



Study on consumers' attitudes towards online Terms and Conditions (T&Cs) Executive Summary

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Background and purpose of the study

Previous research has shown that when buying products and services online, the vast majority of consumers accept terms and conditions (T&Cs) without even reading them. Although by not reading the T&Cs consumers are disempowering themselves, this behaviour can be viewed as rational from a cost-benefit perspective. After all, the costs of reading are high since the T&Cs are often long and written in a complex language, and the benefits low since purchasing the product or service is only possible if the T&Cs are accepted. As such, it would be unrealistic but arguably also unnecessary to expect all consumers to read and comprehend all T&Cs that they encounter: In most cases these T&Cs will not have an impact on the performances of the parties. On the other hand, even in such cases consumers may want to have a short look at the T&Cs in order to assess the reliability of the trader with whom they are about to conclude a contract. Therefore, this research took on a *dual approach* as to how to help consumers assess the substantive quality of the T&Cs.

The first approach was to increase readability. We investigated whether readership and understanding would be increased by **shortening and simplifying the T&Cs**. The assumption was that some consumers are motivated to be informed about (specific parts of) the T&Cs before making a purchase. If consumers are motivated to read the T&Cs, they should be able to *understand* this information. This approach is in line with the case-law of the Court of Justice pertaining to the requirement in Article 5 of the Unfair Contract Terms Directive (UCTD) that terms and conditions must be drafted in plain and intelligible language. According to the Court, this requirement implies that terms must be drafted in such language that the average consumer can foresee, on the basis of clear, intelligible criteria, the economic consequences which derive from these terms for the consumer.¹ Shorter and simpler T&Cs could contribute to the readability of the T&Cs and therefore to better consumer decisions regarding whether or not to conclude the contract with a particular trader.

The second approach was to create effortless awareness. This approach was not focused on increasing the share of consumers who read the T&Cs per se. Rather, it investigated how consumers can be made more aware of the content of the T&Cs, or at least of the quality thereof, without them spending much more effort. To that extent, we investigated whether trust in the T&Cs and purchase intentions would be increased by **adding a quality cue** to the online store, such as the presence of a logo of a national consumer organisation accompanied by the statement "these terms and conditions are fair". The assumption was that when the T&Cs were accompanied by such a statement, consumers would trust the content of the T&Cs more and would

¹ See in particular CJEU 30 April 2014, case C-26/13, ECLI:EU:C:2014:282 (Kásler), point 73.

therefore be more willing to conclude a contract with that trader compared to traders that did not accompany their T&Cs with such a statement. Again, this may then contribute to better decision-making by consumers regarding whether or not to contract.

Method

Preliminary studies

Before developing the main study, we conducted two preliminary studies. These studies provided first insights into consumer behaviour regarding T&Cs and the effects of adding a quality cue.

Preliminary study 1 was an online survey that mainly aimed to 1) provide insight into consumers' general awareness of their rights and 2) explore which alternative strategies consumers may have to reading the T&Cs in order to inform themselves about store-specific terms and conditions. Preliminary study 1 was conducted in **the Netherlands** and completed by 6,045 respondents.

Preliminary study 2 aimed to provide insight into: 1) The effects of quality cues on trust in the substantive quality of the T&Cs and purchase intentions, and 2) Negative consequences of not being sufficiently informed about the T&Cs. Preliminary study 2 was conducted in **the Netherlands** and **Poland**. In total, 1,012 respondents completed the online survey. The two countries included in this preliminary study are different from each other on relevant aspects (consumer empowerment, national income, population density, region) and could therefore provide important information for the design of the main study, particularly on which quality cues should be tested in the main study.

Main study

The main study was conducted in 12 Member States, with 1,000 respondents in each Member State. The country selection was aimed at including a wide variety of countries with respect to region, country size, and GDP/capita. The samples are nationally representative in each surveyed Member State. The main study was conducted in the following Member States: **Estonia, Finland, France, Germany, Italy, the Netherlands, Poland, Romania, Slovenia, Spain, Sweden, and the United Kingdom**.

The study consisted of three online experiments. Experiment 1 focused on shortening and simplifying the T&Cs (increasing readability); experiments 2 and 3 focused on adding a quality cue to online stores (creating effortless awareness). In each experiment, consumers visited an online store. These online stores were dynamic in the first two experiments and static (pictures) in the third. In the dynamic online stores consumers went through all the steps of an ordering process. The online stores contained terms and conditions, which had to be scrolled through to continue the ordering process (default exposure in experiment 1) or could be accessed by clicking on a link (free exposure in experiment 2).

In experiment 1, we investigated whether shortening and simplifying the T&Cs would increase readership and comprehension of the T&Cs and consumers' attitudes towards the T&Cs. For doing this, we varied the length and complexity of the T&Cs. We also examined whether the effects were the same on domestic as on foreign stores. For this purpose, some stores were domestic, i.e. from the same country as the participant, and others foreign (a UK store)². In experiment 2, we focused on the effects of adding a quality cue on consumers' trust in the quality of the T&Cs. The quality cues that were included in this experiment were logos from consumer organisations stating that the terms and conditions were fair. The consumer organisation was either a national organisation or a European organisation. In addition, we investigated whether adding a reading cost cue –

² The foreign store for UK respondents was an Irish store.

stating that “reading the terms and conditions takes less than five minutes” – would affect the number of respondents accessing the T&Cs to read them. Again, we examined whether the effects were the same on domestic as on foreign stores. In experiment 3, we also focused on the effects of adding a quality cue on consumers’ trust in the quality of T&Cs. Quality cues that were examined were the consumer organisation endorsements of experiment 2 as well as a customer feedback cue in which customers indicated that the terms and conditions were fair through a star rating system. Again, we examined whether the effects were the same on domestic as on foreign stores. We also investigated whether the effects were the same for existing as for fictitious stores.

Key findings

Knowledge about consumer rights and readership of T&Cs

It has been well established that readership of terms and conditions, privacy notices, end-user licence agreements and other click-through agreements is generally low, although estimated readership varies strongly across studies, ranging from less than 1% to about 65% who read the T&Cs at least partially depending on the specific situation and the methodology used.³ This low readership of terms and conditions is confirmed in the experiments we conducted. Indeed, in the current experiments, the percentage of consumers’ accepting the T&Cs is very high, between 90 and 95%. However, when the opening of T&Cs is optional, only 9.4% open the T&Cs (in the absence of a quality cue). Readership seems to increase when scrolling through the T&Cs is the default option, as 77.9% of the consumers then report to at least scan through the T&Cs.

Blind acceptance of T&Cs may – to some extent – not be problematic if consumers obtain knowledge about their rights and obligations in other ways. If consumers were fully aware of their basic (legally provided) consumer rights, this would reduce the need to read information pertaining to such rights in the T&Cs in two ways. First, where the T&Cs merely reproduce the consumers’ basic (legal) rights, the T&Cs convey information that consumers would already be aware of. Second, where the T&Cs would derogate from these basic (legal) rights to the detriment of the consumer, consumers would be aware of the fact that such derogation is not legally allowed and therefore not binding on them. In both cases, reading the T&Cs would not add very much to the consumers’ knowledge about their rights and obligations. Reading the T&Cs would, however, inform the consumers about other relevant aspects related to the purchase, such as delivery information, dispute resolution, etc.

Yet, both preliminary studies demonstrate that consumers’ knowledge of their basic consumer rights is limited. Moreover, self-perceived knowledge is quite high, which demonstrates that many consumers do not have accurate perceptions of their own knowledge. This may have adverse implications for their approach to reading (or not) terms and conditions: lack of awareness about their ignorance may withhold consumers from obtaining more knowledge by reading T&Cs.

Consumers may also employ other strategies to get informed about the specific content of the T&Cs. In preliminary study 1, Dutch consumers report to need a substantial amount of information before making a purchase online, and delivery information is seen as particularly important. The more consumers shop online, the less information they need to have before making an online purchase. In the same study, about half of the respondents indicate that they would check the Frequently Asked Questions (FAQ) section on the website to look up the information they consider important. That same information is likely to have been included in the T&Cs as well. Consumers that have read the relevant FAQ section will therefore not necessarily see the need to

³ See for instance Milne, G.R. & M.J. Culnan (2004). Strategies for reducing online privacy risks: why consumers read (or don’t read) online privacy notes. *Journal of Interactive Marketing*, vol. 18, 15-29; and Bakows, Y., F. Marotta-Wurgler & D.R. Trossen (2009), Does anyone read the fine print? A test of the informed minority hypothesis using clickstream data. New York University School of Law Working Paper.

look for the same information, but often described in a much more detailed and complicated way, in the T&Cs, as they will rely on the information already obtained.

Experiencing problems due to not reading the T&Cs

When asking about problems that respondents encountered because of insufficient knowledge of the T&Cs, 26.6% of respondents in the Netherlands and Poland indicate that they had encountered a situation in the 12 months prior to the interview where they did not sufficiently know the terms and conditions that applied to a purchase, and experienced problems because of that. In both preliminary studies, delivery issues are most frequently mentioned, followed by issues related to returns. For the majority of problems experienced, the costs involved are below 100 Euro (62.7%) and related to either contacting the seller or an inability to make use of the product or service. Moreover, 66.8% of these problems occur with online purchases. For 37.8% of the problems related to domestic purchases and no less than 65.5% of the problems related to cross-border purchases, consumers blame themselves. Over half (52.7%) of the consumers who experience a problem consider the problem as serious.

Furthermore, of the consumers reporting to have experienced a serious problem due to not knowing the T&Cs, 57.9% did not take any action, not even contacting the trader about the problem. This suggests that a large proportion of consumers who do not read the T&Cs before the contract is concluded are also not likely to take any action against the trader in case of problems.

Effects of increasing readability of T&Cs

In the main study, we examined whether simplifying and shortening the T&Cs resulted in higher trust and more positive attitudes towards the T&Cs, and increased readership (experiment 1).

Experiment 1 reveals that simplifying and shortening the T&Cs has beneficial effects, although some of the effects measured are small: readership is improved, understanding of the T&Cs is better, and the T&Cs are trusted more and perceived more positively. For example, consumers are more satisfied with the content and less frustrated while reading the T&Cs. Importantly, although the T&Cs are shortened, consumers do not feel that they miss relevant information, which suggests that, at least from consumers' viewpoint, short and simple T&Cs can be at least as informative as long and complex T&Cs. These effects are similar for domestic and foreign online stores.

A notable effect was also found when adding a reading cost cue on a website with free exposure to the T&Cs (experiment 2). Stating that "reading the terms and conditions takes less than five minutes" roughly doubled the number of consumers opening the T&Cs from 9.4% to 19.8%. Thus, adding a reading cost cue seems to result in more consumers actually reading (parts of) the T&Cs.

Creating effortless awareness by using quality cues

The study also investigated the effectiveness of various quality cues in making consumers (more or less) effortlessly aware of the quality of T&Cs (preliminary study 2 and experiments 2 and 3).

In preliminary study 2, we found that quality cues seem to affect trust and purchase intentions, but the effects sometimes depend on store characteristics, namely whether the store is domestic or foreign, existing or non-existing, professional-looking or with a semi-professional appearance. The effect of quality cues also depends on the type of cue in the national or cross-border setting. A store's own 'promise-to-be-fair' cue and the expert endorsement of the T&Cs by well-reputed professors of consumer law in both the Netherlands and Poland don't seem to have any positive impact. In the domestic, non-existing, professional-looking store these quality cues actually *lower* purchase intentions compared to a no cue situation. On the other hand, customer feedback,

national consumer organisation endorsement, and European consumer organisation endorsement do sometimes have positive effects. These effects are mainly present for domestic, existing online stores, although an endorsement by a European consumer organisation also has a positive effect for foreign online stores.

In the main study, we only tested the quality cues that showed a positive effect in the preliminary study. The results show that, in general, adding a quality cue (positive customer feedback, endorsement by a national consumer organisation, or endorsement by a European consumer organisation) increases purchase intentions and trust. In experiment 2, these effects are most notable on trust in the seller (and are not found on trust in the T&Cs), whereas in experiment 3, the effects are also found on trust in the T&Cs and the consumers' purchase intentions. Positive effects of adding a quality cue are found on domestic as well as foreign online stores and on existing as well as non-existing online stores.

The different quality cues vary most in the level of trust they themselves evoke. Although all cues have shown positive effects, a customer feedback cue is trusted the least. On domestic online stores, a national consumer organisation endorsement cue is trusted the most, while on foreign online stores, a European consumer organisation endorsement cue is trusted the most.

Policy recommendations

1. To improve readership, T&Cs could be presented in a **default exposure** format.
 - The study shows that where consumers can access the T&Cs by clicking on a link, only a small percentage of consumers (9.4%) opened the T&Cs in the absence of a quality or reading cost cue. When the T&Cs were directly provided on the screen and consumers had to scroll through them, only 22.1% indicated that they did not read the T&Cs at all, compared to the 90.6% in the voluntary exposure experiment. How much readership can be improved by this measure needs to be investigated in further experiments that directly compare free and default exposure conditions on the same outcome measure.
2. To improve readership and understanding, T&Cs could be standardised and presented in a **simple and short** format, containing no more than the most relevant information. From the perspective of general consumer law and product-specific regulations, certain information must be disclosed to consumers by traders. Standardised forms for providing this information may facilitate reductions in length. This study suggests that T&Cs do not need to be long and complex, and traders actually have a commercial and legal interest in keeping T&Cs short and simple.
 - When the T&Cs were simplified and shortened, more consumers indicated that they had read the T&Cs. For example, when the T&Cs were extremely short and simple, 26.5% reported to have read the whole T&Cs compared to only 10.5% in the standard long and complex T&Cs condition. Consumers also understood the T&Cs better when they were short and simple. This was found on an objective comprehension test about the content of the T&Cs as well as on consumers' self-report on how easy or difficult it was to comprehend the T&Cs.
 - Moreover, consumers' attitudes towards the T&Cs were influenced by the length and complexity of the T&Cs. Simple and short T&Cs were trusted more than long and complex ones. Consumers were also more satisfied with the content of the T&Cs, felt less frustrated while reading them, and felt that reading them was more worth their time when the T&Cs were simplified and shortened. It should be emphasised that in this part of the experiment the length and complexity of the T&Cs differed but their substance did not. This suggests that it is indeed the length and complexity of the texts as such that influence the trust that consumers have in the fairness of the T&Cs, irrespective of the content.
 - Importantly, consumers indicated that they did not miss relevant information in the short and simple T&Cs. Thus, despite shortening them, the T&Cs appeared to contain all relevant information of the

longer version, at least from consumers' viewpoint. This suggests that the shorter T&Cs were at least equally effective in providing the necessary information as the longer and more complex T&Cs.

- The effects did not depend on whether the online store was domestic or foreign (meaning that the effects were present on both types of online stores), and hardly differed between countries.
 - Shortening the T&Cs is in line with other European legislative instruments. In this respect it is important to note that under the Consumer Rights Directive (CRD) traders need to present a list of information items in a clear and comprehensible manner before the consumer is bound by the contract. This information needs to be actively presented to consumers and cannot be buried in the T&Cs. Similarly, relevant practical information could possibly be included in the FAQ section at a website instead of in T&Cs, thus further enabling traders to shorten the T&Cs.
3. To improve readership of T&Cs, a statement with an estimation of the time it takes to read the T&Cs could be added (a **reading cost cue**). If providing such a reading cost cue is made mandatory it may also work as an incentive for traders to reduce the length of their T&Cs.
- Experiment 2 showed that readership of the T&Cs was influenced by the presence of a reading cost cue. In one condition, we added the message that “reading the terms and conditions takes less than five minutes” next to the link by which the T&Cs could be accessed. This reading cost cue increased the number of consumers opening the T&Cs from 9.4% to 19.8%. Moreover, the time spent on the T&Cs indicated that when a reading cost cue was present, respondents who opened the T&Cs also spent, on average, more time on that page than respondents who opened the T&Cs when no such reading cost cue was present.
4. To increase effortless awareness of the T&Cs, quality cues may be helpful. Customer feedback, national consumer organisation endorsement, and European consumer organisation endorsement cues can be used, as they positively influence trust and purchase intentions. The most positive effects are achieved with a **national consumer organisation endorsement cue** on domestic online stores, and with a **European consumer organisation endorsement cue** on foreign online stores.
- Adding a quality cue indicating that the terms and conditions are fair had an effect on consumers' trust in the T&Cs and their purchase intentions. Adding a customer feedback quality cue, an endorsement by a national consumer organisation, and an endorsement by a European consumer organisation increased trust and purchase intentions. These positive effects were found on domestic as well as foreign online stores (though more pronounced on domestic stores) and on existing as well as non-existing online stores.
 - The quality cues were not all trusted to an equal extent. Although all cues had positive effects, a positive customer feedback cue was trusted the least, indicating that (supposed) endorsement by customers is trusted less than (supposed) endorsement by a consumer organisation. Which of the consumer organisation endorsement cues was trusted the most depended on the type of online store. On domestic online stores, a national consumer organisation endorsement cue was trusted the most. On foreign online stores, a European consumer organisation endorsement cue was trusted the most.
 - A promise-to-be-fair by the seller and expert endorsement sometimes *decreased* trust and purchase intentions. This study therefore does not find evidence to support the promotion of such quality cues.
 - Adding a quality cue seems to be effective on both familiar and unfamiliar online stores, although the effects appear to be larger on familiar online stores. Preliminary study 2 highlighted that the positive effects of adding a quality cue are more pronounced on existing (familiar) than on non-existing (unfamiliar) online stores. A similar result was found with subjective familiarity. The main study did, however, also find positive effects on non-existing (unfamiliar) online stores (experiment 3). Taken together, these findings suggest that the effects of adding a quality cue are present on existing (familiar) and non-existing (unfamiliar) online stores, although the effects are sometimes more pronounced on existing (familiar) online stores.
 - When deciding on whether to add a quality cue to an online store, differences across Member States do not appear to be so large as to warrant that they be given much weight.

5. Policy may also focus on raising *general* and *specific awareness*, thus making consumers more aware of their basic rights.
- Both preliminary studies demonstrated that consumers' knowledge of consumer rights (general awareness) is limited. Interestingly, consumers' self-reported knowledge is not equally low, indicating that consumers are generally unaware of their lack of knowledge.
 - In order to raise general awareness, one can think of information campaigns initiated by governments, consumer authorities, or consumer organisations through media channels or at the point-of-purchase (e.g. when entering a mall).
 - Finally, policy may focus on raising specific awareness. An example is that information about the delivery period and length of the right of withdrawal and commercial guarantee must be mentioned on the first page/screen of the order form, as this is typically the type of information consumers need before they can make their decisions.