> and 9.8% reported a small impact; 14.3% of respondents believed it had no impact at all. Over half of the respondents (50.7%) were unsure or did not know what the MD impact was, possibly indicating a lack of clarity or awareness about the directive and its effects on dual quality.

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<sup>79</sup> Information based on desk research and interview with the competent authority conducted by the RO country expert.

<sup>80</sup> Bartková, Lucia/Veselovska, Lenka (2023). They note that “In any event, when objective factors justify variations in the quality or composition of dual-quality goods, traders are obliged to transparently communicate the specific reasons for these differences to consumers. This requires businesses to offer detailed explanations regarding what objective factors contribute to any quality disparities between similar products. For example, if a food company offers a ketchup product with a sweeter taste in one region and a spicier version in another due to local culinary preferences, the company should clearly state this reason for the dual quality. For example, the label might say: “Specially formulated for regional taste preferences.” In cases where a brand uses different materials or ingredients in different countries due to supply chain limitations, this should also be explicitly stated. A tagline might read: “Crafted with locally-sourced materials due to supply chain consideration”.

<sup>81</sup> However, it should be borne in mind that, as mentioned later in the text, over half of the respondents (67 respondents) selected the answer “Don’t know.”

<sup>82</sup> These respondents were the following: more than half (53%) of the respondents were business associations, followed by 16% traders and 11% consumer associations or NGOs. European Consumer Centres, national enforcement authorities, national ministries and those categorised as ‘other’ compiled 5% of the respondents each. No responses were received from academics.

<sup>83</sup> These respondents were the following: more than the third (36%) of the respondents were national enforcement authorities, followed by national ministries, consumer associations or NGOs and traders with each comprising 14% of the respondents. Business associations, European Consumer Centres and those categorised as ‘other’ were 7% each, with no responses from academics.

Similarly, when asked whether they believed that consumers suffered detriment due to dual quality practices, 136 diverse responses were recorded.<sup>84</sup> Around 9.5% noted that consumers experienced a significant detriment,<sup>85</sup> 9.5% believed the detriment was moderate,<sup>86</sup> and 6.6% reported it as small. 24.2% of respondents did not think consumers suffered any detriment from such practices. At the same time, similar to the previous question, a significant percentage of respondents (50.0%) selected 'Don't know', showing uncertainty or lack of information on the matter.

When asked about the sufficiency of current measures to tackle dual quality practices, a majority of the 26 respondents<sup>87</sup> (65.3%) revealed they believed stronger legal rules are needed<sup>88</sup> while approximately a quarter (23.0%) of respondents believed that the present EU rules, aimed at a case-by-case assessment, are adequate and just need enforcement<sup>89</sup>. The remaining 11.5% did not have an answer to the question. In addition, it should be borne in mind that half of the respondents answered 'Don't know' to the two questions discussed above, indicating a large lack of awareness.

Taken together, these survey results paint a picture of ambiguity about the actual effects of the MD on dual quality issues.

### **c. CPC Context**

The Consumer Protection Cooperation (CPC) Regulation EU No. 2017/2394, serves as a crucial mechanism for enforcing consumer rights and ensuring fair practices across Member States. It has existed since 2006, when the predecessor Regulation was adopted ([EU Regulation 2006/2004](#)). The relevance of this framework becomes particularly apparent in cases involving "dual quality" of goods, where the same brand offers products of differing qualities in various markets.

Firstly, the CPC network facilitates the sharing of data, expertise, and best practices among consumer protection authorities. This can be invaluable for individual Member States that may lack the resources or expertise to tackle complex dual quality cases alone. Secondly, a coordinated effort under the CPC regulation ensures that investigations into dual quality are conducted uniformly. This prevents loopholes and inconsistencies in evaluating the differences in characteristics and composition of products marketed identically across different markets. Thirdly, investigating multinational traders requires significant resources, which can be more easily borne when spread across multiple EU countries. CPC regulation allows for collective action that transcends national borders, making legal enforcement more effective and far-reaching. The only example where a consumer protection authority initiated a CPC alert concerns the Romanian CPA and the case mentioned above regarding

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<sup>84</sup> However, it should be borne in mind that, as mentioned later in the text, half of the respondents (68 respondents) selected the answer "Don't know."

<sup>85</sup> The breakdown of these respondents is the following: 38% of the respondents were consumer associations or NGOs, with European Consumer Centres making up the next largest group at 23%. Academics or researchers in the field and National enforcement authorities each constituted 15% of the respondents. National ministries were represented by 8% of the participants. No responses were recorded from business associations, those categorised as 'other', or traders, with each of these categories accounting for 0% of the total.

<sup>86</sup> The breakdown of these respondents is the following: around a third of respondents (with 31% each) were European Consumer Centres and national enforcement authorities, followed by consumer associations or NGOs and national ministries, with each accounting for 15% of the total. Those categorised as 'other' composed 8% of the respondents. There were no responses from academics or researchers in the field, business associations, or traders, each with 0%.

<sup>87</sup> The breakdown is as follows: 23% of participants (6 responses) believe current EU rules are adequate, while the majority, 65.3% (17 responses), think stronger rules are needed. Additionally, 11.5% (3 responses) were unsure or deemed the question irrelevant.

<sup>88</sup> The breakdown of these respondents is the following: 29% of the respondents were consumer associations or NGOs, with both European Consumer Centres and national enforcement authorities each accounting for 24% of the total. Academics or researchers in the field made up 12% of the respondents. National ministries and those categorised as 'other' were each represented by 6%. There were no responses recorded from business associations or traders.

<sup>89</sup> The breakdown of these respondents is the following: national enforcement authorities and national ministries each comprised a third (33%) of the respondents, while consumer associations or NGOs and European Consumer Centres both accounted for 17% each. There were no responses from academics or researchers in the field, business associations, those categorised as 'other', or traders, all with 0%.



the differences in the composition of Fanta beverages sold in Romania compared to those in other EU countries. However, no CPC action was initiated.<sup>90</sup>

#### 1.1.8.2 Resale of event tickets bought through bots

##### a. Overview

The addition of a new prohibition to Annex I (point 23a) of the UCPD by the MD brings to the forefront a significant consumer protection issue: the unfair practice of event ticket resale. Specifically, this new ban addresses **one specific aspect** of ticket resale – it targets **practice of traders using automated means to bypass restrictions or quotas on ticket purchasing**. Event ticket resale has been a longstanding issue. However, with the advent of technology, traders have started using automated means, often referred to as "bots", to circumvent restrictions set by event organisers or ticketing platforms. These bots can quickly purchase large quantities of tickets, depleting the available stock and effectively blocking genuine consumers from acquiring them at face value. The tickets are then resold at significantly higher prices, leading to inflated markets and compromised consumer experiences.

The analysis of case-law within the EU Member States corroborates that the ticket resale issue has been a pervasive problem. While some Member States had already been trying to address this issue through their national laws, the scope and efficacy of such measures were often limited. The lack of a unified EU-wide legislation on this matter has led to inconsistency in tackling this unfair practice.<sup>91</sup>

The analysis shows that some **Member States had already banned by national law ticket resale before the adoption of the MD**. For example, before the transposition of the MD, it was illegal according to **Danish** Law to offer or resell tickets for cultural and sporting events for a higher amount than the tickets were originally acquired unless there was a specific agreement with the organiser.<sup>92</sup>

##### b. Country analysis

The analysis shows that the majority of Member States rely primarily on the framework provided by the UCPD, without enacting additional specific rules on event ticketing in general. For example, **Austria's** legal framework, as outlined in national consumer law transposing the UCPD and FAGG (i.e. Federal Act against Unfair Competition), aims to regulate the resale of admission tickets to events. The key focus is on ensuring transparency and fairness in ticket resale transactions. Both the original purchaser and third parties are required to consider the prices set by the event organizers when reselling tickets.

Few Member States have adopted specific provisions to rule on the practice of ticket resale (Denmark and Ireland).

In 2021, **Ireland** has introduced a provision to prohibit the resale of tickets to live events in designated venues and for designated events at a higher price than the original sale price. The law, entitled the Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021<sup>93</sup>, came amid the increasing use of scalper bots, where tickets were being sold well above their original price. Consumers were being informed that tickets had sold out on primary websites, and subsequently found out that the same tickets were made available on secondary websites at higher prices. The law does not impose an outright ban on scalping, rather it bans the scalping of tickets for designated venues with a capacity of 1 000 or more. It appears that the legislation has had a positive impact. A report from July

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<sup>90</sup> Interview with Romanian authority representatives.

<sup>91</sup> Cases were reported in Belgium, Denmark, Germany, France, Italy and also in the UK and Switzerland. See also the document, BEUC, 2019, Q&A on resale of tickets, available at [https://www.beuc.eu/sites/default/files/publications/beuc-x-2019-034\\_resale\\_of\\_tickets\\_-\\_questions\\_and\\_answers.pdf](https://www.beuc.eu/sites/default/files/publications/beuc-x-2019-034_resale_of_tickets_-_questions_and_answers.pdf).

<sup>92</sup> See **Act No. 458** of 23 May 2007 on the resale of tickets for cultural and sporting events in Denmark.

<sup>93</sup> See at: <https://www.irishstatutebook.ie/eli/2021/act/21/enacted/en/html>.

2022 on the post-enactment of the legislation found that no enforcement actions had been taken. The specific ban, as introduced by the MD in Annex I (p. 23a) of the UCPD, was transposed in Ireland by section 157 of Consumer Rights Act 2022 amending Section 55(1) of the Act of 2007 (“reselling event tickets to consumers if the trader acquired them by using automated means to circumvent any limit on the number of tickets that a person may buy or any other rules applicable to the purchase of tickets”).

Moreover, the country analysis confirms that the **case law and national legal scholarship** on this specific practice of the resale of tickets (acquired through automated bots) remains limited in the Member States.

It has been reported that **French** authorities have sanctioned ticket resale practices at least in two occasions (WSI Live SA and Global Service Concierge).<sup>94</sup> In particular, the French authority has found that the companies WSI Live SA and Global Service Concierge were involved in engaging in deceptive commercial practices related to the resale of tens of thousands of show tickets. Although this case did not involve specifically the use of scalping bots, these practices were deemed as misleading the customers by creating the false impression that they (resellers) were occasionally reselling tickets through a third-party platform, either with the authorisation of the rights holders or on an occasional basis. However, they were operating as professionals without any authorisation. As a result of their actions, they have jointly and severally agreed to pay a penalty of EUR 150,000.

### c. Feedback from the consultations

Concerning issues with tickets reselling, in the **consumer survey** carried out for the study, 33% of consumers indicated that they experienced a situation where they wanted to purchase a ticket for an event, but only saw tickets from secondary sellers available at a higher price. In the 2023 Consumer Conditions **Scoreboard**, when replying to a **more general question relating to reselling practices**, 21% of consumers reported that they bought new product at a higher price from reseller as brand’s official website sold out (comprising “always”/“most of the time”/“sometimes” replies).

In the **targeted consultation** of the stakeholders carried out in the context of this study, the ban on event ticket scalping through the MD amendments to the UCPD and the requirement for indicating the status of the seller as a trader or a consumer were perceived as having a positive effect.

## 1.2 Analysis of the application

This section focuses on the analysis of the practical application of selected provisions of the MD, namely the provisions on **price reductions, price personalisation, transparency of the ranking of search results/hidden advertising, transparency of online marketplaces about contractual parties, online consumer reviews and social endorsements, telephone calls at basic rate in passenger transport services, and pre-contractual information and formal requirements**. The analysis relies heavily on a mix of the different data collection activities carried out under this study. Specifically, the research makes use of the data from the 2022 Consumer conditions survey<sup>95</sup> feeding into the 2023 Consumer Conditions Scoreboard<sup>96</sup> conducted by the Commission, which include specific questions concerning consumer perceptions of some of the issues regulated by the MD. In addition, the team has assessed data and information from **interviews** (notably those with traders, CPAs, and ministries, but also with consumer organisations), **business**<sup>97</sup>

<sup>94</sup> Direction générale de la concurrence, de la consommation et de la répression des fraudes. Available at [https://www.economie.gouv.fr/dgccrf/pratiques-commerciales-trompeuses-dans-le-secteur-de-la-revente-de-billets-de-spectacle?fbclid=IwAR3E\\_R1tIzONt8wqs0PlaYuVZuTSyszAyy-Kenk0lSk-aacA7xblZ7d6yYU](https://www.economie.gouv.fr/dgccrf/pratiques-commerciales-trompeuses-dans-le-secteur-de-la-revente-de-billets-de-spectacle?fbclid=IwAR3E_R1tIzONt8wqs0PlaYuVZuTSyszAyy-Kenk0lSk-aacA7xblZ7d6yYU).

<sup>95</sup> Ipsos for the European Commission, ‘Consumer Conditions Survey 2022’.

<sup>96</sup> DG Just, ‘Consumer Conditions Scoreboard’ (2023 edition) March 2023, at [https://commission.europa.eu/system/files/2023-10/consumer\\_conditions\\_scoreboard\\_2023\\_v1.1.pdf](https://commission.europa.eu/system/files/2023-10/consumer_conditions_scoreboard_2023_v1.1.pdf).

<sup>97</sup> Carried out between April and May 2023.

and consumer<sup>98</sup> survey, market sweeps,<sup>99</sup> and targeted stakeholder survey<sup>100</sup>. The number of websites covered in market sweeps varied between 48-99, depending on the area a given sweep was covering. These websites were covered across 10 Member States (**Estonia, France, Germany, Hungary, Italy, Poland, Portugal, Romania, Spain, Sweden**) and in the following areas, relevant for the MD application:

- Telephone calls at a basic rate (for passenger transport only),
- Transparency of online marketplaces (triple sweep),
  - Transparency of the ranking of search results / disclosure of advertising and paid ranking,
  - Presence of information on a personalised price,
  - Online consumer reviews (prohibition of fake reviews),
- Price reductions.

Customer service: while undertaking price reduction and other price promotions sweep, the researchers were asked to report whether they had experienced customer service chatbots and what process was offered to contact customer service. While not a sweep in itself, the results are briefly presented in the Annexes of this Study Report.

The **business enterprise survey** represents a balanced approach that considers the perspective of all stakeholders involved. By including a diverse sample of **1000 companies** across the **10 Member States** where the sweeps were conducted, the survey encompasses a range of businesses, from small enterprises to large corporations, ensuring that the findings are representative of the wider business community. By considering the perspective of businesses, alongside the consumer survey (covering **10 000 consumers** across the same **10 Member States**) and the targeted sweep of websites and apps, it was possible to create a well-rounded picture of the current state of transparency in the online ecosystem.

## 1.2.1 Price reduction announcements

### 1.2.1.1 Nature of legal changes through MD

The MD has introduced the new Article 6a into the PID, which requires traders to indicate, in case of a price reduction announcement, the prior price (which corresponds to the lowest price within the last 30 days). The provision aims at preventing the practice of increasing the price before the price reduction to make it appear more attractive.

Evidence suggests that there was a pressing need for such a provision. An examination conducted in 2018, known as the CPC Sweep, revealed that approximately one-third of the websites offering special prices had some form of irregularity.<sup>101</sup> A more recent sweep in 2022, targeting specifically Black Friday sales, also unearthed irregularities after MD adoption.<sup>102</sup> These findings underscore the prevalence of questionable pricing strategies and highlight the urgency for robust regulatory oversight.

The main issues assessed in this study were the following: whether traders have implemented the changes regarding the indication of the prior price in the price reduction announcements, whether the changes regarding price reductions have led to sellers using more other promotional techniques, and challenges for traders in establishing the prior

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<sup>98</sup> Carried out between June and July 2023.

<sup>99</sup> Carried out between January and October 2023.

<sup>100</sup> Carried out between June and September 2023.

<sup>101</sup> The results of the 2018 CPC sweep are available at: [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_1333](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_1333).

<sup>102</sup> The results of the CPC sweeps are available at: [https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps\\_en](https://commission.europa.eu/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/sweeps_en).

price, including whether the Commission guidance issued was sufficient to ensure effective application.

On this topic, data was gathered by grounding on [sweeps and stakeholder feedback through interviews and surveys](#).

#### 1.2.1.2 Sweeps and stakeholder feedback on changes to the PID

##### Sweeps

The results of the 2022 consumer sweep were published by the European Commission in December 2022. Under the coordination of the Commission, 13 national CPAs checked whether price reductions were compliant with the new rules under the MD. The authorities found that 43% of websites were in breach of EU rules during Black Friday 2022. The screening showed that more than half of the products monitored presented a price reduction announcement for Black Friday, and out of this number, 23% were clearly inconsistent with the PID which stipulates that shops must indicate the lowest price applied to the product in the preceding 30 days when announcing a discount. National authorities monitored the prices of 16,000 products from 176 websites over a period of one month.

Another sweep on price reductions and other promotion techniques used by the traders was carried out for the purposes of this study on 95 websites across 10 Member States between January and October 2023. The websites were selected based on their popularity ranking on SimilarWeb in the eCommerce and Shopping category. While the detailed results of the sweep can be found in Annex 5, it can be mentioned here that the sweep offers the following insights<sup>103</sup>:

Of the 475 products screened, price reductions or other promotions appeared regarding 360 products (on 75 out of 95 websites). The check also showed that combined offers were present on 27 websites for 88 products. Finally, general percentage reductions or percentage reductions linked to a minimum purchase amount were relatively common (49.5% of the screened websites).

As regards the presentation of price reductions/promotions for specific products (251 products on 42 websites), in around 90% of cases, the reference price was crossed out to emphasise the discount. In 75.6% of cases, the price advantage was presented in percentage. Often, crossed out reference price and percentage or absolute value discount were used together to highlight the promotion. As regards the nature of the price advantage, in most cases (69.7%) the researchers did not notice any qualification or explanation of the provided (crossed-out) reference price. This suggests that the seller was offering a price reduction, which means that the reference price provided had to comply with the requirements for the 'prior price' under Article 6a PID. The remaining promotions appeared to be price comparisons. Most of them used the recommended retail price as reference (25.8%) and the remaining referred to the notion of 'average price' (3.1%) and prices on other websites (1.4%).

These results suggest that the price reductions were the prevalent type of price promotion; however, it has to be borne in mind that the specific qualification of the reference price may not have been readily visible and noticeable in all cases.

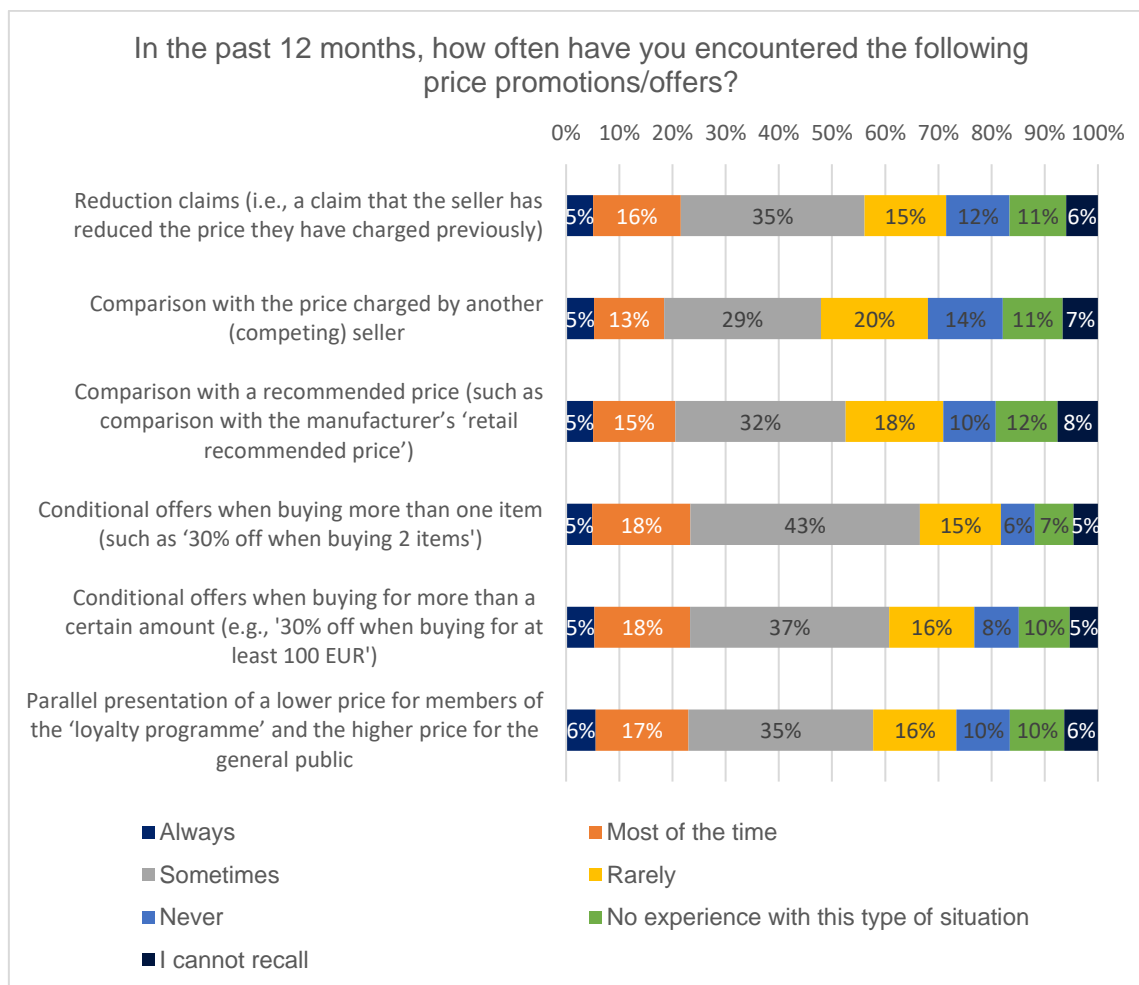
##### Consumer survey

The consumer survey contained a question on consumers' experiences with different types of price presentations on online platforms. The summary of the responses is presented in the figure below.

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<sup>103</sup> This sweep is different from the 2022 sweep conducted by CPC that focused on how indication of 30-day lower price rule is applied.

**Figure 1-1: Promotions/offers encountered by consumers**



Source: study team

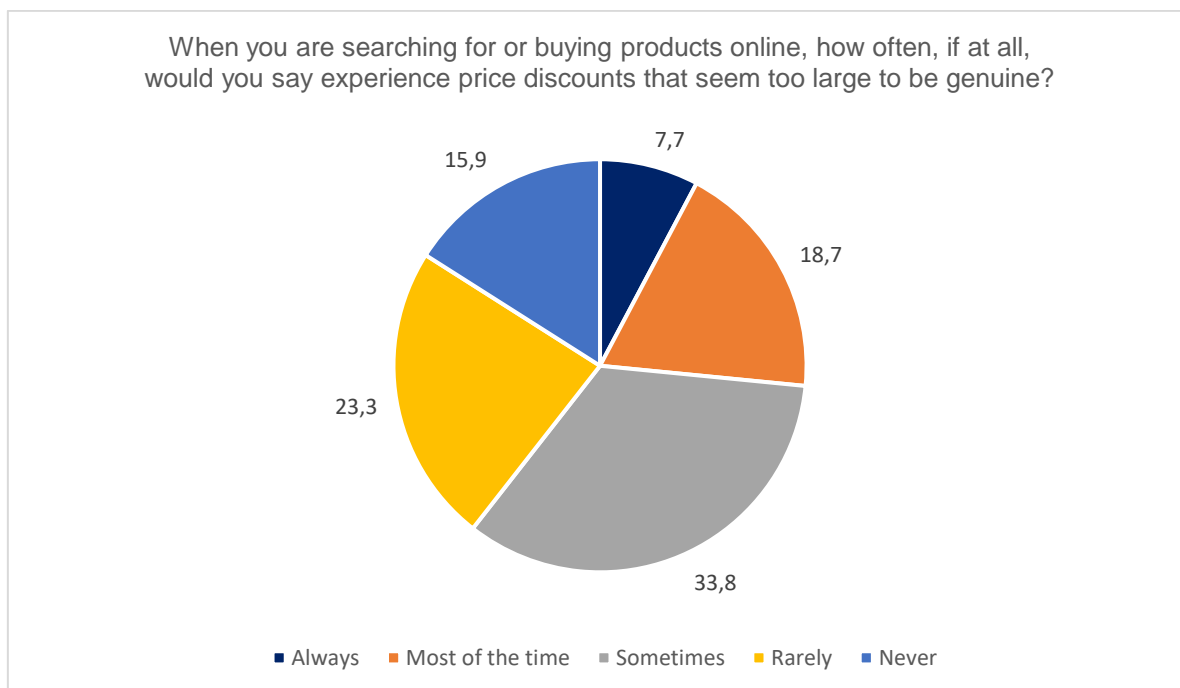
The data reveals that conditional offers, either based on quantity or total purchase value, appear to be the most commonly-experienced pricing practices. Reduction claims and price comparisons, whether it is against competitor prices or a recommended price, are also encountered frequently by consumers. However, some consumers also reported never experiencing these pricing practices or having no experience with this type of situation across all categories.

### Consumer Conditions Survey 2022

The Consumer Conditions Survey 2022 (feeding into the 2023 Consumer Conditions Scoreboard<sup>104</sup>) investigated an issue related to the above one. Particularly, it looked into how often (if at all) consumers **experienced price discounts that seemed too large to be genuine**. The responses show a diverse range of experiences among consumers. Approximately 7.7% of consumers reported that they always encounter what seem to be excessively large price discounts when shopping online. A higher percentage, 18.7%, indicated that they come across such discounts most of the time. The majority of respondents, representing 33.8%, indicated that they sometimes experience these potentially misleading price reductions. A smaller proportion of online shoppers, 23.3%, responded that they rarely encounter suspiciously large price discounts. Finally, there is a significant group of consumers (15.9%) who reported that they have never come across such discounts when purchasing products online. A visualisation of the data is presented in the figure below.

<sup>104</sup> Available at: [Key consumer data - European Commission \(europa.eu\)](https://ec.europa.eu/consumers/odr/).

**Figure 1-2: Discounts that seem too large to be genuine**



Source: study team, based on data in the Consumer Conditions Survey

### Targeted stakeholder consultation

The targeted stakeholder consultation contained a question asking the respondents about the perceived strengthening effect of the MD on consumer protection in terms of ensuring more transparency concerning price reduction announcements. The 131 responses<sup>105</sup> are rather varied, indicating differing opinions among the respondents. A slightly higher proportion of respondents believe that the MD has strengthened consumer protection to a moderate extent (21.4%),<sup>106</sup> compared to those who believe it has done so to a great extent (20.6%)<sup>107</sup>. A smaller percentage (14.5%) feel that it has only strengthened consumer protection to a small extent.<sup>108</sup> Even fewer respondents (7.6%) think that the Directive has not strengthened consumer protection at all in this regard. Notably, the largest percentage of respondents (35.9%) were uncertain about the extent of the Directive's impact, selecting "Don't know" as their response. This indicates a lack of a clear consensus among the respondents. While some recognise a degree of positive impact, a significant portion of the respondents are either sceptical of its effectiveness or lack sufficient knowledge to assess the impact of the MD on ensuring more transparent price reduction announcements. A visualisation of the abovementioned data is presented below.

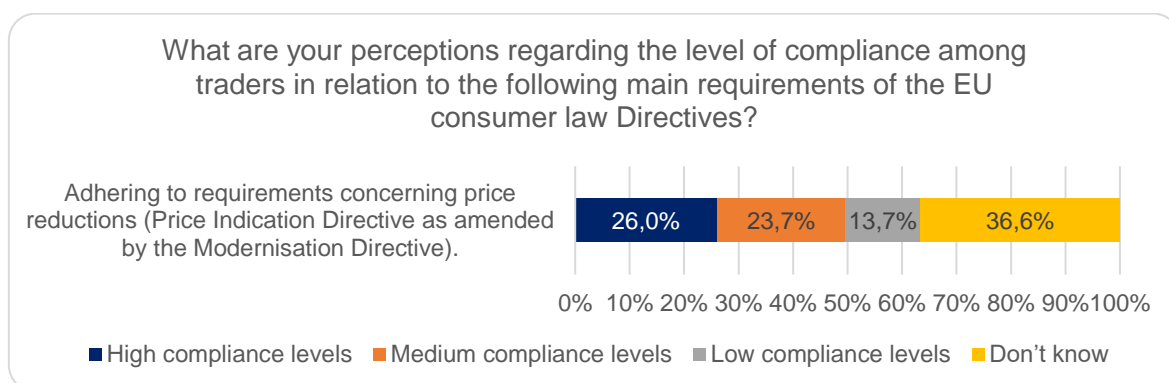
<sup>105</sup> It should be borne in mind that 35.9% of the 131 respondents selected the option "Don't know", as is later mentioned in the text.

<sup>106</sup> The breakdown of these respondents is the following: more than a third (36%) of the respondents were national enforcement authorities, with business associations composing 29% of the total. Consumer associations or NGOs were represented by 11%, while both national ministries and traders each accounted for 7% of the respondents. Academics or researchers in the field, European Consumer Centres, and those categorised as 'other' each constituted 4%.

<sup>107</sup> The breakdown of these respondents is the following: 37% of the respondents were business associations, while traders accounted for 22%. European Consumer Centres represented 11% of the respondents. Consumer associations or NGOs, national enforcement authorities, national ministries, and those categorised as 'other' each made up 7% of the total. There were no respondents from academics or researchers in the field.

<sup>108</sup> The breakdown of these respondents is the following: 42% of the respondents were consumer associations or NGOs, followed by business associations which comprised 32%. National enforcement authorities represented 11% of the total. Academics or researchers in the field, national ministries, and traders each made up 5% of the respondents. There were no responses from European Consumer Centres or from those categorised as 'other'.

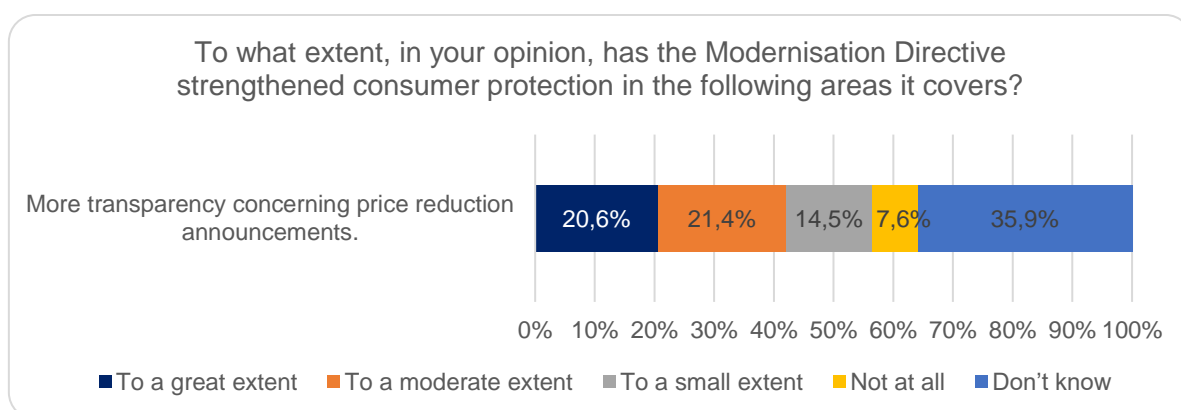
**Figure 1-3: Perceptions regarding the level of compliance among traders in relation to adhering to the PID requirements as amended by MD**



Source: study team

The responses to the survey question regarding the level of compliance among traders in relation to adhering to the requirements concerning price reductions of the PID as amended by the MD also suggest a varied perception among the 131 respondents.<sup>109</sup> A notable proportion of respondents (26.0%)<sup>110</sup> perceives that there are high compliance levels among traders with the amended PID requirements concerning price reductions. A slightly lower percentage (23.7%)<sup>111</sup> believe that traders exhibit medium compliance levels, with fewer respondents (13.7%)<sup>112</sup> perceiving that traders have low compliance levels when it comes to adhering to these requirements. The largest segment of respondents (36.6%) selected "Don't know," indicating a significant level of uncertainty or lack of knowledge about the compliance levels among traders. A visualisation of this data can be found below.

**Figure 1-4: MD strengthening consumer protection in relation to price reduction announcements**



Source: study team

<sup>109</sup> It should be borne in mind that 36.6% of the 131 respondents selected the option "Don't know", as is later mentioned in the text.

<sup>110</sup> The breakdown of these respondents is the following: 62% of the respondents were business associations, followed by traders who made up 18% of the total. Respondents who were categorised as 'other' accounted for 9%. Consumer associations or NGOs, European Consumer Centres, national enforcement authorities, and national ministries each composed 3% of the group. There were no respondents from academics or researchers in the field.

<sup>111</sup> The breakdown of these respondents is the following: 39% of the respondents were business associations, with national enforcement authorities representing 19% of the total. European Consumer Centres accounted for 13%, and traders made up 10%. Consumer associations or NGOs and national ministries each comprised 6% of the respondents. Academics or researchers in the field and those who were categorised as 'other' accounted for 3% each.

<sup>112</sup> The breakdown of these respondents is the following: 39% of the respondents were national enforcement authorities, closely followed by consumer associations or NGOs, which made up 33% of the participants. National ministries were represented by 11% of the respondents. Business associations, European Consumer Centres, and those categorised as 'other' each accounted for 6% of the total. There were no respondents identified as academics or researchers in the field or as traders.

## Interview feedback

Whilst evidently the full impact of Article 6a of the PID can only be assessed in due course, given that the legislative changes were made recently, a number of stakeholders, especially Ministries and industry associations, had views on various issues around the changes made in the regulation of price promotions. There was acknowledgement of the EU's positive intent in making these changes to strengthen the transparency of price promotions to enhance consumer protection. However, there were concerns regarding the unintended consequences and practical challenges in implementing these new rules in certain circumstances.

As noted earlier, the amended legislation requires that when a price reduction is announced, the trader must indicate the lowest price the good has been for sale during the last (at least) 30 days before the announcement of the price reduction.

Stakeholder feedback was received on the impact of this change. It was observed by several trader associations (e.g. **Independent Retail Europe, EuroCommerce and Ecommerce Europe**) that more consultation was needed on the impact of this change due to the problem of unforeseen consequences.

**EU trader associations** that focus on the independent retail sector (including many SMEs) and on e-commerce noted that whilst they supported in principle the idea of price reduction announcements being subject to some rules, they viewed the new rules introduced through the MD as being insufficiently flexible to reflect market realities in terms of how price promotions are designed. They noted that there are different business structures for retailers, such as cooperatives and franchises. This means that price promotions are not always centralised, with discretion at local level for independent retailers belonging to larger cooperative structures being able to determine their own prices independently of the centralised part of the business group. Interviewees representing the interests of 10,000 independent retailers in Europe commented that:

*“Independent retailers make their own price promotions and have some independence from larger owners. The way in which Art. 6a of the PID has been phrased is not very clear in the law. This appeared to exclude the possibility of independent retailers making differentiated prices from their larger group structure with centralised bodies responsible for promotions. This would assume that prices across all independent retailers are identical, which is not the case. This then makes it difficult to refer to the price applied by every single retailer within an affiliated group of independent retailers, as there is only information at a centralised level from the centralised part of the group and not detailed pricing information about local promotions. As there is a legal requirement to clearly inform consumers about price reductions compared with the original price, there needs to be flexibility as to how the original price is assessed. This wasn't in the initial legal text but is addressed in the supporting guidance.”*

Regarding the inter-relationship between **the PID and the UCPD**, further feedback was received from trader associations, according to which some marketing practices relating to pricing were not considered to be a misleading practice relating to price promotions before the MD, but are now subject to stricter rules (i.e., price reduction announcements under the PID). A Swedish member of a European trader association in e-commerce noted that there was a risk of an unintended consequence of infringing competition law if price promotions are too strict as this limits the ability of groups of independent retailers and franchises within a retail chain to offer localised discounts and competitive price promotions against local competitors. It was also noted that centralised parts of business groups do not have control over all the prices charged in stores and this was not intended as such within the business model.

To address the difficulties in interpretation and application associated with the PID changes, in December 2021 the European Commission published a Commission Notice on the



interpretation and application of Article 6a of the PID ('the PID Guidance').<sup>113</sup> This document provides supporting guidance on the changes to the PID due to the Modernisation Directive, including clarity on issues such as the interplay between the PID and UCPD. It explains the scope of application of Article 6a, provides guidance on the meaning of price reduction announcements and on the application of the provisions in case of general price reduction announcements as well as in case of 'perishable' goods, 'new arrival' goods and progressive price reductions.

Art. 6a PID provides for regulatory choices, allowing Member States to derogate from the general rule on price reduction announcements, namely: (1) for goods which are liable to deteriorate or expire rapidly ('perishable goods'); (2) for goods which have been on the market for less than 30 days ('new arrivals' goods); and (3) in case of successive price reductions within a period of 30 days. Having some greater flexibility to apply the rules – through regulatory choices if applied by the Member States – was considered necessary (i) by trader associations representing the interest of independent retailers and also (ii) by platforms interviewed. According to them, it gives the needed flexibility, as within e-commerce websites and on marketplaces, there are more frequent price changes in some digital sectors than in others. Some trader associations at EU level (e.g. Independent Retail Europe and their national association members, groups of independent retailers) also welcomed the fact that the Commission's Notice recognises the possibility to use the Recommended Retail Price (RRP) as a guide for pricing (while ensuring that comparison with RRP is not perceived by the consumers as a price reduction), given that localised pricing differences may make it difficult to establish a single stable price over 30 days within looser groups of retailers operating under a single brand, but with independent retailers being part of the grouping.

Whilst trader associations welcomed the guidance, there were concerns that the legislation itself remains insufficiently clear as regards the abovementioned issues around localised price promotions within looser groups of retailers.

The **Italian Ministry of Enterprises and Made in Italy** interviewed pointed out that the most difficult part of the Modernisation Directive's transposition concerned the PID. It was noted that the potential impacts of the changes made through the introduction of Art. 6a of the PID did not receive sufficient reflection at impact assessment stage, given this was not a change originally envisaged (rather, it was introduced by the EP in the late stages of the co-decision procedure). While the Ministry agreed with the ultimate aim to avoid traders using deceptive pricing strategies that are not real promotions, this has been difficult to implement. Reflecting these challenges, most national laws transposing MD provisions entered into force in Italy on 2 April 2023, apart from the provisions on price reductions indication, which came into force on 1 July 2023.

Among the uncertainties highlighted by stakeholders in Italy were that:

- For groups of independent retailers, there are **different price promotions at local level, making it difficult to establish a single promotional price.**
- For multichannel retailers, there are **differentiated pricing strategies between different sales channels, again making it challenging to establish a single price to benchmark for the 30 days prior to price promotional period.** This includes, for instance, purely offline brick and mortar channels, click and collect hybrid, purely online e-commerce channels and affiliate marketers, the changes become complex to implement from a Ministry perspective. This makes it difficult to interpret from a trader perspective, according to feedback the Ministry has received from trader associations.
- In Italy it is common to have **major discounts for out of stock and seasonal products**, raising issues as to how to implement Art. 6a PID. This has been a highly-debated issue for traders and the Ministry. The problem is that in IT, traders often

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<sup>113</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2806%29>.

sell fashion products such as textiles and shoes at heavy discounts already compared with the normal price.

- Sometimes traders also sell products that don't belong to seasonal lines with lot of controls by the police against false seasonal sales. Whilst this is a criminal law issue, there is also a consumer law dimension. The calculation of price promotion for **products that are outdated and have not previously been sold for a long period have caused problems and regulatory uncertainty for traders as it was difficult to calculate the previous average price in the last 30 days if the product had not recently been sold.** Following consultations between the Ministry and trade associations, the latter have been asking for local-specific national guidance as to how to implement the Directive in the Italian context. This problem has also been difficult for other MS (e.g. leading to national guidance in France).
- Implementing Art. 6a PID changes has required complexity and coordination between the Ministry and trade associations. The latter called for national methodological guidance on calculating an average price in the previous 30 days for those traders that change prices more frequently and advice on how to establish a single price for collective marketing campaigns by groups of traders, such as cooperatives.

During autumn 2023, new FAQs for traders were developed by the Italian Ministry<sup>114</sup> based on the EC guidelines. A decision was taken to opt for FAQs rather than an additional guidance document as this was viewed as a more flexible tool than fixed guidance as the FAQs can easily be updated. This was viewed as making sense as there is frequent feedback from different types of traders on the application of the PID in an Italian context and across different sectors. For instance, the FAQs cover topics such as:

- Which products will be excluded from the previous price announcement, such as food and perishable products.
- The specific procedure for publishing prices for promotional campaigns involving products sold below their cost value (the concept of loss leaders<sup>115</sup>) as otherwise, this would not involve a fair price comparison.
- Guidance that damaged products sold at a discount cannot be considered as a discounted price for the purpose of assessing price promotions.

In **the Netherlands**, a representative from the Ministry of Economic Affairs and Climate mentioned that they had also experienced problems in this area. In particular, problems were observed with regard to the recommended retail price (RRP), which some traders had used for price promotion as a reference price was an artificially inflated price, as the RRP is commonly higher than the actual price consumers are typically paying. Moreover, there were examples of prices that were crossed out but did not represent a discount, i.e. the crossed out price was identical to the new "promotional price". Further clarifications as to what should be considered illegal practices in complying with the new rules were therefore sought.

The above feedback demonstrates the complexity of a seemingly simple change and the need to monitor unintended consequences and how these are being managed at national level in future application reports.

A further point of feedback on the PID was the issue of misinterpretation of its scope. Whilst the PID, including its new Article 6a, is only applicable to tangible goods, some Member

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<sup>114</sup> FAQs about the application of the new price promotion rules under the PID in Italy - <https://www.mimit.gov.it/assistenza/domande-frequenti/annunci-di-riduzione-di-prezzo-domande-frequenti-faq>.

<sup>115</sup> Loss leader is "[A] product or service offered for sale by an organization at a loss in order to attract customers" (J Law, A Dictionary of Business and Management (2009) Oxford Reference, <https://www.oxfordreference.com/display/10.1093/acref/9780199234899.001.0001/acref-9780199234899-e-3844?rskey=zW4xG3&result=3977>).

States' enforcement authorities (particularly, in some Central and Eastern European countries, such as Hungary) are also applying the same pricing rules to services, according to a major European e-commerce industry association.

Thus far, there has been only limited feedback from **online marketplaces** on the changes to the PID. A major global e-commerce player interviewed noted that the EC's original intention of strengthening the transparency of pricing for consumers regarding promotions was positive, however, it was suggested that this should remain at the principles-level. The reasoning behind this suggestion is that if there is an attempt to put in too much detail, it ends up being difficult to implement in practice, given that different digital sub-sectors have different promotional pricing practices. The marketplace mentioned they have no problem with the 30 days rule per se but an issue around the lack of precision in the wording. For example, it was noted that strikethrough pricing, where the original price of an item is crossed out next to the discounted price, is a common marketing strategy in e-commerce. Its interpretation under the updated PID, however, has been inconsistent. Some e-commerce operators view strikethrough pricing as a clear method of displaying price reductions, arguing that it provides consumers with straightforward comparative pricing information. On the other hand, consumer associations contend that this practice can be deceptive, potentially misleading consumers about the actual savings or value if the 'original' price is not the 'prior' 30-day price. Also, an overuse or constant presence of strikethrough pricing can lead consumers to mistrust the original prices, leading them to question whether any item is sold at the 'original' price. It could also create a tendency for consumers to only buy products when those are on sale.

Traders do not appear to have had difficulties in adjusting algorithms for price promotions in e-commerce sites, according to the interviews. However, during some seminars and online workshops on EU consumer law, e-commerce industry associations (e.g. EuroCommerce, Independent Retail Europe) pointed to the frequency of pricing changes on e-commerce websites and online platforms changing very quickly to react to demand and supply making it difficult to establish a clear single price for the 30 days prior to the new price promotion.

According to interviews with CPAs, when examining enforcement and compliance-related issues to Art. 6a on price reductions, CPAs from countries such as IE, IT, RO, DK, NL, and ES noted that the traders do not have data on compliance in this specific area. This data gap underscores the need for more rigorous data collection mechanisms and perhaps a more collaborative approach among CPAs to share best practices, insights, and resources on how to implement the PID.

As regards what **difference the changes to the PID have made from a consumer protection perspective**, while some positive changes were observed, there were concerns regarding lack of effective application to date. A study was undertaken in France by a national consumer association *UFC-Que Choisir*<sup>116</sup> which looked at price promotions post the Modernisation Directive to assess how far practices have evolved. *UFC-Que Choisir* conducted an analysis of a sample of 6,586 offers with crossed-out prices on the main e-commerce websites where dubious practices have been observed. The study results showed that only 3.4% of offers with a reference price were genuine price reductions that complied with the new Directive. More than 9 out of 10 offers in the sample instead displayed reference prices based on the concept of so-called price comparisons. This was seen as demonstrating how traders have quickly developed new strategies to circumvent the requirements under the PID. The result is that consumers are confused due to the wide variety of expressions used such as: "recommended retail price", "original price", "was price", "average price on the marketplace", "average price on competitor websites", "price provided by third-party seller", etc.

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<sup>116</sup> FR UFC-Que Choisir (2023) "PRIX DE RÉFÉRENCE TROMPEURS DES FAUSSES BONNES AFFAIRES À TOUT PRIX" <https://www.quechoisir.org/action-ufc-que-choisir-fausse-promotions-l-ufc-que-choisir-depose-plainte-contre-8-sites-de-commerce-en-ligne-n108122/?dl=118214>.

In addition, the Dutch Authority for Consumers and Markets (ACM) had checked whether the prices on websites comply with the rules for price discounts.<sup>117</sup> A significant number of the inspected companies were identified as consistently breaching regulations. Consequently, the ACM is set to commence enforcement actions; the ACM has the authority to apply sanctions such as fines, or implement orders subject to periodic penalty payments for the violations that took place.<sup>118</sup>

The variety of price references used by traders and the lack of clear information for consumers was also identified as a challenge. *Que Choisir* notes that:

*“In rare cases where calculation methods can be verified, it turns out to have been fabricated by the trader with the sole aim of producing an inflated comparison price, to create the illusion of a substantial discount. From the omission of delivery costs to the use of an average price instead of a median price, to the inclusion of reference prices that are detached from economic reality, there are many ways to deceive consumers, and traders do not hesitate to make use of them”.*

### 1.2.1.3 Findings – price promotions

- Whereas all stakeholders broadly supported the changes made by the MD to PID, there were concerns regarding practical application.
- In particular, traders considered problematic to establish the ‘prior’ price, i.e. the lowest price in the 30 day period prior to price promotions.
- Implementing a 30-day lowest price prior to any price promotion is considered especially difficult by independent retailers who implement localised price promotions.
- The Commission’s guidance was essential (both for national CPAs and Ministries as well as traders) given that a seemingly simple change to the legislation has raised application challenges for traders.
- A clear trend was identified among traders to use various price promotion and comparison techniques, particularly on e-commerce websites and online platforms. However, these pricing strategies, such as strikethroughs and complex comparisons, are often not transparent and can mislead consumers regarding the magnitude of discounts and the actual savings. The findings indicate that overuse or lack of clarity in these promotion techniques can damage consumer trust, indicating the need for more transparent and comprehensible pricing practices to ensure effective consumer protection.

## 1.2.2 Price personalisation

### 1.2.2.1 Nature of legal changes through MD – price personalisation

Personalised pricing mainly consists of a form of price discrimination that involves charging different prices to consumers according to their willingness to pay by relying on data analytics and pricing algorithms.<sup>119</sup> The MD specifically addresses the practice of personalised pricing. In particular, the MD inserted a new point (ea) in Article 6(1) CRD, which now reads: ‘(1) Before the consumer is bound by a distance or off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner: (...) (ea) where applicable, that the price was **personalised on the basis of automated decision-making (...)**’ (see also Recital 45).

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<sup>117</sup> ‘ACM cracks down on web shops that use fake discounts’, <https://www.acm.nl/nl/publicaties/acm-pakt-webwinkels-aan-die-nepkortingengebruiken>.

<sup>118</sup> Ibid.

<sup>119</sup> OECD (2018). Personalised pricing in the digital era at: <https://www.oecd.org/daf/competition/personalised-pricing-in-the-digital-era.htm>.

According to the Article, **consumers ought to be informed**, in a clear and prominent manner and directly before clicking 'buy', when the price they are seeing when buying online has been personalised by a pricing algorithm. The requirement is limited to information about the fact of personalisation taking place.

The country analysis has confirmed that the above-mentioned provision has been transposed only recently and, consequently, the case-law and the practical application of this personalised pricing transparency requirement in the EU are limited.<sup>120</sup>

On this topic, data was gathered through **sweeps, desk research and stakeholder consultations (consumer surveys and interviews)**.

#### 1.2.2.2 Sweeps, stakeholder feedback and desk research findings

##### Sweeps

The sweeps on this topic (85 websites were swept) found price differences in **6%** of the total products analysed where prices varied depending on whether access by researchers was from a 'clean' or 'normal' browser<sup>121</sup>. This phenomenon was found in 12 products (majority of which was on e-commerce websites, followed by price comparison sites) across 10 sites out of 207 products on 85 sites. Surprisingly, in most instances (9 out of 12), the 'normal' browser search resulted in a lower product price. Nevertheless, there were no explicit indications on the websites about the use of personalised pricing. Despite the apparently personalised pricing, the terms and conditions or cookie policies did not specifically mention this practice.

##### Interview feedback

Some feedback was received from the stakeholders on the obligation under the MD to inform consumers about the fact of a personalised price based on automated decision making. As mentioned above, prior to the conclusion of a distance or off-premises contract, or any corresponding offer, traders are obliged to clearly inform the consumer in a comprehensible manner if the price has been personalised using automated decision-making (see also Recital 45). In essence, consumers should be fully and prominently informed, immediately before the purchase, whether the price they are presented with online has been customised through a pricing algorithm.

Consumer stakeholders welcomed this change as it provided more transparent information to consumers as to whether the decision was automated. They also noted that this was a logical next step, and complementary to the GDPR's Article 22, where consumers have the right not to be subject to a decision based solely on automated processing which produces legal effects concerning him or her or similarly significantly affects him or her.

Some EU trader associations, however, noted that personalised pricing often benefits consumers, as they may receive discounts based on their previous choices and data held about them to reward their loyalty. Nevertheless, a legal academic in consumer law interviewed raised the challenge that even when consumers have been informed that pricing is personalised in accordance with new pre-contractual information requirements, they are not informed whether personalised pricing is beneficial or conversely disadvantageous to them.

Generally, the analysis of the interviews suggests the need of some further guidance to understand how the new provision shall be applied in the practice of online commerce (for

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<sup>120</sup> Civil Consulting, *Study on Personalized Pricing*, prepared for IMCO, 2022, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL\\_STU\(2022\)734008\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/734008/IPOL_STU(2022)734008_EN.pdf).

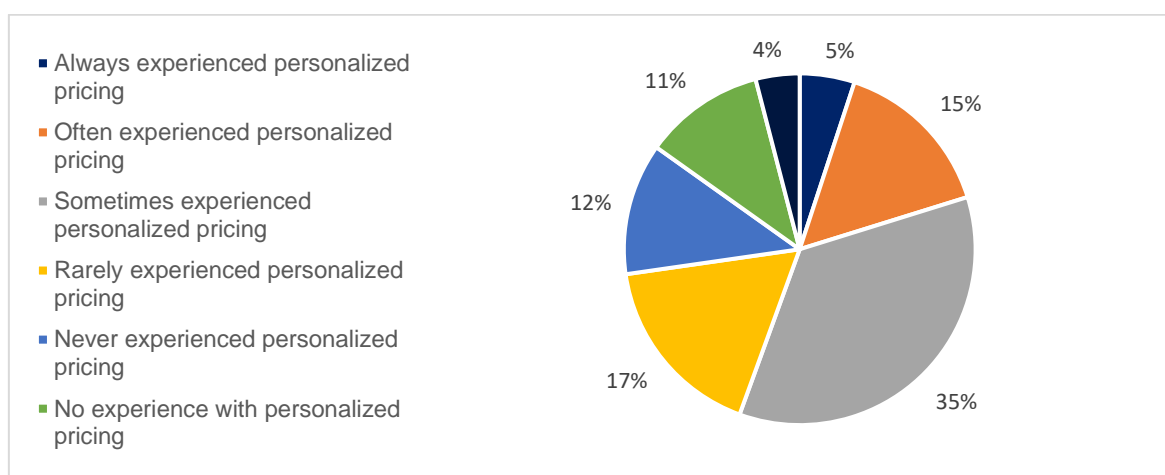
<sup>121</sup> **Normal browser** was used when the researchers used their usual browser while signed into the accounts and websites they use on a regular basis (Google, Facebook, X (formerly Twitter), if relevant the website researched etc.). **Clean browser** was used when researchers used a VPN locating them in the same country, making sure they were logged out of all accounts and performed the searches on a browser they never use and cleared of cookies before each search.

example, what level of detail of information should be conveyed to consumers in the disclosures).

### Consumer surveys

According to the **consumer survey conducted within this study**, respondents were asked about their experiences in past 12 months with receiving a discount or a price that was presented as “personalised” for them, either through a website or via email. The results showed that 5% of respondents always experienced this type of personalisation, while 15% encountered it most of the time. Meanwhile, 35% of respondents said they sometimes were offered personalised prices, and 17% rarely experienced it. Interestingly, 12% claimed they had never received such an offer. About 11% of respondents had no experience with this type of personalised pricing situation, and 4% were unable to recall whether they had experienced it or not. A visualisation of this data can be found in the figure below.

**Figure 1-5: Consumer survey - personalised discounts or prices**



Source: study team

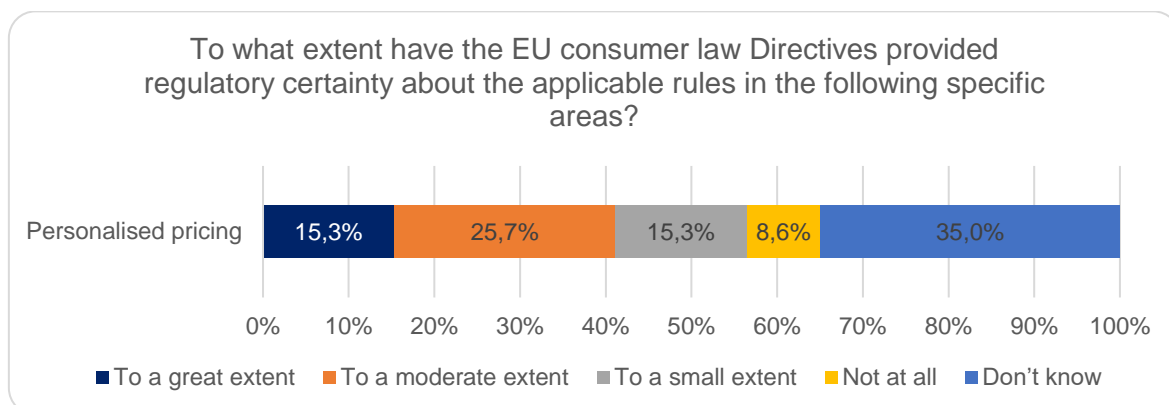
In the framework of the **Consumer Conditions Scoreboard (CCS) 2023**, consumers were asked about their online buying experiences over the past 12 months, specifically in terms of how often they noticed different prices for goods or services compared to their peers. Remarkably, whilst being one of the least commonly experienced practices amongst most common online problematic practices reported in that survey, the results of the survey revealed that 39% (comprising “always”/“most of the time”/“sometimes” replies) of the surveyed consumers reported that they had encountered this issue. This data suggests that a number of consumers perceive differential pricing practices in online transactions. In comparison with the Consumer Conditions Survey conducted a year before the abovementioned one, the online buying experience in terms of different prices for goods or services compared to peers has remained largely stable, with around a single percentage points difference.<sup>122</sup>

As part of the **targeted survey**, stakeholders were asked to indicate to what extent have the EU consumer law Directives provided **regulatory certainty** about the applicable rules in relation to personalised pricing. The majority of respondents (34.9%) indicated they do not know to what extent personalised pricing is used. This shows considerably high levels of uncertainty or lack of awareness on this matter. A roughly equal proportion of respondents indicated that personalised pricing is used “To a great extent” and “To a small extent”, each around 15.3%. Around a quarter of respondents (25.7%) noted that personalised pricing is used “to a moderate extent”. Finally, 8.5% of the respondents

<sup>122</sup> Ipsos, ‘Survey of Consumers’ Attitudes Towards Cross-border Trade and Consumer-related Issues 2023’ (February 2023), see also at: [https://commission.europa.eu/document/download/131d2167-ade8-4838-ad44-bcaa143f1f38\\_en?filename=ccs\\_2022\\_executive\\_summary.pdf](https://commission.europa.eu/document/download/131d2167-ade8-4838-ad44-bcaa143f1f38_en?filename=ccs_2022_executive_summary.pdf), p. 22.

believed that personalised pricing is not used at all. A visualisation of this data is presented in the graph below.

**Figure 1-6: Targeted survey - regulatory certainty on personalised pricing**



Source: study team

In addition, the stakeholders were asked to indicate to what extent they agree that personalised pricing is a problematic practice. Approximately 40.3% of respondents noted that they either strongly agree (19.4%) or agree (20.8%) on the issue of the problematic nature of personalised pricing. On the other hand, around 23% of respondents either disagree (11.1%) or strongly disagree (11.8%) with the statement. The largest group, however, at 36.8%, responded with “Don't know”, potentially indicating a lack of understanding or awareness about the concept of personalised pricing.

#### Desk research

It is also important to consider how far the MD has had a positive initial impact in influencing changes in traders' behaviours in terms of avoiding personalising prices without first informing consumers. An example was identified of a major B2C online marketplace engaging in such practices, but crucially changing them immediately prior to the coming into application of the MD on 28<sup>th</sup> May, 2022. The trader concerned chose to stop personalisation practices altogether. However, it does demonstrate how regulatory changes introduced under the MD have had a positive impact on eliminating non-transparent price personalisation practices.

#### Price personalisation practices – example of lack of sufficient disclosures for consumers.

The prices on a particular online marketplace, Wish, were being personalised based on – among other factors – consumers' location and purchase behaviour. Under the MD, companies must clearly indicate the use of personalised pricing prior to the purchase, and consumers must also understand in what ways their personal data affect prices. Wish did not disclose the personalisation of prices at all.

This problem of personalised pricing without adequate transparency was identified and highlighted by ACM, the Dutch consumer authority.

The ACM, working closely with the Commission and the CPC Network, obtained EU-wide commitments from Wish to ensure that its practices respect EU consumer law.

Wish stopped personalised pricing techniques in the EU, as of 1 June 2022, as it was not clear for consumers how they function and how they determine the price based on consumers' personal data.

Sources: <https://www.leidenlawblog.nl/articles/personalised-pricing-is-happening-heres-what-you-need-to-know> with author edits; <https://commission.europa.eu/live-work-travel->

[eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services\\_en#aliexpress-and-wish](https://ec.europa.eu/consumer-rights-and-complaints/enforcement-consumer-protection/coordinated-actions/market-places-and-digital-services_en#aliexpress-and-wish).

Desk research also points out that the interplay of this provision – only dealing with the duty of the trader to inform the consumer<sup>123</sup> - with established instruments (i.e. GDPR) and more recent instruments (e.g. DSA and AI Act Proposal) is unclear.

### 1.2.2.3 Findings – price personalisation

The findings from sweep, consumer surveys, stakeholder feedback and desk research collectively portray a complex landscape of personalised pricing in online commerce. The (small scale) sweep data suggests that price personalisation could be happening, but its prevalence varies, while consumer surveys highlight that consumers relatively frequently perceive what seems to them as personalised prices, although the understanding of this practice is less clear.

The targeted stakeholder feedback paints a blurry picture of the adoption of personalised pricing, with most respondents apparently uncertain about the extent of its use. The feedback suggests greater transparency has been achieved concerning personalised pricing due to regulatory changes. However, it also suggests that there is a need for some additional guidance on how these new norms should be applied. Overall, a mixed picture emerges of personalised pricing and transparency on that in online transactions, potentially indicating a need for more clarity.

## 1.2.3 Transparency of the ranking of search results/hidden advertising

### 1.2.3.1 Nature of legal changes through MD – transparency of rankings of search rankings/hidden advertising

Hidden advertising refers to advertisements that are not clearly disclosed as such and are integrated into the content or search results (of the products offered by third parties) in a way that may deceive or mislead consumers. This can include sponsored content, native advertising, or influencer marketing where the promotional nature of the content is not explicitly stated. In fact, a common practice by search engines but also e-commerce platforms or marketplaces is to show as the first search results offers for which the provider has in fact paid to be shown in first place.

Article 7(4a) of the UCPD introduced by the MD requires traders (such as online marketplaces or price comparison websites) to disclose on their websites the parameters that lead to the search results (of the products offered by third parties) shown to a (potential) consumer (similar requirements apply to search engines in B2B environment under the P2B Regulation<sup>124</sup>). In addition, new point 11a of the Annex I of the UCPD now expressly prohibits undisclosed paid advertising in search results. Article 6a CRD, applicable to online marketplaces, also provides for requirements of informing on the ranking parameters.

This practice is particularly suitable for being checked through the market sweep, as traders must include an information section on their website, the existence of which can be verified by the evaluators performing the market sweep.

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<sup>123</sup> S. Barros Vale (2020).

<sup>124</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R1150>.



On this topic, data was gathered via the [Consumer Conditions Scoreboard 2023, website sweeps and stakeholder consultations \(including interviews, the consumer survey and the business survey\)](#).

### 1.2.3.2 Sweeps and stakeholder feedback

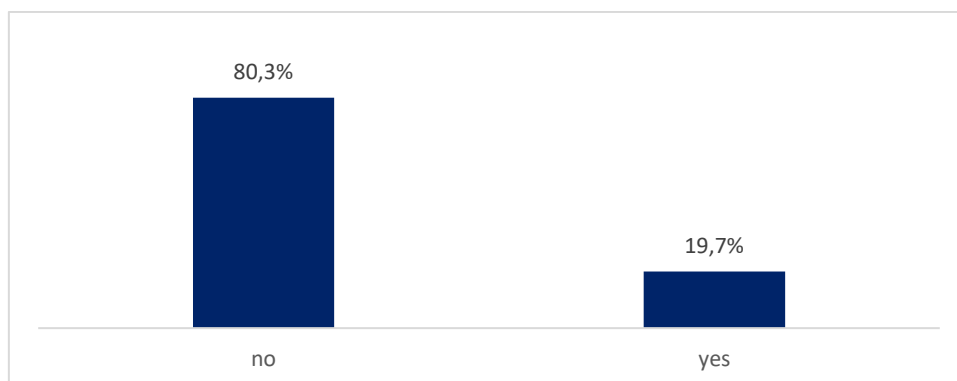
#### Sweeps

The targeted sweep of 85 websites and apps in 10 Member States reveals interesting insights about the state of transparency in the online ecosystem, particularly regarding the presence of **paid placements** and consumer information on **search result rankings**. The “triple” sweep looked at the following aspects: transparency of the ranking of search results / disclosure of advertising and paid ranking, presence of information on a personalised price (addressed above) and online consumer reviews (addressed in the following section 1.2.5).

A total of 414 searches were undertaken.

Upon examining the presence of **paid placements in search results**, it is observed that in **56.4%** of searches on 47 websites, none of the result presented paid placement. However, in **19.7%** of cases, the search results included top results indicated as paid placements (advertisements).. In the remaining 80.3% (70 websites) of cases, the researcher could not find reference to the presence of paid placement. While the identification of paid placements is not inherently negative, the significance lies in the platform's ability to clearly distinguish between organic and paid content.

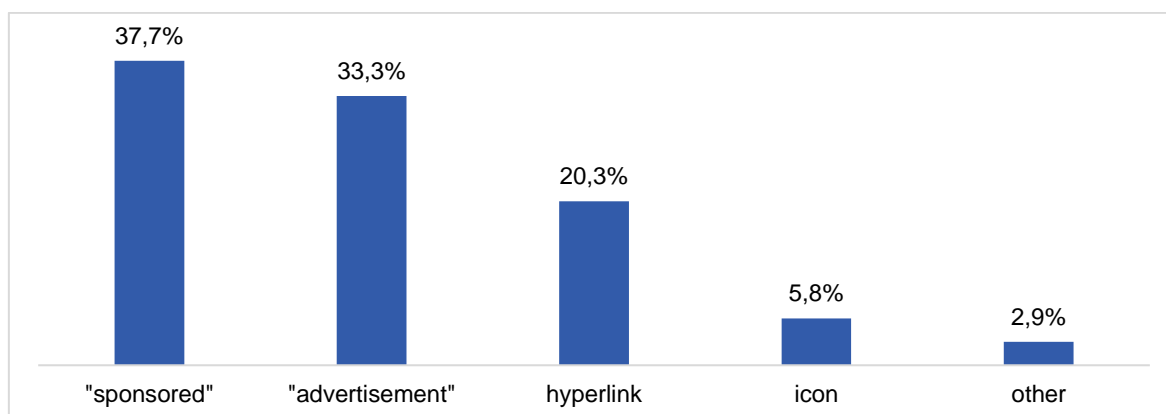
**Figure 1-7: Paid placements in search results**



*Source: study team*

Where paid placements are indicated, they were **labelled** as “sponsored” in 37.7% of results, or “advertisement”, occurring in 33.3% of cases. Alternative methods of identification included the use of an icon or a clickable link redirecting the user to a separate page with more information or displaying text indicating that the result is sponsored when the mouse hovers over the icon. This was the case in 26.1% of instances, as per the graph below.

**Figure 1-8: How is the paid placement identified covering 15 websites**



Source: study team

The lack of consumer information on how **payments** influence the order and ranking of search results is another area of concern. In a minority of cases (**16.9%** of searches or 21 out of 85 websites), consumers were provided a general information that payments influence the ranking of search results on the **results page**. In 74.7% of cases, or 53 out of the 85 websites, information about the fact that payments influence the search results was provided in **the terms and conditions**. This percentage is disappointingly low, indicating a lack of transparency that can significantly compromise the consumer's ability to make informed decisions. The majority (**83.1%**) of the platforms analysed did not provide this crucial information on the results page.

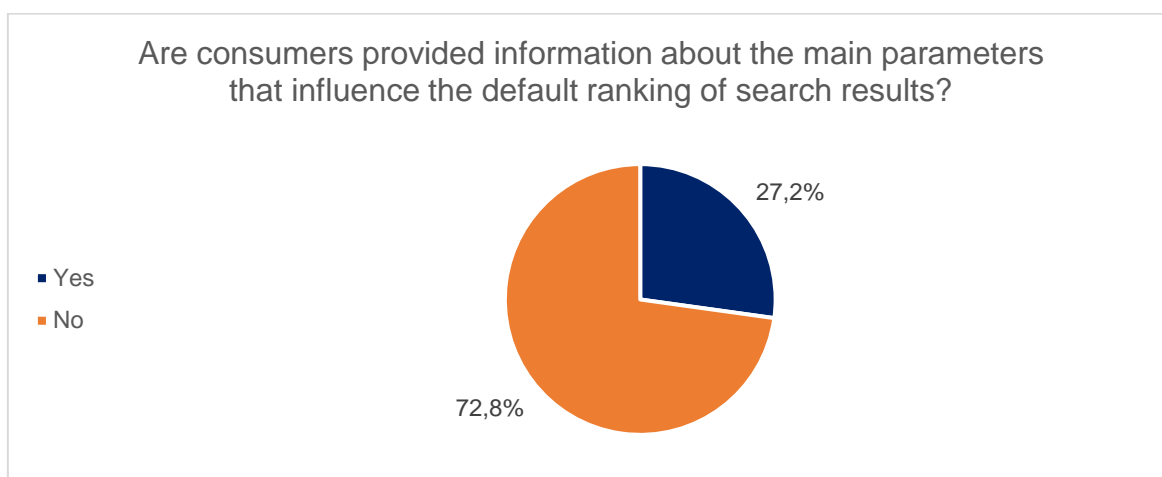
Furthermore, the sweep carried out in the context of the study, as mentioned, also looked at the **information about the search results ranking parameters**. The data shows that only in **27.2%** of searches (or **35%** of websites – 30 out of the 85 websites), consumers were informed about the **parameters influencing the default search result rankings**.<sup>125</sup> A slightly higher percentage was recorded in another study that looked into alignment of online platforms with the P2B Regulation requirements (that also includes requirements on ranking transparency in B2B context, i.e. *vis-à-vis business users* of the platforms), where in 33.1% of the cases the ranking parameters were listed in the T&Cs of the online intermediation services and online platforms.<sup>126</sup>

As reported in the sweep results for the current study, in almost three-quarters of cases (**72.8%**), **this information was not provided**, leaving users in the dark about the criteria used to rank search results. A visualisation of these results is presented below.

<sup>125</sup> When information on the ranking of the results was presented, it was generally clear, but lacked focus. The general principles were provided (ranking based on the products searches, popular products, or against remuneration from partners), but the exact way in which the ranking was done was never explained or provided.

<sup>126</sup> However, only 25% of the descriptions of the ranking could be qualified as well explained. 'Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation)', available at: <https://op.europa.eu/en/publication-detail/-/publication/d6a287b5-5116-11ee-9220-01aa75ed71a1/language-en>. See also Report from the Commission on the first preliminary review on the implementation of Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (COM(2023)525).

**Figure 1-9: Information provided to consumers about the main parameters that influence the default ranking of search results**



Source: study team

Thus, the analysis indicates that while some websites are in compliance with the legal requirements laid out by the MD, there is a significant variance in how different platforms adhere to these regulations. One of the key areas where this disparity is evident, as is clear from the sweep results mentioned above, is in **the disclosure of parameters influencing search result rankings**. While some platforms provide detailed information about the algorithms and criteria used to generate search results, others offer little to no insight, leaving consumers in the dark about how products or services are being presented to them. This lack of transparency can result in a skewed perception of the available options and impede the consumer's ability to make informed decisions. Consumers may not be aware of the factors that are influencing their search results, such as personalised algorithms based on their browsing history, or the promotion of certain products over others due to paid partnerships. This lack of clarity can lead to a situation where consumers are unwittingly steered towards certain products or services, without a full understanding of the forces at play.

One redeeming aspect observed in the sweep was that in all cases, the consumer was given the opportunity to change the ranking parameters, such as sorting by date added or highest reviews. This feature empowers consumers, providing them with control to customize the results in a way that is most relevant to their needs.

### Consumer Conditions Scoreboard 2023

In the Consumer Conditions Scoreboard, responses were presented from consumers who had made online purchases about the problems they experienced when **searching for or buying products online**. The results showed that the most common problem was advertisements that appeared to have been tailored to the individual (76%<sup>127</sup> of the respondents experienced it), followed by hidden adverts placed within search results (75%), consumer reviews that did not appear genuine (69%), price discounts that seemed too large to be genuine (60%), and social media influencers who appeared to have been paid to promote products without clear disclosure (55%).

In addition, the respondents were asked to indicate how often they did not understand why **the search results** were ordered in the way they were. Notably, 52% of the respondents (comprising “always”/“most of the time”/“sometimes” replies) noted that they experienced such a situation often, with further 23% rarely experiencing it and another 23% never experiencing it. 2% of the respondents answered with “Don’t know”.

<sup>127</sup> The 76% comprise “always”/“most of the time”/“sometimes” replies.

Precisely, the survey has analysed these concerns based on demographic factors. It found that females had slightly higher levels of concern compared to males. Age-wise, the 18-34 age group had the highest levels of concern, followed by 35-54, 55-64, and 65+. Education level did not show significant variations in concerns. Household composition showed that single-person households had the highest levels of concern, followed by married/cohabiting couples without children, single parents with children, and married/cohabiting couples with children.

### Targeted Stakeholder Survey

This survey posed a question regarding the extent to which EU consumer law Directives have **contributed towards achieving transparency and fairness** of personalisation practices including personalised advertising, pricing, offers, ranking and recommendations. The respondent' views varied: 25.2% indicated that these laws have contributed to a great extent,<sup>128</sup> while a larger proportion, 31.3%, believed the contribution to be moderate<sup>129</sup>. A smaller fraction, 14.1%, noted that the Directives have made only a small impact.<sup>130</sup> 11.7% felt there had been no contribution at all.<sup>131</sup> It should be noted also that 17.8%, did not have a clear understanding of the impact of these laws on ensuring fairness and transparency of personalisation practices.

In terms of the type of stakeholders, the significant majority were business associations, making up approximately 39.9% of the total participants. Traders or firms (those selling online, offline or via online marketplaces/platforms) represented about 10.4% of respondents; consumer associations or NGOs made up 11.7% of the respondents. National enforcement authorities, representing 12.3%, also had a notable presence in the data. Both European Consumer Centres (ECC) and National Ministries each represented approximately 6.1% of the total participants. Academics or researchers in the field were the smallest group at 5.6%. Finally, 7.9% of respondents classified themselves as 'other'. A visualisation of this data is presented below.

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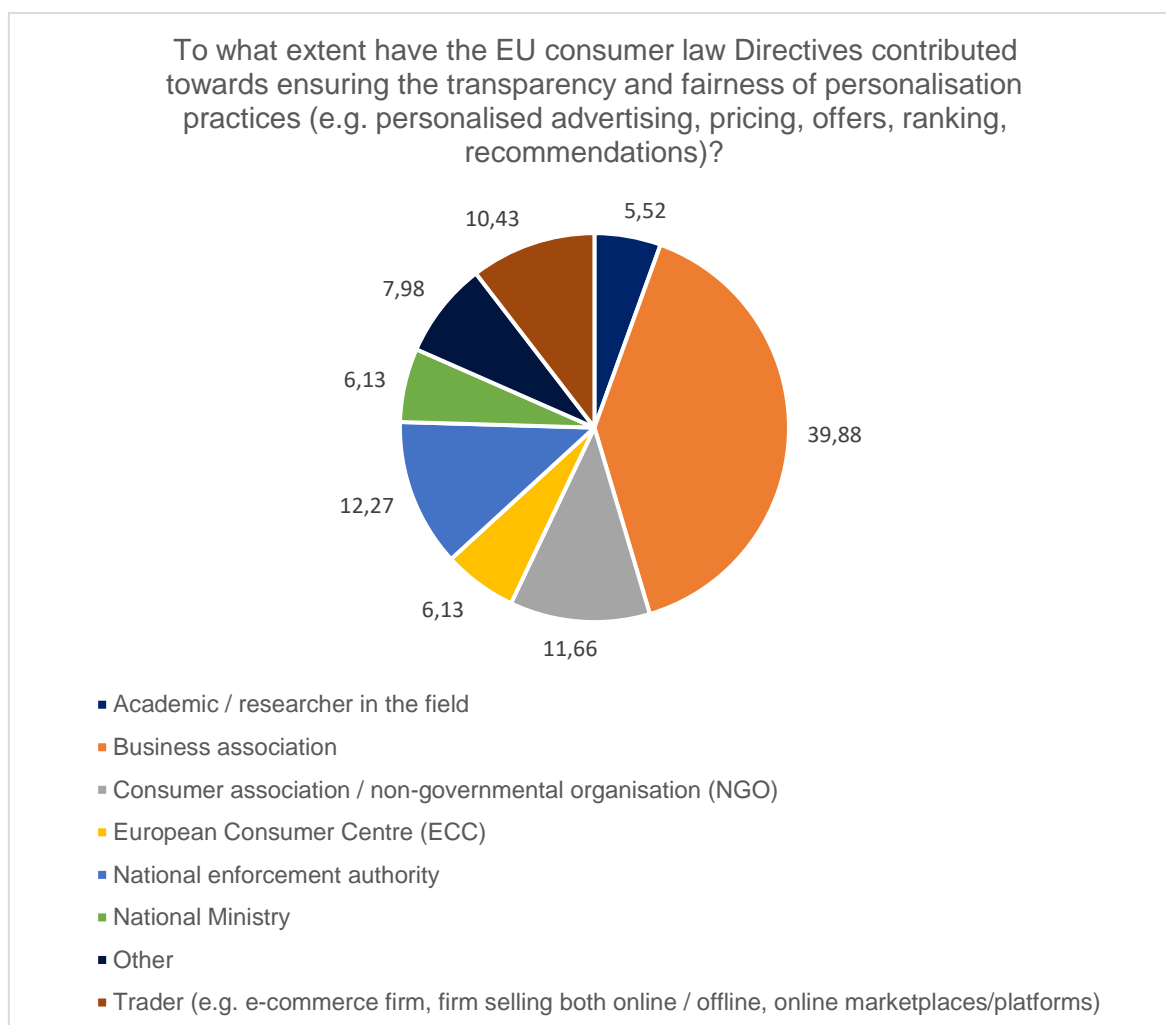
<sup>128</sup> Among these respondents, the majority (49%) were business associations, followed by traders with 17%. 10% were European Consumer Centres, 5% were national enforcement authorities, and consumer associations or NGOs and national ministries were 2% each. In addition, 15% categorised themselves as "Other". No academics or researchers in the field responded "To a great extent".

<sup>129</sup> The breakdown of these respondents is the following: more than half (53%) were business associations, followed by national enforcement authorities, who made up 18%. Traders, including e-commerce firms, those selling both online and offline, and online marketplaces/platforms, constituted 12%. Consumer associations or NGOs represented 8%, while European Consumer Centres accounted for 6%. Both national ministries and respondents who specified 'other' were the smallest groups, each comprising 2%. Academic or researcher respondents were not represented in the feedback.

<sup>130</sup> The breakdown of these respondents is the following: around a quarter (26%) of respondents were consumer associations or NGOs, closely followed by business associations at 22%. National ministries accounted for 17% of the feedback, while national enforcement authorities made up 13%. Both academics/researchers in the field and traders, each represented 9% of the total. The European Consumer Centres comprised 4%, and there were no respondents classified as "other".

<sup>131</sup> The breakdown of these respondents is the following: around a third (37%) of the respondents were consumer associations or NGOs, with academics or researchers in the field and national ministries each making up 16%. Other specified stakeholders and national enforcement authorities each constituted 11% of the respondents. Business associations and the European Consumer Centres each accounted for 5%. There were no respondents identified as traders.

**Figure 1-10: Transparency and fairness of personalisation practices**



Source: study team

In addition,

the respondents were asked about the **change in the frequency of potentially problematic B2C digital practices related to personalisation such as ranking, offers, and recommendations** in the past five years. 15.2% perceived a significant increase in these practices, while 13.9% perceived a more moderate rise. On the other hand, 10.4% perceived no change in the frequency of such practices over the past half-decade. Interestingly, a decreasing trend was observed by fewer respondents, with 9% reporting a decrease and 6.2% identifying a significant drop in these practices. These results suggest a perception of growing potentially troublesome personalisation practices in B2C digital interactions within the past five years.

### Consumer survey

The recent **consumer survey for the study** offers valuable insights into the consumer perspective when navigating through online **search results** during their purchasing journey in the last 12 months.

The survey findings indicate that **21%** of consumers often (always or most of the time) faced difficulties in locating information about the parameters used for ranking search results. In addition, 52% (replies comprising “always”/“most of the time”/“sometimes”) of the consumers surveyed for **the Consumer Conditions Scoreboard 2023** reported that they do not understand the ordering of the search results when buying goods or services via the internet. This represents a significant portion of consumers who are left perplexed by the

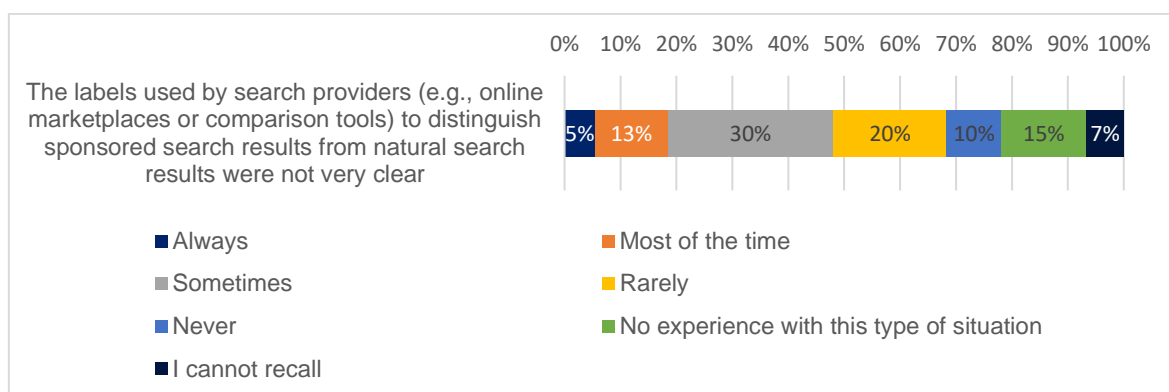
lack of clear and accessible information regarding the factors influencing the organization of search results. This is a clear indication that there is a significant lack of transparency in how online platforms present this crucial information to consumers.

Furthermore, in the consumer survey, an additional **27%** of consumers reported that they sometimes found it challenging to access this information. This group, combined with the 21% mentioned earlier, constitutes nearly half of the surveyed consumers. These consumers are potentially at a disadvantage as they are not fully equipped with the necessary information to make informed purchasing decisions.

On a more positive note, **30%** of consumers stated that they rarely or never faced difficulties in locating information about ranking parameters. This shows that there is a portion of online platforms that are succeeding in providing clear and accessible information to consumers, which is indeed commendable.

In addition, the consumers were asked whether they experience that **the labels used** by search providers (e.g., online marketplaces or comparison tools) to distinguish **sponsored search results** from natural search results were not very clear. A small portion of the respondents (5%) marked that they always experienced this particular situation. Meanwhile, 13% of respondents encountered it most of the time. The largest group of respondents, 30%, indicated that they experienced this situation sometimes. On the other hand, 20% of respondents said they rarely experienced this situation, while 10% claimed they never encountered it. In addition, 15% of respondents stated that they have no experience with this type of situation at all. Lastly, 7% were unable to recall whether or not they had experienced this situation. A visualisation of this data can be found in the graph below.

**Figure 1-11: Unclear labels distinguishing sponsored results from natural search results**



Source: study team

Thus, the consumer survey shows that while there are platforms that are successful in providing clear and accessible information to consumers, there is a substantial proportion of consumers who continue to struggle in this regard. The introduction of Article 7(4a) of the UCPD and Art.6a(1)(a) CRD, as mandated by the MD, is a positive step towards addressing this issue. However, it is crucial that traders fully comply with this requirement to ensure that consumers are empowered to make informed decisions, thereby fostering a fair and transparent online environment.

### Business survey

Answering questions to the business survey conducted within this study, 18% of the respondents noted that advertising (including personalised ads) involves legal uncertainty for their company.

In addition, the results of the survey suggest that **the average number** of employees working on incorporating information about online search results ranking and disclosing paid placements is 2.2, and they work for an average of 22.5 days on this task.

From the business perspective, dedicating 2.2 employees for an average of 22.5 days might seem like a significant investment of human resources and time. However, this investment is crucial in ensuring compliance with the new legal requirements and in fostering a more transparent online environment. It is also worth noting that these figures are **averages**, and the actual resources required **will vary** depending on the size of the business, the complexity of its online platforms, and the extent of paid placements used.

It is possible to say that the business survey highlights the practical implications and costs for companies operating in compliance with Art. 7(4a) UCPD and Art.6a(1)(a) CRD.

### 1.2.3.3 Findings— transparency of ranking of search results and hidden advertising

Overall, the data before mentioned and, particularly, the (limited scale) sweeps and the consumer survey, reflects a concerning lack of transparency in the online ecosystem. The lack of transparency regarding **consumer information on search result rankings** is a significant issue that can impact user trust and decision-making. While the opportunity for users to change ranking parameters is a positive aspect, it is not enough to compensate for the lack of clarity in other areas. It is imperative for online platforms to prioritize transparency and provide users with the necessary information to make informed choices, thereby building a solid foundation of trust and integrity in the digital realm.

Moreover, the presence of **paid placements** is another area where transparency is often lacking in online platforms. While some platforms go to great lengths to clearly label content that has been sponsored or promoted, distinguishing it from organic content, others are less scrupulous, leaving consumers unable to differentiate between the two. This is problematic because sponsored content may be presented in a way that makes it appear more trustworthy or relevant than it actually is. In some cases, paid placements may be virtually indistinguishable from organic content, leading consumers to make choices based on incomplete or misleading information.

Thus, notwithstanding the positive impact of the Article 7(4a) and point 11a Annex I of the UCPD and the new requirements in Art 6a CRD introduced by the MD aimed at improving digital services and fostering a fair online environment, the findings of our 2023 **empirical research** before indicated suggest that there is much more to be done to achieve the MD's goals. The findings indicate that the efforts towards transparency and fairness in the online ecosystem, although noteworthy, are **not yet sufficient to fully protect consumers and empower them to make informed decisions**.

## 1.2.4 Transparency of online marketplaces about contractual parties

### 1.2.4.1 Nature of legal changes through MD – transparency of online marketplaces about contractual parties

Online marketplaces are providers that may also directly sell to consumers, but their defining feature is that they offer a platform for consumers to buy products or services from third party sellers/traders or other consumers. Notably, where the marketplace also acts as a trader itself, it can be unclear to the consumer whether they enter into a contract with the platform or with a different trader. This is particularly relevant if the third party seller is not a trader, in which case EU consumer protection rules do not apply. Therefore, the MD has added **Article 6a to the CRD** which introduces (para 1, points (b)-(d)) respective information obligations for online marketplaces (also, UCPD, Article 7(4)(f)).

On this topic, data was gathered through stakeholder consultations, **sweeps and desk research**. The desk research conducted by the national legal experts under Task 1 – Part 2 (complemented by at least one interview with the national Ministry responsible for implementation) helps in determining to what extent marketplaces comply with this information obligation, and how the information is provided.

#### 1.2.4.2 Sweeps and stakeholder feedback

##### Sweeps

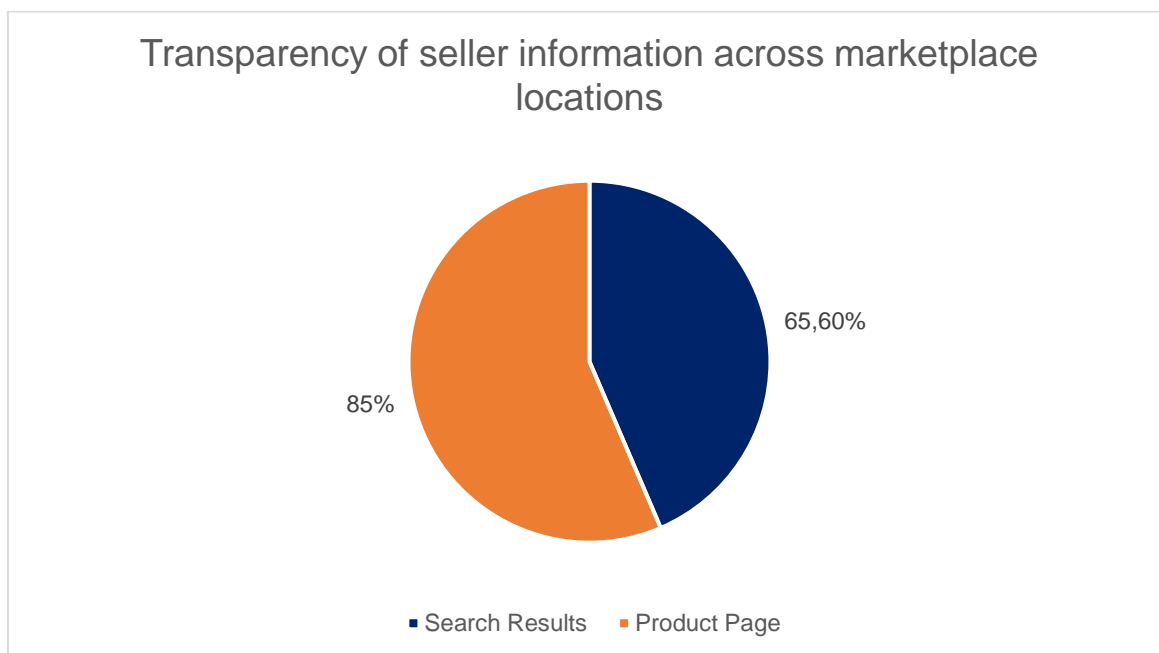
In the current study, a comprehensive sweep of 50 online marketplaces (across 10 Member States) with a total of 212 products accessed provides valuable insights into the current state of these information obligations.

In the majority of instances (**66.5% of products**), the **trader selling the product** was not the marketplace itself.

Transparency regarding **liability** is crucial for consumers to know their rights and possible recourses. Encouragingly, 74.2% of product pages in cases where the trader is different from the marketplace displayed who held the liability for legal guarantees. Additionally, clarity on who bears the liability for consumer's application regarding the Right of Withdrawal (RoW) was visible in 75.9% of the cases.

Consumers need to know if their purchases are from the **marketplace directly or through another seller**. In **65.6%** of instances, this information was readily available on the **search results page**, indicating a reasonably high level of transparency. On the **product page**, the share of products bearing an indication of who the trader is increases to 85% of products (168) on 46 websites. A visualisation of this data can be found below.

**Figure 1-12: Transparency of seller information across marketplace locations**



Source: study team

Distinguishing between a **professional trader and an individual (non-professional)** selling items is essential for consumers in terms of guarantees and consumer rights. In **65%** of the cases, this differentiation was clear and easy to discern.

While there were positive indicators in the aforementioned aspects, there remains room for improvement. In the swept websites, the researchers deemed that in 29.4% of cases, the information about the trader and the marketplace (such as who the trader was, as well as the responsibilities for dispatch, legal guarantee and right of withdrawal) was either unclear or very unclear. **This lack of clarity can lead to consumer confusion** and potential disputes.

##### Stakeholder feedback

As regards transparency, overall, the recent study about the P2B Regulation, in B2B context (already mentioned before in Section 1.2.3 on the different subject, i.e. that of the



transparency on the *ranking parameters in search results*), shed light on a concerning trend regarding platform transparency.<sup>132</sup>

The insights from that study (B2B context) seem to confirm the need to better safeguarding also consumer interests and rights by enhancing the transparency of online marketplaces. The findings of the study also show that **raising awareness** – of platforms, regarding their obligations, and of business users, with regard to their rights under this Regulation – is crucial for effective implementation.

Indeed, this lack of awareness has also emerged from the results of the **business survey** conducted for the current study by the team (see Annex 6 – stakeholder consultations).

### **Consumer Conditions Scoreboard 2023**

According to the Scoreboard, a relatively small number - 7% - of the surveyed consumers indicated they had experienced **problems after purchasing a product on an online marketplace and finding out it was purchased from a private individual rather than a professional seller**.

The survey states that “the main reasons for not buying online are a preference to buy in person or the lack of necessity to do so, although concerns about reliability of e-commerce is also a factor”. While this does not directly address the transparency on contractual parties when buying online, it does highlight that some consumers may have concerns about the reliability of e-commerce, which could include concerns about the transparency of contractual parties.

### **Consumer Survey**

As it follows from the consumer survey there is a notable ambiguity that consumers face when making online purchases.

We note that **20% of consumers “always” or “most of the time” found it unclear** who the seller was and who would handle the delivery. This uncertainty can be particularly concerning, especially if issues arise post-purchase, like the need for returns, replacements, or refunds. When a consumer is not certain of the seller or the responsible entity, addressing these issues can become a daunting task.

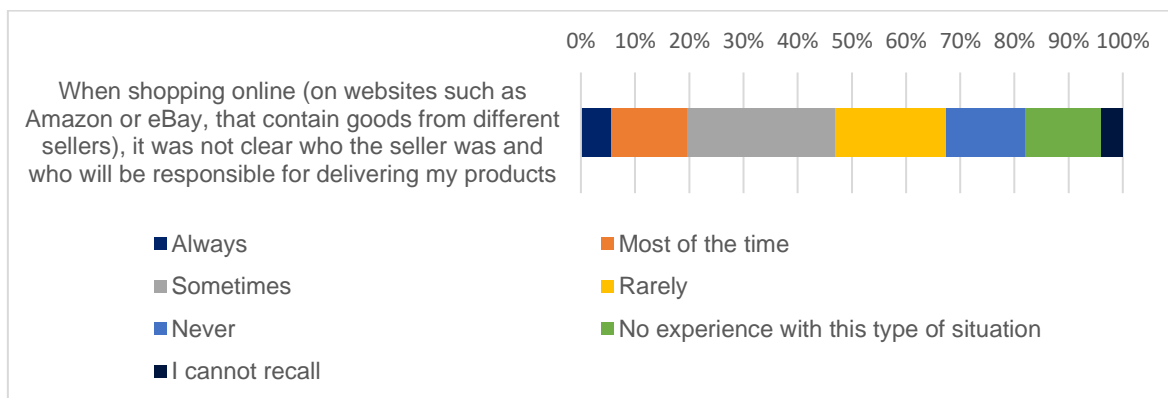
An additional **27% faced this confusion “sometimes”**, suggesting that the problem is not limited to a small fraction but is instead quite pervasive.

On a positive note, 35% indicated that they rarely or never encountered this ambiguity. This implies that there are platforms or systems where clarity is maintained, and best practices can be derived from such instances to guide other platforms.

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<sup>132</sup> European Commission, Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, Gineikytė-Kanclerė, V., Klimavičiūtė, L., Kudzmanaitė, B. et al., Study on evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation) – Final report, Publications Office of the European Union, 2023, available at: <https://data.europa.eu/doi/10.2873/29212>.

**Figure 1-13: Clarity of the identity of the seller and of the party responsible for delivering the products**



Source: study team

## Business Survey

The Business Survey delved into the operational side of online selling. The results suggest that, **on average**, businesses required 2.4 employees working for approximately 26.5 days to manage and incorporate information related to third-party sellers, which is more than the number of employees and days, on average, required for compliance with consumer reviews or ranking of search results (as discussed in their respective sections).<sup>133</sup> However, it should be borne in mind that these **figures are averages** and the actual numbers can **depend on factors** such as the size of the business, the complexity of the information and the efficiency of the employees. This indicates a significant operational requirement, showcasing that transparency and clarity are not just 'add-ons', but necessitate dedicated resources.

## Targeted Stakeholder Survey

The targeted stakeholder consultation carried out within this study contained a question on the extent to which the MD has strengthened consumer protection by ensuring more **transparency on whether the third party offering products through online marketplaces is a trader or a consumer**. The results showcased varied perspectives. Approximately 29.5% of respondents believed that the MD had greatly strengthened consumer protection in this regard.<sup>134</sup> A further 21.2% felt that it had moderately enhanced protection.<sup>135</sup> Conversely, 12.1% perceived that the MD had only minimally impacted consumer protection, while 3.8% believed it had no effect at all. Notably, a considerable 33.3% of respondents were unsure about the extent of the impact of the MD in this aspect.

In terms of the types of stakeholders who responded to this question, the following picture emerges. The groups with the highest representation are business associations, comprising approximately 41.7% of the respondents. The next most sizable group is the National enforcement authority, making up about 13.7% of responses, followed closely by Consumer associations or NGOs at 12.1%. Traders (including e-commerce firms, firms selling both

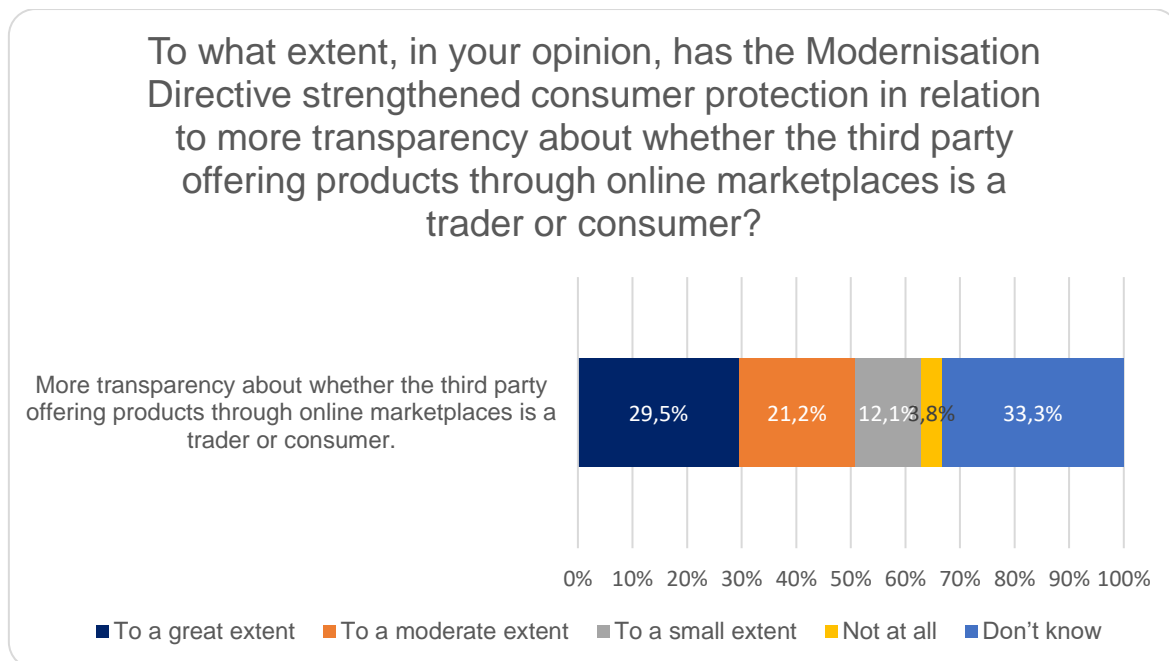
<sup>133</sup> However, it should be mentioned that the **highest perceived costs** related to the provision of information on the criteria used for explaining **the search result rankings and the verification of online reviews** to ensure they are authentic.

<sup>134</sup> The breakdown of these respondents is the following: around half of the respondents were business associations, comprising 51% of the total. This was followed by traders (which includes e-commerce firms, firms selling both online and offline, and online marketplaces/platforms), who accounted for 15%. European Consumer Centres and national enforcement authorities both represented 8%, as did respondents who specified 'other'. Both consumer associations or NGOs and national ministries each made up 5%, and academic or researcher respondents in the field were the least represented at 3%.

<sup>135</sup> The breakdown of these respondents is the following: more than a third (39%) of the respondents were business associations, while national enforcement authorities represented 29%. Consumer associations or NGOs accounted for 14% of respondents, and national ministries composed 11%. Traders made up 7% of the total number of respondents. There were no respondents from academics or researchers in the field, European Consumer Centres or those who were categorised as "other".

online and offline, and online marketplaces/platforms) make up roughly 9.8% of the respondents. It is seen that about 8.3% of the participants fall under the category 'Other', which could include a range of different entities not covered in the aforementioned groups. National Ministries account for 6% of responses, while the European Consumer Centres (ECC) represents 4.5%. Finally, the least represented group is Academics or researchers in the field, at 3.8%.

**Figure 1-14: Strengthened transparency regarding whether the third party is a trader or a consumer**



Source: study team

### 1.2.4.3 Findings - transparency of online marketplaces

The analysis of the sweeps and stakeholder consultations (consumer survey, Consumer Conditions Scoreboard 2023, targeted stakeholder survey) indicate the following: the online marketplaces implemented new information requirements, overall, to a considerable extent (see results of the sweep), but at the same time, a **relevant percentage of consumers buying on-line remain to date unsure about the seller's identity** and the party responsible for product delivery. This emphasise the need for further monitoring and measures to strengthen compliance and trust among both consumers and businesses.

## 1.2.5 Online consumer reviews and social endorsements

### 1.2.5.1 Nature of legal changes through MD - consumer reviews and social endorsements

Similarly to the obligation for traders to provide information on search results ranking parameters, as per Article 7(6) of the UCPD they are also obliged to provide information about whether and how the trader ensures that consumer reviews on their website or app are authentic. Annex I of the UCPD also blacklists (points 23b and 23c) specific practices relating to fake reviews. Those new provisions aim at addressing the practice of traders to place fake reviews that promote their products but are not actually provided by a real consumer who has bought and/or used the product. Like the obligation on search results transparency, this information obligation is equally suitable to be checked through the market sweep.

On this topic, data was gathered through **sweeps and stakeholder consultations (consumer survey, business survey, Consumer Conditions Survey 2022, targeted stakeholder survey)**.

### 1.2.5.2 Sweeps and stakeholder feedback

#### Sweeps

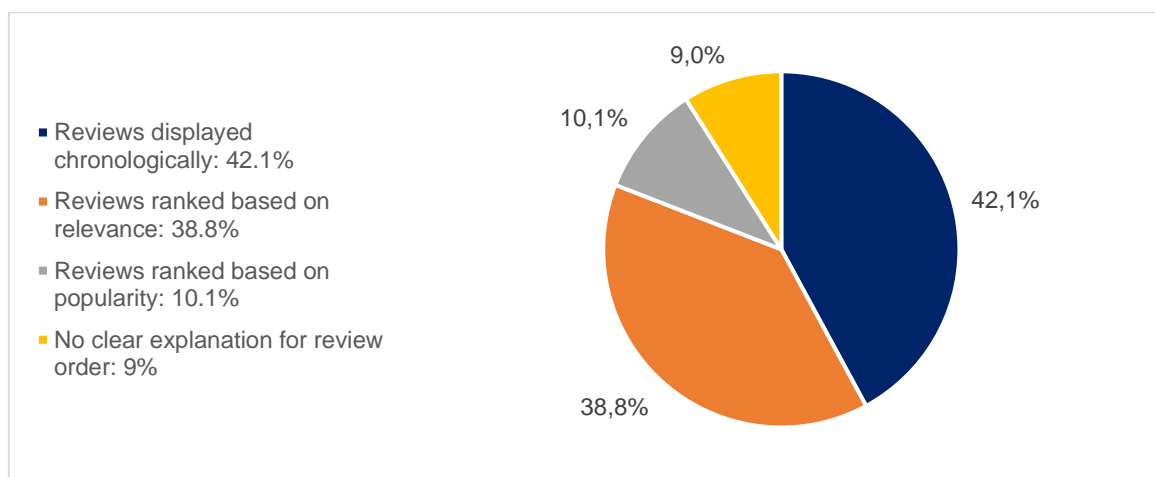
The targeted sweep results provide an insightful glimpse into the current landscape of online consumer reviews across a diverse set of websites and apps. 85 websites in 10 Member States were screened and consumer reviews were present on 52 websites.

Among the 52 websites allowing consumer reviews, exactly **half of them** (26) provided **information on the use and processing of the reviews**.

As concerns **where information on the reviews is located**, a notable finding is the common practice of segregating information related to the processing and use of reviews from the section where reviews are displayed. In the cases where the websites provided information on the use and processing of the reviews, it was always presented in the terms and conditions of the website.<sup>136</sup> This could potentially affect the transparency sought by the UCPD, as consumers might not take the extra step to navigate to a different section to understand the review's context.

As concerns **how reviews are displayed**, a majority of the websites showed reviews in chronological order, with the latest ones first (accounting for 42.1% of products on 16 sites, or 31% of sites that permitted reviews). In 38.8% of products across 16 sites (or 31% of sites allowing reviews), these were ordered by "relevance", however without a clarification on what this meant. Without a clear definition or criteria, there is potential for manipulation or bias in how reviews are displayed, which might affect a consumer's purchasing decision. On 3 websites, comprising 10.1% of products, reviews were organised by "popularity", reportedly based on user feedback regarding the review's usefulness. In 9% of instances (2 websites), there was no evident rationale for the review ranking. The latter can be particularly problematic, leaving consumers in the dark about the criteria used to display reviews. An additional 15 sites, while allowing reviews, did not display any, making the ranking method undeterminable. The data is presented in the figure below.

**Figure 1-15: The order of displayed reviews by % of products**



Source: study team

We note that only **half of the websites** (i.e. 26 out of 52 websites) allowing reviews **provided information on the use and processing of the reviews**. Such measures are

<sup>136</sup> On the websites, the link to the terms and conditions could either be accessed via a link located close to the reviews or through the general 'small print' of the websites (i.e. by scrolling to the end of the page and clicking on the T&C section).

crucial in maintaining trust in the review system. Moreover, allowing sellers the opportunity to respond to reviews in all observed cases promotes a two-way communication channel, fostering transparency and accountability. In terms of the verification of review authenticity, the information published by some websites explains that a review can only be left by customers having bought the product on the website, whereas in others anyone can leave a review. Nonetheless, the latter label the reviews by users having bought the product as “confirmed purchase”.

It should be mentioned that the sweep did not return any findings on the **existence of incentivised reviews**. One caveat is that it is likely that incentivisation would emerge only when the user is asked to provide a review, thus after a purchase and was beyond the scope of this sweep.

The main problem identified by the sweeps relating to reviews is rather widespread omissions on the part of the screened online traders regarding the consumer reviews (only half of the 52 websites allowing consumer reviews provided **information on the use and processing of the reviews**). Further, **ranking consumer reviews by ‘relevance’ is unclear and opens the possibility for the seller or website to alter the results presented in a non-transparent way**.

### Consumer Survey

The consumer survey paints a telling picture of the quest for transparency in the virtual world. A significant 30% of consumers lamented the frequent obscurity they encounter when attempting to find info how the reviews are collected and whether the company ensures that published reviews are made by real customers. This sizable proportion highlights a pressing concern: in an era of information overload, why is crucial data about review validation so elusive? The issue does not end here. Another 26% expressed that they “sometimes” face this challenge, indicating that the problem is widespread, albeit with varying intensities across different online platforms. Interestingly, 24% of consumers rarely or never grapple with this problem. This latter group's experience suggests that certain platforms maintain commendable transparency standards, or perhaps, some consumers possess superior digital navigation skills. In particular, the survey brings to light a demographic trend. Younger individuals reported fewer difficulties in accessing information about review sourcing than their older counterparts. This discrepancy might be a testament to the digital adeptness of the younger generation or perhaps an indication of a broader digital literacy gap.

### Business survey

The Business Survey provides a window into the operational side of online reviews. The findings reveal that businesses are not oblivious to the demands of transparency. The results suggest that companies, **on average**, designate 2.1 employees specifically for the task of managing online reviews. Moreover, it has been reported that these employees spend nearly 24 days processing and verifying the integrity of online feedback. Such significant resource allocation underscores the importance that businesses place on nurturing a genuine and trustworthy online review ecosystem. Obviously, as reported for previous topics, actual numbers depend on various factors.

### Consumer Conditions Survey 2022

In the Consumer Conditions Survey 2022 (feeding into the Consumer Conditions Scoreboard 2023), consumers were asked how often they encounter consumer **reviews that do not appear genuine while searching for or purchasing products online**. The responses revealed varying levels of encounters with potentially ingenuine reviews. Specifically, 9.0% of the respondents reported that they “always” come across insincere reviews. Similarly, a larger proportion, 24.1%, claimed they experience such reviews “most of the time” when shopping online. The largest group of consumers, amounting to 35.6%, reported that they “sometimes” encounter seemingly not genuine reviews. Meanwhile, a smaller portion of the respondents, totalling 18.0%, stated they rarely come across

suspicious consumer reviews. Finally, 12.3% of consumers stated that they never encounter consumer reviews that seem disingenuous during their online shopping experiences. A visualisation of these results can be found in the figure below.

**Figure 1-16 - Consumer reviews that do not appear genuine**



Source: study team, based on data in the Consumer Conditions Survey

Based on the findings of the survey, it was observed that a significant majority (69%, comprising “always”, “most of the time” and “sometimes” replies) of consumers who had made an online purchase in the past 12 months, have encountered customer reviews that did not seem genuine. The perceived non authenticity of online consumer reviews can be considered a common issue experienced by online shoppers. The Scoreboard indicates that looking at trends since these questions were introduced in 2020, the experience of consumer reviews that do not appear genuine has slightly risen by a small 2 percentage point increase<sup>137</sup>.

When comparing the results from the consumer survey referenced above and of the Consumer Conditions Scoreboard 2023, the differences in the formulation of the question should be borne in mind. The former focuses on the *perceived difficulty of ascertaining the authenticity* of the reviews, whereas the latter focuses more on the *perceived authenticity* of online reviews in the broader context of potential problems encountered by consumers while making purchases online.

### Targeted Stakeholder Survey

As part of the Targeted Stakeholder Survey, participants were asked to assess **the impact of the MD in enhancing consumer protection**, specifically focusing on the transparency regarding the processing and verification of consumer reviews that traders collect and make available. The responses varied: 25% of the stakeholders<sup>138</sup> believed that the MD significantly strengthened consumer protection in this regard. Approximately 19.7% noted that it had a moderate impact on improving transparency. Conversely, 13.6% of

<sup>137</sup> See the Consumer Conditions Survey – executive summary, p. 22, available at: [131d2167-ade8-4838-ad44-bcaa143f1f38\\_en \(europa.eu\)](https://ec.europa.eu/consumer-conditions-survey/).

<sup>138</sup> The percentages on the types of stakeholders who responded to this question are identical to the one presented under "Transparency of online marketplaces about contractual parties".

respondents found it only slightly effective, and 7.5% believed it had no impact at all. However, it is noteworthy that a considerable percentage, 34.0%, were uncertain about the impact of the MD.

### 1.2.5.3 Findings - consumer reviews and social endorsements

The detailed empirical data previously discussed, thoroughly examining an array of online platforms, presents a comprehensive perspective. A number of platforms demonstrate a commitment to adhering to the established legal requirements, cultivating an atmosphere of trust and credibility. Nevertheless, as per the sweep results, half of the screened websites appear to fail in **providing information on the use and processing of the reviews**. Also, there remains an opportunity to refine practices, particularly concerning the criteria for ranking reviews based on 'relevance'. Moreover, examples identified through the research from Italy and Spain found fake reviews in between 2% and 8.5% of the cases examined.<sup>139</sup> This indicates that further efforts are needed. In Spain, the results of the abovementioned research were presented to the Spanish consumer protection authority, but no action was taken by the latter.<sup>140</sup> In Italy, following the discovery by *Altroconsumo* (the Italian Consumer Organisation) of 'an organised system' of producing fake reviews, criminal proceedings were filed. Nonetheless, the cases were dismissed by the prosecution in two of the four cases.<sup>141</sup> Furthermore, the relevant report with the findings was shared with the Italian consumer protection and competition agency (AGCM).<sup>142</sup> A more transparent approach to this criterion could foster a more consistent user experience and further enhance consumer trust.

The surveys examined above accentuate the consumers' quest for clarity. While many consumers express ease in navigating the digital terrain of online reviews, a notable segment encounters challenges in discerning the origins and authenticity of these reviews. Additionally, the subtle distinction between younger and older demographic groups suggests evolving digital competencies, with younger individuals often navigating with more ease.

In conclusion, whilst it seems that many platforms and businesses have improved their practices related to consumer reviews, e.g. in presenting consumer reviews, ensuring their authenticity, detecting fake reviews, there remains much room for improvement among some. **The management of consumer reviews**, including steps to ensure the **authenticity** of the reviews, is a crucial aspect of online platforms that requires greater transparency. Some platforms may engage in practices such as deleting negative reviews or promoting positive ones, creating a biased representation of consumer satisfaction. This lack of transparency can significantly undermine consumer trust and confidence in online platforms. Greater guidance from EC and CPAs could act as a beacon, directing businesses to best practices and ensuring the system's efficacy.

## 1.2.6 Telephone calls at basic rate in passenger transport services

### 1.2.6.1 Nature of legal changes through MD - basic rate for telephone calls

Article 21 of the CRD, which obliges traders to operate post-purchase customer telephone hotlines at basic rate (meaning without surcharge for callers), did not apply previously to passenger transport services. This was changed by the MD, which extended the scope of that provision to passenger transport services. While this practice can be checked through the market sweep by verifying the hotline rates that traders list on their websites (if

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<sup>139</sup> Spanish Organisation for Consumers and Users (La Organización de Consumidores y Usuarios, OCU), 'Fake reviews on Amazon, Tripadvisor and Booking' ('Fake reviews en Amazon, Tripadvisor y Booking'), 1 June 2021, <https://www.ocu.org/consumo-familia/compras-online/noticias/fake-reviews>.

<sup>140</sup> Euroconsumers, 'Enforcers are failing consumers on fake reviews', 28 June 2023, <https://www.euroconsumers.org/enforcers-are-failing-consumers-on-fake-reviews/>.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid. At the time of the publication of the source, response from the authority was pending.

available), it has not been possible to verify the actual rates in particular in cases where no information is provided online.

The analysis is based on the **sweep**.

### 1.2.6.2 Sweeps - basic rate for telephone calls

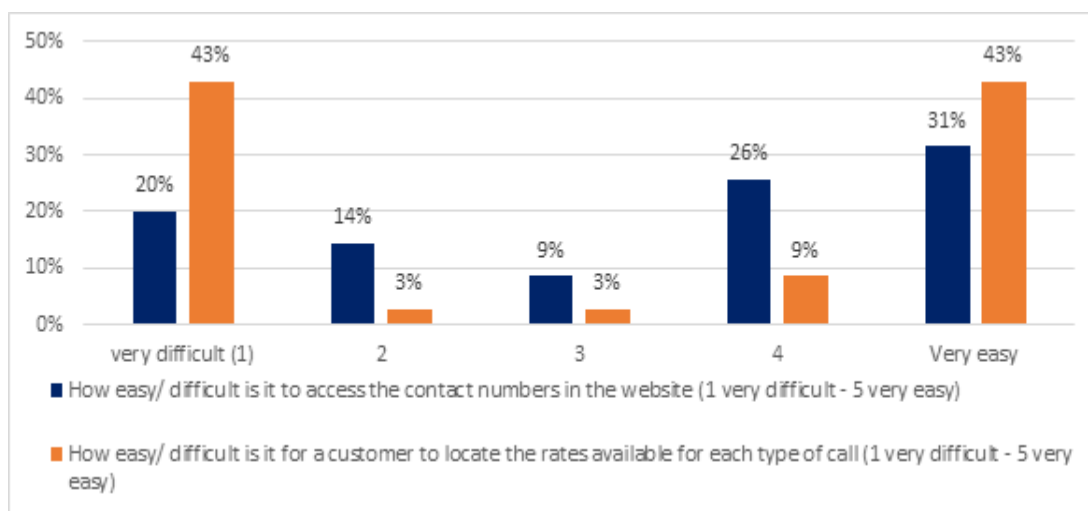
#### Sweeps

The sweeps carried out on a diverse range of 50 websites (in 10 Member States), including airlines, bus and railway transport services, and multiple modes of transportation, as well as ticket intermediaries provide insights into the industry’s alignment with the extended scope of Article 21 of the CRD. In particular, this sweep looked at the types of telephone numbers the customer transport companies want the consumers to use (normal/premium/free number).

**68%** of the surveyed websites have incorporated a dedicated hotline. While this is a large majority, it also indicates that there's a segment (32%) yet to prioritize this mode of consumer interaction, representing an area for further development and alignment.

A closer examination of the **accessibility** (finding the contact phone number and the rate) of these hotlines reveals varied user experiences. For the researchers, a streamlined approach was evident in **about 30-40%** of the platforms, where they could locate the hotline (31%) and the rate within one or two clicks (43%), a model of user-friendliness. However, a smaller fraction of websites (20%) necessitated a more cumbersome navigation process, requiring the researchers to engage in over five clicks to pinpoint the hotline number. The Figure below shows the relevant data at a glance.

**Figure 1-17: How easy / difficult is it access the contact phone number and the rate available for the call (n=36)**

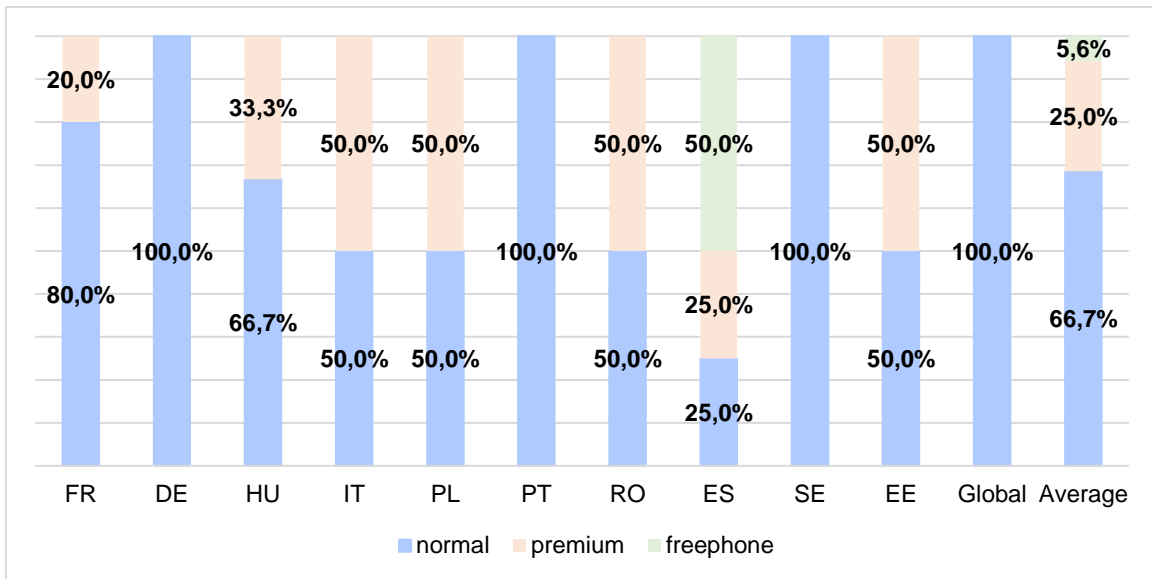


Source: study team

Importantly, as regards **compliance with Art 21 CRD requirement** of a “basic rate” for post-purchase contacts, the sweep reveals with respect to the **cost** structures that **a majority** of the swept traders’ hotlines operate at **a domestic rate (normal, i.e. fixed/mobile rate)**, again signifying industry-wide alignment with the Directive. Nonetheless, **a quarter** of these services charge a premium, though it is reassuring to note that in **most** such instances (8 out of the 9 cases identified), the cost is transparently communicated to the consumer. A sliver of services (6%) offers toll-free communication, showcasing a commitment to elevating consumer experience. Interestingly, in scenarios where multiple numbers are available, a handful of platforms take the onus of elucidating the cost implications based on the nature of the call.



**Figure 1-18: What kind of phone number is provided on the website?**



Source: study team

In the four cases identified where more than one number was present, consumers were informed on the website that there were different rates based on the type of phone call. The number related to 'existing bookings' (as covered by the legal requirements of the MD). Where the premium numbers were available, the website generally provided the cost of the call. In the tested websites in the sweep, overall, **the premium numbers were related to services other than post-contractual consumer services**, such as calls for the sale of tickets or additional services to a flight (booking a specified seat, additional baggage etc.).

### 1.2.6.3 Findings - basic rate for telephone calls in passenger transport services

Overall, the landscape of post-purchase telephone hotlines in passenger transport services, following Art. 21 CRD, is positive, based on the results of the limited scale sweep. It appears that most platforms have embraced the Directive, enhancing consumer accessibility and transparency. This trend underscores the industry's recognition of the importance of post-purchase support and the trust such services can instill in consumers. However, some differences in the implementation, in levels of accessibility, and a spectrum of cost structures suggest opportunities for refining the consumer experience.

## 1.2.7 Pre-contractual information and formal requirements

### 1.2.7.1 Nature of legal changes through MD – pre-contractual information and formal requirements

The MD made a number of amendments and additions to the CRD, Articles 5-8, relating to pre-contractual information and formal requirements, e.g., on a reminder of legal guarantee of conformity of goods, digital content and digital services, information about functionality, compatibility and interoperability of goods with digital elements, digital content and digital services, information on the personalisation of prices (see analysis above relating to Art.6 CRD), contact details of the trader in distance and off-premises contracts, etc.

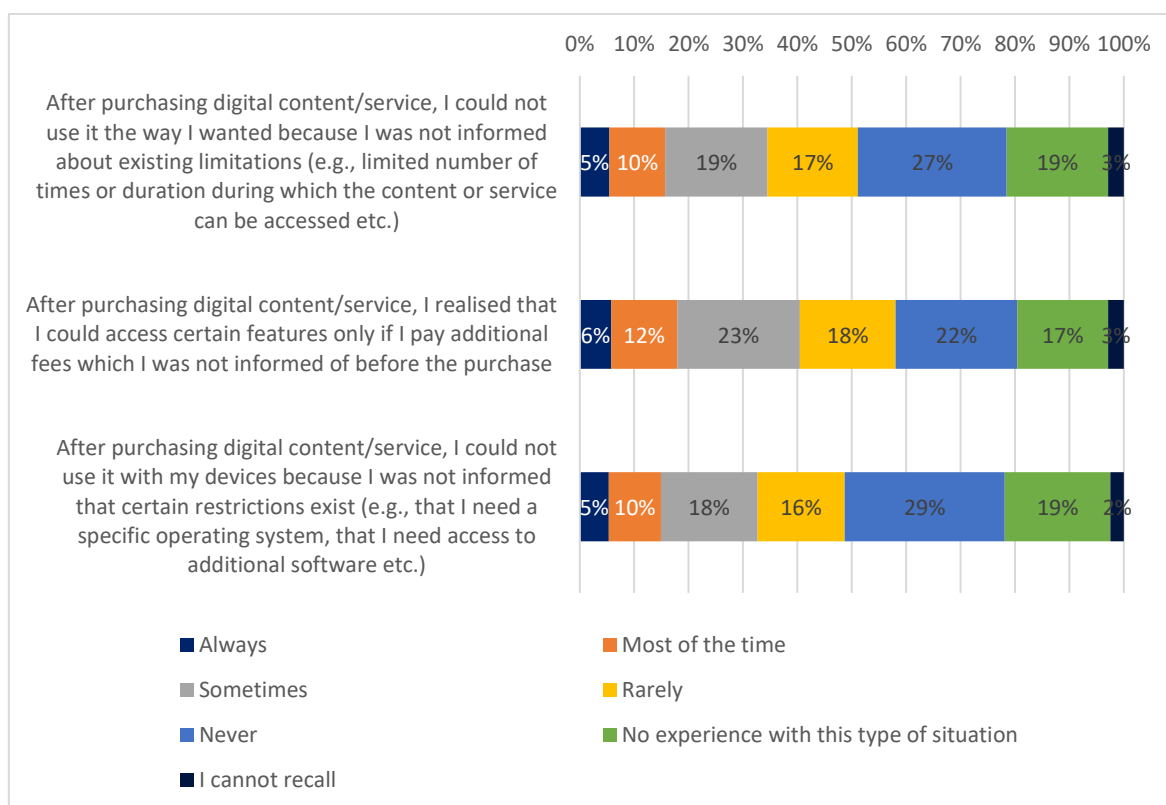
The analysis of some of these elements and of some broader aspects in this section is based on stakeholder feedback collected through **the consumer survey conducted within this study and the targeted stakeholder survey**.

### 1.2.7.2 Consumer surveys

#### Functionality and interoperability

The **consumer survey conducted within this study** contained questions on consumer experiences which can be used for observations on the information to the consumers on the functionality and interoperability in the area of digital content and digital services. The survey responses indicate that 5% of the consumers always experienced limitations in usage after purchase due to a lack of information about such limitations, such as restricted access times or duration. A further 10% encountered this issue most of the time, 19% sometimes, and 17% rarely, while 27% reported never experiencing it. However, 19% of respondents had no experience in this type of situation, and 3% could not recall their experience. At the same time, responses representing consumers' encounters with unexpected additional fees for certain features after making a purchase which they were not informed about beforehand show that 6% always faced this issue, 12% most of the time, 23% sometimes, and 18% rarely, whereas 22% never experienced it. Further 17% had no experience with this situation, and 3% could not recall their experiences. A visualisation of this data can be found in the figure below.

**Figure 1-19: Consumer Experiences with Functionality and Interoperability in Digital Content and Services**



Source: study team

In addition, some responses illustrate the frequency at which consumers could not use purchased digital content or services with their devices due to undisclosed restrictions, such as the need for a specific operating system or additional software. Here, 5% of respondents always encountered this issue, 10% most of the time, 18% sometimes, and 16% rarely. Meanwhile, 29% never faced this issue, 19% had no experience in this type of situation, and 2% could not recollect their encounters.

In addition, in the framework of the **Consumer Conditions Survey 2022**, 51% of the respondents (comprising “always”/“most of the time”/“sometimes” replies) encountered insufficient information about features / functioning of “free” online services when making online purchases. Further 23% rarely encountered it, while 24% reported never encountering such a situation. 2% of the respondents answered with “Don’t know”.

The abovementioned results indicate the existence of issues regarding information about the functionality and interoperability of digital content and digital services. A certain proportion of consumers, albeit not necessarily a significant proportion, reported having faced problems where they could not utilise digital content or services as intended due to either undisclosed access limitations, unexpected additional fees for accessing certain features, or device compatibility restrictions. A consistent trend across all the parameters is a certain lack of clear, upfront information provided to consumers about potential limitations or additional requirements.

### Contact information of the company

The consumer surveys sheds light on the access to the contact information of the company for the consumers shopping online.

The findings shows that **54%** of the consumers **when asked about the ease of finding contact information**, reported that during their online shopping experiences, they could readily access the desired contact information of the company. This ease of access, either always or most of the time, underscores the initiatives taken by most digital platforms to ensure that their customers feel connected and supported. For these consumers, the digital purchasing journey is complemented by the assurance that behind the virtual storefront, there is a tangible line of communication should they wish to reach out.

However, as with any spectrum, there is a varied range of experiences. An additional **21%** of respondents conveyed that they could sometimes locate the company's contact details. This intermittent accessibility suggests that while these platforms might have the requisite information available, it may not be as prominently displayed or as intuitively positioned as necessary. Such inconsistencies can lead to varied user experiences, with some consumers feeling adequately supported, while others might perceive it as a digital wild goose chase.

On the more concerning end of the spectrum, 16% of consumers perceived that they could rarely, if ever, find the contact information they sought. The absence or difficulty in accessing contact details can not only lead to frustration but can also seed doubts about the credibility and customer-centricity of the platform.

### The Targeted Stakeholder Survey

In the **Targeted Stakeholder Survey**, when stakeholders were asked to gauge the extent to which the MD strengthened consumer protection specifically regarding better **consumer information about “free” digital content and services provided in exchange for the commercial use of personal data**, there was a mixed response. 27.4% believed the directive had greatly enhanced consumer protection,<sup>143</sup> while 17.56% felt the improvements were moderate or small,<sup>144</sup> and 5.3% saw no impact. 32.0% were unsure. When further asked about the extent of the contribution of EU law in protecting consumer rights when using free services involving commercial use of the consumer's personal data, 25.1% responded that EU law has contributed to a great extent, 26.9% perceived the contribution to be moderate, and 12.8% thought the contribution is small. Only 9.2% saw no contribution at all and 25.7% did not know.

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<sup>143</sup> The breakdown of these respondents is the following: around 2/3 (64%) of the respondents were business associations, traders constituted 14% of the total. National enforcement authorities accounted for 8%, and European Consumer Centres represented 6%. Consumer associations or NGOs, national ministries, and those categorised as 'other' each composed 3% of the respondents. There were no respondents identified as academics or researchers in the field.

<sup>144</sup> The breakdown of these respondents is the following: around a third (35%) of the respondents were business associations, with consumer associations or NGOs constituting 22% of the total. National enforcement authorities accounted for 17%, while traders made up 9%. Academics or researchers in the field and European Consumer Centres each represented 4% of the respondents. National ministries were 7% of the total, and those categorised as 'other' accounted for 2%.

Additionally, in the framework of the [Consumer Conditions Survey \(CCS\) 2022](#), consumers were asked whether they experienced unclear [explanation on the use of their personal data during an online purchase](#). Notably, 55% of the respondents (comprising “always”/“most of the time”/“sometimes” replies) noted that they experienced such a situation often, with further 22% rarely experiencing it and another 21% never experiencing it. 2% of the respondents answered with “Don’t know”.

### 1.2.7.3 Findings

In terms of functionality and interoperability, a noteworthy proportion of consumers reported facing issues due to undisclosed limitations, unexpected additional fees, and device compatibility issues. These findings underscore the need for greater transparency and upfront information about potential limitations or requirements. Regarding personal data, responses varied in the targeted stakeholder survey on how much the MD and EU law have contributed to offering better consumer information about “free” digital content and services provided in exchange for personal data use.

### 1.2.8 Conclusions

Additional costs incurred due to the implementation of the MD, particularly disclosure-related clauses, were reported, with varying figures noted between the business survey, which indicated small costs, and the targeted consultation, which pointed to higher compliance costs (for further details, see Accompanying Annexes to the Final Report). Several MD provisions are specific to online platforms and marketplaces, likely causing the observed disparity in reported costs.

Despite these costs, the overall benefits of the MD for traders and consumers should be acknowledged, as highlighted by business associations and enforcement authorities in the targeted survey. The MD has fostered an environment of enhanced transparency and consumer trust, which can lead to long-term advantages such as increased customer loyalty and a more level playing field for businesses. Compared to the low-to-moderate costs associated with the longstanding pre-contractual information requirements of the CRD, the new information obligations of the MD were perceived as relatively more burdensome. However, this may reflect the fact that one-off, CRD-related compliance costs occurred some time ago, whereas the MD requirements are new, affecting perceptions of how burdensome they are. Nevertheless, these initial higher compliance costs are considered a worthwhile investment, as they contribute to a marked improvement in consumer protection standards and potentially reduce future enforcement actions. The survey findings indicate that long-established regulations bear less perceived cost over time, suggesting that initial implementation challenges of the MD may diminish as businesses adapt to its requirements.

In relation to [price reduction announcements](#), stakeholders widely support the changes brought about by the MD. Nonetheless, according to traders, practical challenges persisted, particularly in establishing the ‘prior’ price — the lowest price in the 30-day period before price promotions. In this light, the Commission’s guidance to mitigate this challenge for traders, national CPAs and ministries played a crucial role.

The obligations under the MD for traders to disclose that **prices were personalised on the basis of automated decision-making** have improved transparency for consumers. However, due to the complexity of these technologies, consumers might not fully grasp how these decisions are made and whether such pricing strategies are to their benefit or disadvantage, thereby posing an ongoing challenge for informed decision-making, despite the enhanced transparency.

In terms of the [transparency of rankings of search rankings and hidden advertising](#), the data reveal a worrying lack of transparency in the online environment. This can impact user trust and decision-making. Despite significant steps made by the MD, the research suggests that further improvements are needed to fully protect consumers and empower them to make informed decisions. Furthermore, data suggest that a number of consumers

continue to be uncertain about the identity of the seller and the entity responsible for product delivery, indicating perceptions of a certain lack of **transparency of online marketplaces regarding contractual parties**.

With regard to **consumer reviews and social endorsements**, the data analysed revealed the need to improvement by traders in this area: in providing information to the consumers on the management of the consumer reviews, on ensuring their authenticity, etc.

In addition, with regard to requirement of basic **rates for post-purchase telephone calls** in passenger transport services, the data suggests a positive compliance level with Art.21 CRD, as extended by the MD. Though, e.g. varying levels of accessibility highlight potential opportunities for further refinement of application.

Finally, the data analysed indicates issues in the sphere of **pre-contractual information and formal requirements**. In this regard, consumers report often facing undisclosed limitations, unexpected charges and compatibility problems related to, e.g., product functionality.

The empirical data collected and analysed and the stakeholder feedback indicates that, despite broad support for the changes introduced by the MD, application issues may still arise in practice. Overall, the results suggest that while the MD provisions have enhanced consumer protection and transparency, some challenges remain. Hence, further efforts are required to address these. Finally, the diversity of responses also points towards the need for increased awareness and understanding of consumer rights by consumers.

