

STUDY

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Contribution to Growth: Consumer Protection

Delivering economic benefits for
citizens and businesses



Policy Department for Economic, Scientific and Quality of Life Policies
Directorate-General for Internal Policies
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Contribution to Growth: Consumer Protection

Delivering economic benefits for citizens and businesses

Abstract

The following in-depth analysis explores economic benefits of policy achievements related to European Consumer Protection. Theoretical background indicates that measures aimed at improving consumer protection should provide mostly positive wider economic impact. Analysed studies related to EU legislation provide numerous evidence that it is the case indeed, however frequently lack quantification of effects. Some areas open for additional intervention are suggested in the study.

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LIST OF ABBREVIATIONS

CRD	Directive 2011/83/EU on consumer rights
FTE	Full-time equivalent employment
GDP	Gross Domestic Product
IMCO	Internal Market and Consumer Protection
MS	Member State
SME	Small and Medium Enterprise
UCP	Unfair Commercial Practice

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EXECUTIVE SUMMARY

Background

Along with continuous digital development and emergence of new concerns related to the retail and services market, consumer rights and their protection require the adaptation and establishment of effective legislation. The Member States of the European Union consistently implement measures at the national level to safeguard the interests of their consumers. Simultaneously, since the 1970s the European Union has been trying to adjust legislative framework so that they provide EU citizens with the same high level of protection in the European market.

This document contains an in-depth analysis concerning the economic benefits (and costs) of policy achievements in the area of better European Consumer Protection. The study was requested by the European Parliament’s Committee on Internal Market and Consumer Protection (IMCO). The aim of the commissioned study is to provide background information and advice on benefits for the EU businesses and citizens by legislation established in the field of Internal Market and Consumer Protection, as well as to reflect on priority measures and actions to be undertaken in this field. The study examines the relevant assessments and attempts to determine how past achievements in the area of the European consumer protection materialized and contributed to the achievement of EU objectives, and what will be the contribution of current initiatives in the foreseeable future. Concrete legislative acts are reviewed and the economic impact of specific policies is investigated.

According to the analysed impact assessments of individual regulations related to the European Consumer Protection, the measures implemented by the EU had, in a substantial number of cases, a positive economic impact. In individual cases, considerable negative effects emerge, yet their scale and severity are inferior compared to the positive developments on the level of the economy.

The chart below presents selected effects that can be associated with the legal acts analysed in this study related to consumer protection. It is by no means complete and should be understood only as a way to give idea rough estimate of the level of possible gains induced by legislative actions in the field of consumer protection.

Figure 1: Selected effects of EU acts related to consumer protection

Passengers when travelling by water (EUR13,1 bn)	Passengers in bus/coach transport (EUR6,4 bn)	Digital content (...) (EUR4,0 bn)
	Payment accounts, switching (...) (EUR2,0 bn)	Mortgage credit directive (EUR1,3 bn)

Source: Own elaboration based on studies analysed in the report.

To obtain the graph various available quantified impacts were converted into common scale best understood as an impact on nominal 2017 GDP. It should also be emphasised that the numbers presented on the chart do not depict all the effects/changes associated with regulations, but only those directly related to improved consumer protection. The available evidence is frequently limited to qualitative assessment, however a number of quantitative assessments of economic impacts are also offered, especially regarding direct costs and benefits of introducing a regulation.

Quantitative estimates of effects on a general macroeconomic level such as a change in GDP, employment or measures of consumer welfare are quite sporadic, many studies stop at stating that such a positive impact should be expected. In most cases, such effects can be inferred from theory and supplied evidence that given regulation works (or will work) on the microeconomic level. The relative scarcity of quantitative evidence results from reasons such as difficulty in disentangling effects of regulation, lack of data, effects being dispersed or difficulty in quantifying the impact of qualitative changes. Finally, the inherent imperceptibility of some effect, especially preventive ones, is an obstacle to proving a quantitative conclusion.

The basic economic theory behind the impacts of consumer protection measures on the economy is provided to supplement the empirical evidence and substitute it where non-existent. It builds on the conception of market failure as a primary source of actions (or lack of them) leading to consumer detriment. A causal chain channelling exploitation of market failures to economic effects on various levels is described as well as theoretical ways and means of severing those links.

According to analysed assessment studies, new regulations usually entail significant costs of compliance on the part of producers and/or traders. They are usually judged to be manageable and mostly one-off expenditures. On the other hand, in theory, they could expect some benefits of regulations resulting from the increased market size or less erroneous regulatory environment, not much support for that can be found, beyond the occasional statement. However, it is frequently confirmed that traders/producers agree that regulation in question provides more level playing field for law-abiding ones, fostering fair competition.

Although traders fail to notice an increased business opportunity, hints from consumer side effects indicate that it may be actually true in many cases. Studies indicate two additional sources of increased sales/purchases, one stemming from improved financial situation of consumers due to regulation and the other being a result of better consumer confidence. A better financial situation is a result of more competitive markets, lower prices/fees and mechanisms allowing some form of consumer compensation for unlawful producer/seller actions. Also, the evidence is provided of regulation-induced employment and therefore additional income. Improved financial standing constitutes only part of improved consumer welfare. Another important and frequently mentioned component (however completely unquantifiable one) was a wider choice of available goods or services. New regulations usually don't entail additional costs for consumers. It should be noted however, that in numerous cases, additional producer/trader costs were shifted onto the consumer.

Regarding general macroeconomic effects, an increase in employment often results from improved consumer protection. In the case of some laws, numbers that were provided probably might be considered underestimation, as they often cover only jobs necessary for ensuring compliance and do not include additional employment due to an increase of general economic activity. A higher gross domestic product/output is frequently indicated as a result, yet few quantifications are available. In cases that provided them, additional GDP was much bigger than the costs introduced by regulation. Increased sales were also reported, both cross-border and within the Member States, again with few quantifications.

Finally, another theme recurring in assessment studies are economic effects related to the improvement of existing regulations. They are far from being a group consistent in nature and include some or all of those already mentioned. Such effects have appeared or are expected due to improved enforcement of existing laws, expanding them into new areas emerging as a result of product or market development and technical progress and removing deficiencies that become obvious in the course of implementation.

The SME sector seems to be beneficiary of the analysed regulations in most of the cases, with two caveats. First, improvements to the sector position frequently are not designed outcomes of a regulation per se but are rather a side effect of the regulation. A typical example are regulations affecting online trade, dominated by small traders. Second, particular aspects of certain regulations are expected to result in limited negative outcomes for the sector. However, those are usually understood in relative terms, in comparison to larger firms.

Tables below present various aspects of observed or expected economic effects. As estimates of effects are patchy, only ranges related to single regulation are presented in the first table and it is not possible to provide cumulative estimates.

Table 1: Quantified economic effects - summary

Area	Economic effects
GDP and employment	Most of the assessment studies envisage additional economic output. Available estimates range from virtually 0.0% to close to 1.0% per year, usually around 0.1%. Some additional employment is expected. In the case of few regulations having a direct impact on jobs numbers range from 780 jobs to 201 thousand jobs, with low thousands dominating. ¹ One of the regulations is expected to lead to a loss of between 1200 and 3000 jobs. ²
Sales and trade	Industry-specific regulation is usually expected to provide additional sales/revenue significant in comparison to the industry scale (for example revenue of coach manufacturers of €139 ml, up to €12.6 bn of additional tourism revenues). ³ Measures targeted at online activities were expected to provide additional online purchases of the magnitude of several per cent each. Online cross-border sales was expected to grow up to 14% in case of one of the regulations, however other results were much more modest. ⁴
Consumers, prices	Estimates of impact on prices, where included, clearly pointed at falling of up to 1% as a result of a single regulation. Various measures of additional consumer surplus/benefits were provided of up to €3 bn a year as a result of a single regulation. ⁵ In one case growth of private consumption an increase of up to 0.23% was indicated. ⁶

Source: Own elaboration based on the analyzed documents.

¹ EC 2008c, p. 32.

² EC 2008a.

³ EC 2008c, p. 33, 43.

⁴ EC 2015b, p. 29.

⁵ EC 2013c, p. 89-90.

⁶ EC 2015b, p. 29.

Table 2: Economic effects in brief

Area	Legislation name	Direct Impact	Wider impact
Consumer Rights	Directive on consumer rights	<p>Various one-off costs of compliance for traders, significant persistent cost related to the right of withdrawal</p> <p>Savings of €27.5 td per trader due to reduced law diversity among MS⁷</p> <p>Benefits such as additional market likely to be unnoticed by traders</p> <p>Increased confidence in online shopping (37% of consumers)⁸</p>	<p>3% growth of online purchases observed (2014-2017) can be partly attributed to the CRD⁹</p> <p>Stakeholders reporting higher interest in cross-border shopping and online sales</p> <p>Possible positive impact on GDP and employment (any traders' surplus probable to be shifted on to consumer improving the financial position and leading to additional purchases)</p>
	Directive on injunctions for the protection of consumers' interests	<p>Anecdotal, case level evidence of substantial monetary effects for consumers</p> <p>The expected reduction of litigation costs both for consumers and traders</p>	<p>Positive effects stemming from preventing the under-application of consumer related laws covered and strengthening their positive impact</p> <p>The level playing field for law-abiding traders leading to more competition</p> <p>The expected improvement in terms of GDP, employment and sales due to consumers' perception of the fair marketplace and more competition</p>

⁷ Own calculation based on EC 2017h, p. 109.

⁸ EC 2017h, p. 106.

⁹ *ibid.*, p. 120.

Area	Legislation name	Direct Impact	Wider impact
The Digital Single Market Strategy	Proposal of directives on certain aspects concerning contracts for the supply of digital content and (...)	<p>One-off adoption costs totalling €9.05 for companies selling goods online</p> <p>Benefit of up to €243,000 per any new exporter¹⁰</p> <p>Benefit of up to €9,000 per existing exporter¹¹</p> <p>Costs borne mostly by SMEs</p>	<p>Increase of businesses selling online cross-border by 12% or 122,000 businesses¹²</p> <p>Increase of intra EU online exports in nominal terms by an average 0.04%¹³</p> <p>Competition from cross-border trade exerting pressure on domestic markets, leading to better quality, innovation and reduced prices</p> <p>Increase of number of consumers buying online by up to 13.5%¹⁴</p> <p>Increase of online cross-border sales by up to 14%¹⁵</p> <p>Fall of consumer prices by up to 0.25%¹⁶</p> <p>Private consumption raise by up to 0.23%¹⁷</p> <p>GDP permanently increase in real terms by 0.03% or about €24 bn in 10 years¹⁸</p>
Better enforcement of consumer rights	A New Deal for Consumers	<p>Improved consumer welfare due to costs of infringements being shifted on to infringers and lower costs of obtaining redress for consumers</p> <p>Positive impact on vulnerable consumers (disabled, elderly people or people with a migrant background)</p> <p>Limited one-off costs for traders</p>	<p>Level playing field for law abiding traders leading to more competition</p> <p>More innovation and investment resulting from more competitive marketplace</p> <p>Additional consumer spending, better allocation of resources, greater economic efficiency, increased innovation and lower prices</p>

¹⁰ EC 2015b, p. 27.

¹¹ Ibid., p. 27.

¹² Ibid., p. 27.

¹³ Ibid., p. 27.

¹⁴ Ibid., p. 29.

¹⁵ Ibid, p. 29.

¹⁶ Ibid, p. 29.

¹⁷ Ibid, p. 29.

¹⁸ Ibid., p. 30.

Area	Legislation name	Direct Impact	Wider impact
Transport	Regulation concerning the rights of passengers in bus and coach transport	<p>Costs for carriers up to 2.7% of industry revenue and 0.5% increase in revenue due to additional travel (a net loss of 2.2%)¹⁹</p> <p>Particular importance for disadvantaged passengers: by improving conditions of the services, the regulation can be expected to help (re)integrate them into a wider society</p> <p>Limitation of possible positive impact due to various exclusions</p>	<p>Expected additional revenue of coach manufacturers equal to €139 ml, increased employment of 780 FTEs.²⁰</p> <p>Potential impact on accessible coach tourism: up to €12.6 bn of additional tourism revenues and 141 thousand of additional tourist jobs²¹</p> <p>Improved allocation of resources, particularly labour, additional employment and consumer welfare gains due to better inclusion of disadvantaged passengers</p> <p>More frequent use of collective transportation modes</p>
	Regulation concerning the rights of passengers when travelling by sea (...)	<p>Limited additional costs for the industry expected to be shifted on to consumers</p> <p>Marginal additional revenue for tourism industry but significant for maritime travel industry (because of its tiny scale)</p> <p>Additional employments on ships, in ports and in tourism estimated at up to 201 thousand FTEs²²</p>	<p>Limited effects due to scale and the facts that consumers will ultimately bear additional costs</p> <p>Major economic impacts in the long term stems from opportunities uncovered by new standards in the form of lesser uncertainty of customers resulting with a higher willingness to travel and better travel conditions</p>
Financial markets	Directive on the comparability of fees related to payment accounts, payment account switching (...)	<p>The total benefits of access to basic payments account were estimated at up to €3 bn, mostly accruing to consumers²³</p> <p>Additional costs covered by credit institutions, however in the long term shifted on to consumers</p>	<p>A wide range of economic effect was expected, however not quantified</p> <p>Generally improved welfare of consumers</p> <p>Better access to financial services would lead to various economic and social gains such as increased level of security, an increased choice of goods and services, the possibility to access employment and accommodation more easily, and a reduced sense of financial, economic and social exclusion</p> <p>A positive effect on consumer confidence leading to increased demand for payment accounts and encouraging consumer mobility was expected, resulting in additional consumption and sales</p> <p>Amplification of numerous economic effects related to digital space should be expected</p>

¹⁹ EC 2008c, p. 33, 43.

²⁰ Ibid, p. 33, 43.

²¹ Ibid, p. 33, 43.

²² Ibid, p. 32.

²³ EC 2013c, p. 89-90.

Area	Legislation name	Direct Impact	Wider impact
	Directive on markets in financial instruments	<p>One-off costs of adoption between €512 and €732 ml were expected and ongoing costs of between €312 and €586 ml (0.10% to 0.15% and 0.06% to 0.12% of the banking sector operating spending respectively)²⁴</p> <p>Limited direct impact on consumers</p>	<p>Increased economic activity related to compliance, limited to some sectors, such as consulting, legal advice and IT</p> <p>Long term gains for consumers via other stakeholders: pension funds and investment funds having access to more effective and transparent financial markets (and facing more requirements regarding transparency themselves); lower investment costs should directly benefit their participants, affecting long term returns on investment (especially important development regarding pension savings, providing benefits for potentially vulnerable part of society and taking into account extremely long time of pension investments)</p>
Product Safety and Market Surveillance	Directive on the safety of toys	<p>Mixed evidence: possibility of increased cost making the EU toy industry less competitive vs opportunity leading to market growth, due to discouragement of low quality toys imports</p> <p>Lower costs of health care for consumers and states</p> <p>Possible loss of between 1200 and 3000 jobs due to rules on chemicals²⁵</p>	<p>Providing level playing field for market participants, thus inducing innovation, development and investment</p> <p>Positive impact on sales online and on-distance and in other cases related to sale modes offering a limited possibility of personal inspection of toy characteristic</p>
Other	Mortgage credit directive	<p>Improved consumer confidence leading to additional credit, reduction of credit due to preventing unsuitable product, net effect likely positive</p> <p>Additional costs to lenders in range of €381-€619 ml. (one-off) and €266-€325 ml. (recurring)²⁶</p> <p>Gains of consumers and society of €1,272 and €1,931 ml.²⁷</p> <p>Reduction of credit access for some groups of borrowers, migration to unofficial lenders</p>	<p>A lack of proper consumer protection allows irresponsible behaviour with consequences not only for parties involved but also for a financial system and economy. Possible effects of such conflagration are enormous. Even if the directive only limits chances of tem emerging, its contribution to that field should be judged to be the major economic benefit of introduction.</p>

²⁴ EC 2011a, p. 4.

²⁵ EC 2008a.

²⁶ EC 2011b, p. 53.

²⁷ Ibid., p. 53.

Area	Legislation name	Direct Impact	Wider impact
	RAPEX	Reduction of costs for national market surveillance authorities and for EU Improved effectiveness in tracking down unsafe products – improved consumer safety	Positive effects resulting from reporting and monitoring of dangerous products Effective and rapid exchange of information between Member States and the Commission

Source: Own elaboration based on the analyzed documents. For details see related subchapters.

The introduction of the proposed legislative solutions would contribute to significant savings, such as for instance the Single Digital Gateway regulation generating €4 ml. savings per Member State and €11.1 – 55.1 billion saved by businesses.²⁸ This example indicates that generally better protection of consumer rights has significant future economic potential, however due to the fact that currently available sources are not sufficient, it is difficult to estimate specific data showing the potential future impact concerning consumers protection.

The final chapter offers recommendations that will allow for a more robust empirical analysis of economic effects of consumer policy intervention in the future, such as aggregated financial effects or qualitative information about expected impact on prices.

The most important recommendations address the following topics:

- rethinking concepts and definitions of ‘consumer’ and ‘market’ in response to economic and technological developments such as the emergence of prosumers, sharing economy, gig economy, and blockchain;
- attention to the digital economy in areas such as unpaid services, under-regulated digital players moving into new fields or issues of digital security related to Internet-of-Things;
- possible risk arising from the Brexit process;
- general recommendation for future actions aimed at improving certain aspects of application and enforcement of existing laws and of future policy initiatives to extend awareness of applicable law and thus expand its positive impact.

Recommendations regarding improvements of assessment and evaluation processes in the field of consumer protection legislation are suggested with a view to better explain and uncover their positive economic impact.

²⁸ EC 2017d, p. 56.

1. INTRODUCTION

This document contains an in-depth analysis concerning the economic benefits (and costs) of policy achievements in the area of better European Consumer Protection. The study was requested by the European Parliament's Committee on Internal Market and Consumer Protection (IMCO) and it comprises a series of in-depth analyses, which are conducted to serve as an update of a study on "Contribution of the Internal Market and Consumer Protection to Growth", which was published in 2014.

The aim of the commissioned study is to provide background information and advice for the Members of the IMCO Committee on benefits brought in the past and to be realized in the foreseeable future for the EU businesses and citizens by legislation established in the field of Internal Market and Consumer Protection, as well as to reflect on priority measures and actions to be undertaken in this field.

In order to achieve this overall objective, the study presents and examines the relevant assessments and evaluations, which were performed up-to-date and were used in the process of programming, planning, implementation and evaluation of law and policy on the European consumer protection. It also attempts to determine how past achievements in the area of the European consumer protection materialized and contributed to the achievement of the EU objectives, and what will be the contribution of current initiatives in the foreseeable future – to the extent which it is possible to draw the conclusions based on the available, existing data.

The study focuses on the benefits of legislative actions during the 7th and 8th legislature. Concrete legislative acts are addressed and the economic impact of specific policies is investigated. A basic economic theory behind impacts of consumer protection measures on the economy is provided to supplement empirical evidence and substitute it where non-existent.

2. BENEFITS OF BETTER EUROPEAN CONSUMER PROTECTION – GENERAL ECONOMIC DIMENSION

KEY FINDINGS

The provided studies indicate that in 2016 only 67% of retailers considered that merchants comply with consumer law in their country, whereas 24% assumed that many traders do not comply with the existing regulations. According to the another study conducted in 2017, consumers suffered detriment after seeking redress of between €20.3 billion and €58.4 billion over the last 12 months in the EU-28.

Economic theory provides plentiful justification of policy intervention in the area of consumer protection. A typical channel of impact goes through eliminating or mitigating a market failure, for example by preventing parties to take advantage of a given market imperfection. From the point of view of consumer protection three of those are crucial, namely asymmetric information, uncompetitive markets and, to a lesser extent, externalities. Severing a causal link from a market failure to undesirable negative outcome should induce positive economic impact. There are plenty of examples that it can be achieved by a policy intervention.

The role of this part is to present how – from the point of view of economic theory – the improvement of consumer conditions could spawn a positive impact on economic growth. Delving into consumer protection theory has dual justification. First, it is useful to provide an orderly, methodological context before plunging into its practical applications. Second, a more important reason is a relative scarcity of actual evidence, especially of a quantitative nature, related to specific economic impact of EU regulations in the field of consumer protection. For that reason, the analysis in the next chapter will be frequently supported by economic theory sketched below.

Before going into specific channels allowing consumer protection to play a substantial role in supporting economic growth and development one should start with providing a justification for state intervention in the area. It is frequently the case that a market's performance significantly diverges from what economists would call an effective competitive marketplace. So-called market failures are driven by reasons of both supply (seller) and demand (consumer) side. From the point of view of consumer protection, at least three of those should be indicated, namely asymmetric information, uncompetitive markets and, to some extent, externalities.²⁹

The first one results from the fact that some of the transacting agents (usually businesses) may be privy to information relating to the transaction, which – if known by other agents (usually consumers) – would change conditions/price of transaction or prevent it from concluding.³⁰ Producers and to some extent traders naturally enjoy that advantage, especially in case of non-commoditized goods. Where actual quality and characteristics of a good or a service is difficult to establish, monitor or compare with other available choices due to complexity (for example in case of financial products) or conditions related to a transaction (such as transacting on distance), they will be able to employ market failure to own benefit and consumer's detriment. One should also mention possibly prohibitive costs facing a nonprofessional consumer consciously attempting to reduce the information gap separating her or him from a professional business.

²⁹ IFC 2012.

³⁰ Usually a seller is a privileged side, however in some cases also the consumer might be, for example in insurance contracts, knowledge of an existing precondition that would require higher premium is quite asymmetric to the detriment of a seller of insurance.

A special case of the asymmetric information market failure in context of consumer protection is a total unawareness of products/services existence due to the market structure or intentional actions on part of supplier.³¹ Another issue that should be perceived as being an instance of information asymmetry is employing techniques to exploit consumer biases, prejudices and other factors differentiating a common consumer from the theoretical rational agent. Those 'consumer imperfections' should be mentioned, as addressing them creates a useful channel for consumer protection activity and also due to their ubiquity, they are frequently artificially induced by sellers through marketing techniques or transaction conditions and also by dedicated product characteristics.

The informational market failure is of particular importance for another reason. Removing or limiting its impact affects consumer welfare directly and therefore can be expected to produce immediate and observable results of public intervention. It should be also probably considered to be the most common one as it is a frequent case that parties to transaction are asymmetrical: professional business versus nonprofessional consumer.

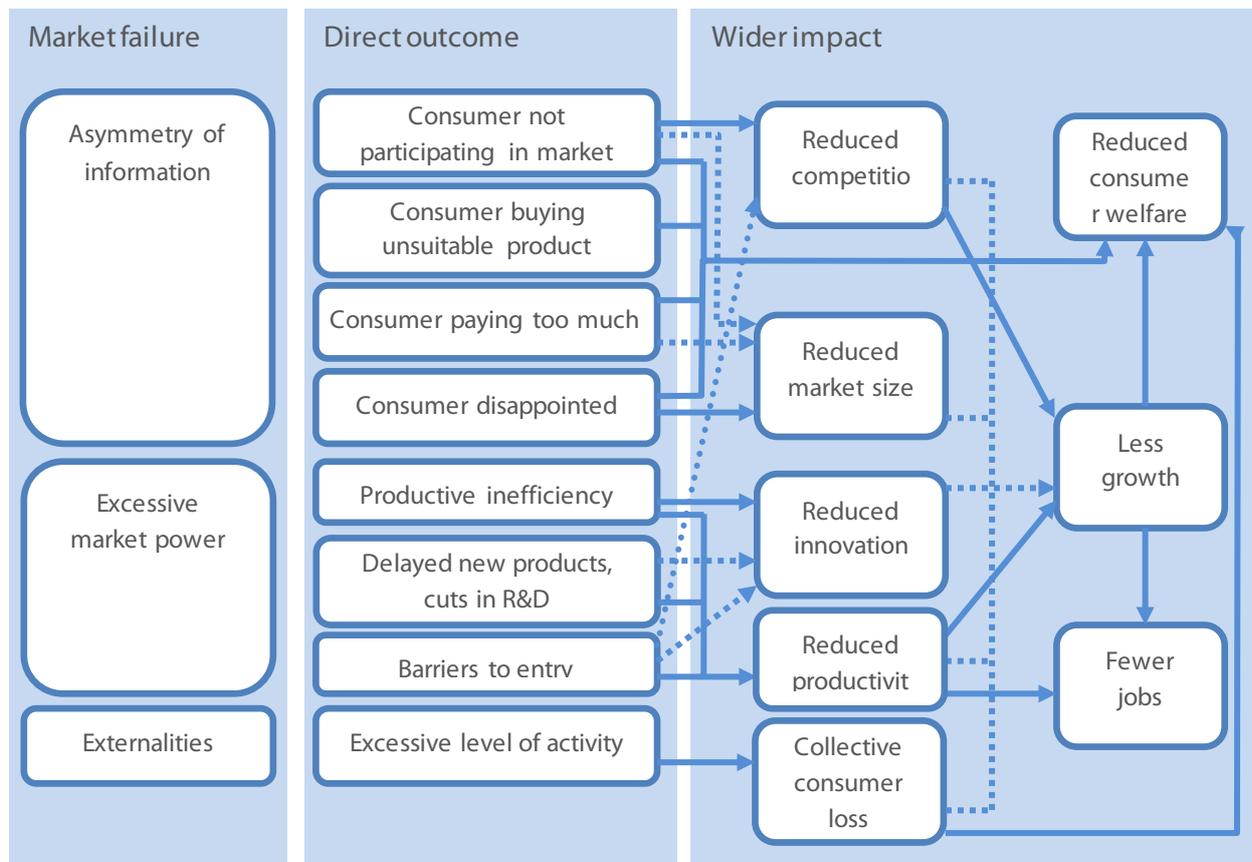
The second market failure relates to market power enjoyed by one of the transacting agents being allowed to impose unfavourable condition on other agents due to markets diverging from a competitive model. Somewhere across that one and information, asymmetry lays the issue of professional and unprofessional agent. With consumers being usually the later it is possible that conditions of contract would be skewed towards professional trader to consumer detriment if imperfect market structure allows this. It is important to make note that market power should not necessary be understood in relation to market as a whole, but as a contractual advantage of a seller/producer over some group of vulnerable customers.

The last market failure results from the fact that transacting agents might not be in a position to accrue all the benefits and costs induced by a transaction, therefore leading to level or conditions of economic activity being not optimal from a wider economic or societal perspective. An example of such a result can be a case of a sale that results in waste-affecting consumers collectively but not a transacting consumer or seller individually. Occurrence of any of those failures creates a space for improvement by state intervention if transacting agents can be nudged or coerced to change their behaviour.

The following scheme illustrates a causal chain driving from a particular market failure to a broader negative economic impact. Major channels related to information asymmetry include consumer obtaining inadequate/improperly priced product and not participating in the market due to a lack of information or excess of it (information noise). Those directly lead to reduced consumer welfare and indirectly to lower growth and thus employment through smaller than optimal overall market size. As some markets require a minimal size to be truly competitive, lower participation may also lead to reduced competition, which affects not only potential consumers excluded from the market but also those already participating.

³¹ ICF 2012.

Figure 2: Market failure to negative economic impact causal chain



Source: Own elaboration based on IFC 2012.

Distorted market structure resulting with excessive power feeds through the following channels. Ability to force condition on consumers allows producers, traders or other intermediaries to run inefficient operations thanks to a reduced market pressure. For the same reason it is possible for them to delay new products/services both as a result of cost cutting or reduction in R&D activity and also following deliberate decisions by companies not willing to undercut own existing products that continue to generate profit. Finally, companies enjoying excessive market power are able to shape market conditions to lock potential competitors out of the market and thus securing higher price to consumers' detriment. Those developments result with reduced innovation and productivity and less competitive markets with an obvious impact on growth level and also employment. Reduced innovative activities may be viewed as undercutting not only current but most of all long-term growth perspective. Finally, one may argue that excessive market power may be an original source of information asymmetry or a factor allowing exploiting it, thus enabling all the channels indicated in the previous paragraph.

Externalities may result in an excessive level of activity that can be understood threefold. First, as excessive level of consumption due to failing to internalize all of its cost. Second, as leading to product characteristics not being optimal due to incorrect pricing of some inputs damaging environment or other users of those inputs. Finally, as transacting too much (i.e. on financial markets) or creating unnecessary complex intermediation chain. Some crypto-currencies could be considered a special case of the former. In any case externalities cause loss to collective consumer, suboptimal growth and consumer welfare.

It should be rationally expected that either preventing any of those market failures from forming in the first place or at minimum preventing them from producing direct outcomes (thus precluding exploitation of entailed market failure) would sever causal chain and ensure better economic performance. Therefore, possible ways of affecting agents' behaviour in order to limit market failures exploitation should be presented.

In the case of information asymmetry to consumer detriment a few potential solutions exist, relating to an obligation to provide information, consumer education or narrowing a field for exploiting asymmetry.

In the case of complex products/services that a typical consumer cannot be reasonably expected to be capable of understanding or exploring its vital characteristics, an obligation can be enforced requiring a seller to provide information necessary for an informed decision. That also applies to transactions made in conditions making such a decision difficult (transacting online or at a distance). In the field of education, measures leading to more conscious choice can be introduced like obligation to point out important characteristics of products in marketing materials offered to potential customers or setting up consumer advice institutions. Providing support and empowering consumer organisation is also an example of activity reducing the ability of companies to exploit consumer vulnerabilities. Limiting the area of asymmetries that could be exploited can be achieved by setting minimal standards that prevent selling goods/services with inferior characteristics.

The issue of excessive market power of one of the agents could be addressed in several ways. One of those is ensuring that the consumer enjoys the actual ability of switching suppliers and is aware of offered options. That relates to availability of alternative providers (addressed among others by anti-monopoly law), limiting financial costs and operational effort of choosing another supplier and again providing a necessary information about possibility, procedure and costs of alternative options to the consumer. A special and relatively novel case of acting to diminish operational effort is forcing standards of data portability to unbind Internet service users from their present providers.³² Another solution, applicable to markets where no actual possibility of switching exists for any specific reason, is forcing transaction condition on the parties. In specific cases providing a legal framework or tools for collective purchase may create a counterbalance to suppliers and push towards a level playing field for all transaction sides.

Measures related to externalities usually force one or all transacting agents to include them as a factor to be taken into account while settling transaction. That could be done either by an implicit requirement of pricing costs of certain actions in a transaction (for example of packaging disposal) or by dedicated taxation.

Tables below provide more detailed description of ways and means to particular market failures.

³² Not necessary sellers, because that it is related both to paid and unpaid content.

Table 3: Options for addressing market failures

		Providing information	Consumer education	Asymmetry reduction	Switching: effective process	Switching: ensuring choice availability	Forcing transaction conditions	Other
Asymmetry of information	Consumer not participating in market	Information targeted at general public by consumer organisation or public bodies	Providing information about options offered by market, targeted at vulnerable groups	Setting minimal standards	-			Collective purchases
	Consumer buying unsuitable product	Minimal information requirements, product comparison tools	General education about consumer rights	Setting minimal standards	Easy switching as a source of pressure preventing from exploiting asymmetry of information		Forcing conditions allowing compensation for consumer/return	
	Consumer paying too much	Price comparison tools, benchmarking	General education about consumer rights	-		Setting maximum price		
	Consumer disappointed	Minimal information requirements, right of return	General education about consumer rights	-	Forcing conditions allowing compensation for consumer/return			

		Providing information	Consumer education	Asymmetry reduction	Switching: effective process	Switching: ensuring choice availability	Forcing transaction conditions	Other
Excessive market power	Productive inefficiency	-	-	-	Providing information about choice and allowing for seamless moving to other supplier	General antimonopoly law, forced market opening, unbundling product/services, unifying separate markets	Forcing conditions allowing new market entrants with higher costs	Collective purchases
	Delayed new products, R&D cuts	Price comparison tools, benchmarking	-	-				
	Barriers to entry	-	-	-				
Externalities	Excessive level of activity	Information targeted at general public by consumer organisation or public bodies	Education about adverse effects	Setting minimal standards			Requirement to include external costs in pricing, targeted taxation, allowing collective redress	

Source: Own elaboration.

Finally some attention should be directed to general measures related to all market failures. Measures allowing consumer (or a third party) to obtain compensation if any market failure was exploited and led to suboptimal decision can be introduced. Those solutions employ a dual channel: through allowing recuperation of unduly gained surplus therefore reverting to desired situation and through preventing from exploiting them in the first place. In this context, an issue of effective enforcement arises; it actually applies to the whole body of consumer protection measures. Another measure constitute actions targeted at rising general public awareness of consumer protection issues, consumer rights and supplier obligations. The latter two are also related to providing proper framework for monitoring compliance both by official bodies and the general public along with securing adequate funding. However, despite the existence of specific measures, still 67% of retailers considered that merchants comply with consumer law in their country, whereas 24% assumed that many traders do not apply to the existing regulations.³³ In turn, consumers suffered detriment after seeking redress of between €20.3 billion and €58.4 billion over the last 12 months in the EU-28.³⁴

Finally, another mechanism should be described. The very existence of market failures undercuts the perceived level of security of consumers that may prevent purchases or reduce them.³⁵ That is particularly true in the case of purchases of discretionary items. Actions aimed at increasing perceived security and reducing uncertainty may therefore open additional growth opportunities.

Examples of aforementioned concepts working in reality abound. The table below provides a short description of some of them.

Table 4: Addressing market failures - examples

	Description	Benefits	Country, year	Source
Asymmetry of information	<i>Enhancing Airline Passenger Protections.</i> Required full-fare advertising (excluding taxes) and a prohibition on opt-out provisions	Enables better comparison, search time saving (value of time saved \$28.97 ml), eliminating deadweight loss due to unnecessary purchases	US, 2011	Jackson, Rothstein 2015
	<i>Tire Fuel Efficiency Consumer Information Program.</i> Required information about the performance of replacement passenger car tires in terms of fuel efficiency, safety, and durability	Fuel saving and reduced emissions (valued at \$11.6 ml), better consumer welfare due to higher durability and safety	US, 2010	Jackson, Rothstein 2015
	<i>High Cost Mortgage and Homeownership Counselling.</i> Requires pre-loan counselling on some mortgages and other types of loans	Benefits for consumers confused by information overload, better assessment of ability to repay and chose alternate option leading to lower default rates	US, 2013	Jackson, Rothstein 2015
	<i>Optimor.</i> Provides advice to mobile customers helping make more confident and	Indicated unnecessary spending of GBP5 bn a year, no estimation how much of that was prevented.	UK, 2006	IFC 2012

³³ Consumer Conditions Scoreboard 2017.

³⁴ EC 2017g, p. 300.

³⁵ Consumers may also chose other way sub-optimal sources of goods or services, or sales channel, to be less exposed to market failures.

	Description	Benefits	Country, year	Source
	smarter purchase decisions of media and services	Benefits include better competition, efficiency savings, additional growth		
Excessive market power	<i>Medical Loss Ratio Requirements under Obamacare.</i> Rebate for customer in case of lack of transparency of offered healthcare plan preventing adequate competition	Rebates estimated between \$931 and \$1542 ml (2010 USD), better value coverage for customers, increased quality medical care	US, 2010	Jackson, Rothstein 2015
	<i>Nondiscrimination in Public Accommodations.</i> Setting minimum accessibility standards	Value of time saved. Significant costs of compliance likely to exceed monetised savings	US, 2010	Jackson, Rothstein 2015
	<i>Patients Know Best.</i> A patient-controlled medical records system that enables patients to organise and share medical data allowing for more active patient role	Not quantified: additional jobs and growth, innovation and increased efficiency, cost savings. Better health of population	UK, 2008	IFC 2012
	<i>nbond.nl.</i> An utility employing reverse auction to lower energy price for customers	Allowed up to 34,000 customers per round to switch to a winning provider	NL, 2012	IFC 2012
Externalities	<i>Refrigerator Standards.</i> Forced energy conservation standards	Reduced emissions (valued at \$2.8 and \$27.5 bn for 30 years), consumer savings	US, 2011	Jackson, Rothstein 2015

Source: Own elaboration based on indicated sources.

3. POLICY ACHIEVEMENTS IN THE AREA OF CONSUMER PROTECTION

KEY FINDINGS

Available studies abound with evidence of positive economic impact of the European consumer protection, however only limited quantification of effects is available.

The regulation have positive macroeconomic impact in the form of additional GDP, consumption or consumer welfare. Where provided, additional GDP or growth of other macroeconomic variables resulting from a single regulation amounted to low tenth of one per cent, yet in terms of absolute numbers are still significant. The regulation regarding certain aspects of digital markets only is expected to increase of intra EU online exports in nominal terms by an average 0,04%, private consumption by up to 0.23% and GDP in real terms by 0.03% or about €24 bn in 10 years.

Also, the regulations have effect on additional employment, ranging in case of individual laws from hundreds to several hundred thousands of jobs. The aforementioned regulation will result with net increase in employment level of around 60 td jobs and regulation regarding passenger rights in bus and coach transport ads up to 141 td tourist jobs and in case of water transport 201 td jobs. Another important result appearing across regulations is an increase in cross-border trade. In most cases a positive impact on SMEs is envisaged, however in some cases being a side effect. The introduction of regulations carries adoption costs (usually measured in low thousands of euro) judged in most cases to be small to moderate, especially in case of recurring costs.

Available studies provide ample evidence in support of a positive economic impact of European consumer protection related regulations. In individual cases, considerable negative effects emerge, yet their scale and severity certainly do not outweigh positive developments on the level of the economy as a whole, however sometimes appear to be quite significant for selected groups. Available evidence is frequently limited to qualitative assessment, however a number of well documented quantitative assessment of economic impacts is also offered, especially regarding direct costs and benefits of introducing a regulation.

Quantitative estimates of effects on general macroeconomic level such as change in GDP, employment or measures of consumer welfare are quite sporadic, many studies stop at stating that such a positive impact should be expected. However, in most cases it is possible to infer the existence of such effects from theory sketched in the previous chapter and supplied evidence that given regulation works (or will work) on the microeconomic level and that some causal mechanisms were actually triggered. Relative scarcity of quantitative evidence results from various reasons such as difficulty to disentangling effects of a regulation from other changes, lack of data, effects being dispersed across different groups of stakeholders or difficulty in quantifying impact of qualitative changes. Finally, inherent imperceptibility of some effect, especially preventive ones, poses an obstacle to proving a quantitative conclusion.

According to analysed assessment studies new regulation usually entail significant costs of compliance on the part of producers and/or traders. They are usually judged to be manageable and mostly one-off expenditures. On the other hand, in theory they could expect some benefits of regulations resulting from increased market size or less erroneous regulatory environment, not much support for that can be found, beyond occasional statement.

However, it is frequently confirmed that traders/producers agree that regulation in question provide a more level playing field for law-abiding ones, fostering fair competition.

Although traders often fail to notice increased business opportunity, hints from consumer side effects indicate that it may be actually true in many cases. Studies indicate two additional sources of increased sales/purchases, one stemming from improved financial situation of consumers due to regulation and the other being a result of better consumer confidence. Better financial situation is a result of more competitive markets, lower prices/fees and mechanisms allowing some form of consumer compensation for unlawful producer/seller actions. Also, evidence was provided of regulation-induced employment and therefore additional income. Improved financial standing constitutes only part of improved consumer welfare. Another important and frequently mentioned component (however completely unquantifiable one) was wider choice of available goods or services. New regulations usually don't entail additional costs for consumers. It should be noted however, that in numerous cases additional producer/trader costs were shifted onto the consumer.

Regarding general macroeconomic effects, an increase of employment often results from improved consumer protection. In the case of some laws numbers that were provided might be considered underestimation, as they often cover only jobs necessary for ensuring compliance and do not include additional employment due to increase of general economic activity. A higher gross domestic product/output is frequently indicated as a result, yet few quantifications are available. In cases that provided them, additional GDP was much bigger than costs introduced by regulation. Increased sales was also reported, both cross-border and within Member States, again with few quantifications.

Finally, another theme recurring in assessment studies are economic effects related to improvement of existing regulation. They are far from being a group consistent in nature and include some or all of those already mentioned. Such effects have appeared or are expected due to improved enforcement of existing laws, expanding them into new areas emerging as a result of product or market development and technical progress and removing deficiencies that become obvious in the course of implementation.

3.1. Economic impact of the legal acts within the general framework for consumer protection³⁶

3.1.1 Directive on consumer rights

A. Name and summary of legislative measure

Directive 2011/83/EU on consumer rights (hereafter 'the CRD') was adopted on 25 October 2011. It targets achieving a high level of consumer protection across the EU and contributing to the proper functioning of the internal market by harmonising certain aspects of Member States' laws, regulations and administrative provisions on contracts between consumers and traders while maintaining the right balance between a high level of consumer protection and business competitiveness.

B. Available assessment studies

This subchapter is based on the following document:

- Report from the Commission to the European Parliament and the Council on the application of Directive 2011/83/EU of the European Parliament, European Commission, 2017f

³⁶ See also the chapter 4.1.4. *A New Deal for Consumers*.

- Study on the application of the Consumer Rights Directive 2011/83/EU. Final Report, European Commission, 2017h
- Information Report on Consumer Rights Directive (evaluation), European Economic and Social Committee, 2017c
- Inception Impact Assessment for targeted revision of EU consumer law directives, European Commission, 2017e

C. *Key objective and barriers eliminated*

Prior to the CRD adoption, a significant differentiation between national legislation in the Member States has been observed. The CRD accomplished unification of the legislation, especially in the cross-border context, across the union, therefore contributing to increased legal certainty for traders and consumers. However, some limited areas remain within the remit of national regulators.³⁷ Also, issues resulting from non-compliance of traders and some specific provision remain and may result in sub-optimal level of cross-border trade.³⁸

The implemented regulation was intended to enhance consumer confidence in the internal market on the one hand, and aimed at reducing business reluctance to trade across the EU's internal borders.³⁹ In broad terms, the regulation unquestionably succeed in improving consumer protection, particularly for distance and off-premises contracts. The level of protection is however considered lower for digital content than for goods and services.⁴⁰ Improvements observed from the point of view of a trader also appear to be very significant, however available studies report minor drawbacks.

D. *Economic impact*

The available assessment studies tend to provide qualitative-only descriptions of impact of the regulation. This is due to various reasons, including commercial interests of traders limiting information availability and difficulties in disentangling the effects of regulation from general effects of structural changes being the two most important. A relatively short period since the CRD transposition into Member States' law is also mentioned as limiting quantitative impact assessment.⁴¹ Available quantitative assessment is based mostly on surveys targeted on traders and/or consumers, both dedicated ones and resulting from regular Eurostat operation. The measured effects on the macroeconomic level are unavailable and their existence can only be inferred from the intervention logic described in the previous chapter, based on the changes reported by consumers/traders.

Trader perspective. Both indirect and direct costs were reported by traders. The former include human resource costs, such as costs of familiarisation with the legislation, management time to check the requirements and to ensure compliance, updating website text and taking corresponding actions to update internal processes and procedures relating to the transaction process e.g. delivery, returns and RoW duration. The latter include the cost of legal advice on compliance and redesigning of websites.⁴² It was estimated that in 2008, administrative costs levied to businesses selling domestically were €5,526 for distance sellers and €6,625 for direct sellers, whereas before CRD introduction €70,526

³⁷ EC 2017f, p. 5.

³⁸ EC 2017e, p. 2.

³⁹ EC 2017b, p. 1-2.

⁴⁰ Ibid., p. 185.

⁴¹ EC 2017f, p. 6.

⁴² EC 2017h, p. 109.

and €71,625 for distance sellers and direct sellers respectively.⁴³ Those costs seem to be in large extent one-offs, thus not affecting long-term performance. Some persistent additional costs to traders were also indicated, chiefly referring to the right of withdrawal. Those result from losses due to goods being used more than necessary to establish their functioning and an obligation to reimburse without having the possibility to inspect the returned goods.⁴⁴ It is also worth noting that according to stakeholders, ultimately any additional costs to traders would be passed on to consumers.⁴⁵

Some traders felt that the CRD was easier to implement for bigger entities;⁴⁶ however SMEs responses to the online survey did not differ significantly from the general group.⁴⁷ Therefore we deem SMEs as not being particularly negatively affected by the regulation.

Obviously, the CRD reduced the regulatory diversity among the MS helping to reduce traders' costs in cross-border transactions.⁴⁸ Surveyed traders engaged in both domestic and cross-border trading reported savings equating to EUR27.5 thousand per trader.⁴⁹ 23% of traders asked directly whether benefits from consumer related legislation exceed the cost confirmed while 35% indicated the opposite opinion (41% either did not know/had no opinion or judged them to be similar).⁵⁰

We believe that the overall picture of traders balance emerging from the researches may be overly pessimistic. That is due to the fact that the nature of benefits is quite elusive and they can be hardly disentangled from changes in the market situation resulting from other factors, while costs of implementation can be easily identified.

Consumer perspective. An increased confidence in online shopping in general was reported by 37% of responding consumers and in relation to cross-border shopping the share was 31%. Also, 45% of national competent authorities reported receiving positive feedback.⁵¹

Sales. Available evidence of effects of the CRD on sales seem to be inconclusive. Analysis by Eurostat shows an increase of online cross-border purchases between 2012 and 2016.⁵² A significant number of respondents agree that cross-border trade and online purchases had increased since 2014. However the changes are limited in scale (3% growth of online purchases from 2014 to 2017) and certainly cannot be solely attributed to the CRD alone. Also, several interviewed traders see theoretical benefits but fail to identify any specific cost savings, or an increase in sales attributable to the CRD. Yet, many stakeholders confirmed growing interest in cross-border online shopping in order to benefit from lower prices due to the CRD adoption.⁵³ In a separate query, over a third of respondents (35%) stated that intra-EU cross-border online sales had increased since June 2014.⁵⁴

Assessments of the CRD impact on the economy level are not available, however we infer some positives from the aforementioned effects on the microeconomic level and the general logic of the intervention. Taking into account the one-off nature of some costs and the fact that assumed effects

⁴³ Ibid.

⁴⁴ EC 2017f, p. 7.

⁴⁵ EC 2017h, p. 111.

⁴⁶ Ibid., p. 120.

⁴⁷ Ibid., p. 126.

⁴⁸ EC 2017f, p. 8.

⁴⁹ Own calculation based on EC 2017b, p. 109.

⁵⁰ EC 2017h, p. 123.

⁵¹ Ibid., p. 106.

⁵² EC 2017f, p. 6.

⁵³ EC 2017h, p. 120.

⁵⁴ EC 2017c, p. 16.

for the consumers seem to have materialised (higher consumer confidence) and also some tentative signs of increased sales one can expect a positive impact on GDP and possibly employment level. Due to a highly competitive character of online trade, most eventual surpluses for traders will probably be passed on to consumers resulting in further increase of sales both through online and traditional channel. Also, the relatively short period of time since the legislation adoption temporarily reduces its positive effects, especially taking into account remaining limitations to consumer awareness of its provisions.

3.1.2. The Single Digital Gateway - the Digital Single Market Strategy

A. *Name and summary of legislative measure*

Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012. The regulation will facilitate easy and efficient online access for businesses and citizens to information regarding the EU and national laws, administrative procedures as well as services providing assistance upon request. This regulation is a part of the package of measures aimed at tackling barriers to freedom of establishment within the framework of the Commission's Digital Single Market strategy, launched in May 2015.

B. *Available assessment studies.*

This subchapter is based on the following document:

- The Impact Assessment accompanying the document Proposal for a regulation of the European Parliament and of the Council on establishing a single digital gateway to provide information, procedures, assistance and problem-solving services and amending Regulation (EU) No 1024/2012, European Commission, 2017d

C. *Key objective and barriers eliminated*

The implemented regulation was intended to diminish the existing burdens to cross-border business activity and mobility of citizens. The currently available information, assistance services and online procedures are generally unclear, incoherent and inefficient which significantly hinders and extends the process of complementing the necessary procedures. Apart from that, the lack of online findability and accessibility for foreign users is noticeable. Three measures have been identified to address these challenges and to facilitate the flow of information between Member States: 1) improvement of the access to digital information and elimination of the differences between cross-border online and offline activities; 2) full digitalisation of the most important and most frequently used procedures in order to decrease the administrative burden for citizens and businesses; 3) inclusion of the assistance services in the single digital gateway mechanism.

D. *Economic impact.*

Little quantitative assessment of the possible economic impact is available.

The available impact assessment study shows that the total user benefits are estimated at 885 000 hours saved by citizens and €11.1 – 55.1 billion saved by businesses.⁵⁵ It is worth mentioning that savings on the consumers' side result mainly from the common search facility and assistance service finder as well as the improved completeness and quality of online information.

⁵⁵ EC 2017 X, p. 56.

The study provided by the European Commission indicates that for all Member States and the Commission together, the regulatory costs amount to €167 million of initial investment costs and around €8 million of annual running costs. The savings potential can be noticeable through the assumption that the initial investment costs would already be mostly compensated for by the saving of €112 million per year through the digitalisation of only nine out of the ten business procedures.⁵⁶

Moreover, the study shows that the regulation enhances firm-level competitiveness and cost efficiencies, increases the volume of trade and investment,⁵⁷ as well as facilitates SMEs access to the Digital Single Market through the reduction of transaction costs within the Member States and elimination of entry barriers to the international markets.

Apart from the Digital Single Gateway regulation, the Digital Single Market Strategy contains a variety of other solutions connected with the digital market. It includes a Proposal for directives on certain aspects concerning contracts for the supply of digital content and on certain aspects concerning contracts for the online and other distance sales of goods, which has been presented below.

3.1.3. Proposal for directives on certain aspects concerning contracts for the supply of digital content and on certain aspects concerning contracts for the online and other distance sales of goods

A. Name and summary of legislative measure

Proposal for directives on (1) on certain aspects concerning contracts for the supply of digital content and (2) on certain aspects concerning contracts for the online and other distance sales of goods. The major aim of the proposal is to contribute to faster development of a Digital Single Market. It contains five options ranging from a voluntary European model contract with an EU trust-mark to full harmonisation of rules for digital content and goods.

B. Available assessment studies.

This subchapter is based on the following document:

- The Impact Assessment accompanying the proposal, European Commission, 2015b

C. Key objective and barriers eliminated

The proposal aims in supporting Digital Single Market by helping to tap the potential of e-commerce. Different national contract laws are considered to be one of the main obstacles to its growth by a large share of businesses selling online. On the other hand, consumers lack confidence when buying online across borders as a result of uncertainty about contractual rights. They also face a narrower selection of goods accompanied by less competitive pricing. Consumers also suffer detriment resulting from unclear contract law rights for faulty digital content.⁵⁸

D. Economic impact.

A wide variety of economic impacts and a considerable scale are anticipated as a scope of businesses affected is possibly huge. The effects are option-dependent.

In the most ambitious one it was expected that around 228,500 EU companies supplying digital content to consumers, both domestically and cross-border, would incur one-off adaptation individual costs of €6,800 totalling an estimated cost of €1.55 bn. In addition, around 1.1 million of companies

⁵⁶ Ibid., p. 70.

⁵⁷ EC 2017d, p. 64.

⁵⁸ EC 2015a, p. 2.

selling goods online in domestic-only trade would incur similar individual costs totalling €7.5 bn across the EU. No costs are expected for offline-only businesses.⁵⁹ Around half of total one-off adaptation expenses will be borne by businesses currently selling online only domestically. Should those retain their domestic-only scope in spite of export facilitation offered by the proposal, those companies would not accrue benefits from cost savings resulting from the new law. Benefits for a new exporter resulting from reduced costs of selling abroad were estimated at up to €243,000. In case of current cross-border online traders' costs savings were estimated at €9,000. The proposed regulation could increase the number of EU businesses selling online cross-border by 5.3 percentage points (or 12% in relative terms) or by over 122,000 more businesses.⁶⁰ However, even those businesses unable to go behind the domestic market would at least partially gain from additional online purchases resulting from greater consumer confidence (see below).

The huge majority of aforementioned costs would be incurred by SME, which constitute 98% of online traders selling goods in the EU and 92% of those providing digital content. SMEs will face costs of adaptation of approximately €6,800. However in a longer perspective they will avoid the additional costs due to international harmonisation. Around €1.4 bn. of initial costs will be borne by SMEs.⁶¹

A wider economic impact is also expected, among others in form of additional trade, economic growth and employment. Intra-EU online exports in nominal terms would increase by an average 0.04%, a number ranging in single countries from 0.0% to 0.14%. Additional competition from cross-border trade would exert pressure on domestic markets leading to better quality, innovation and reduced prices.⁶²

It is expected that the most ambitious option could increase the number of consumers buying online cross-border by about 7 percentage points (or 13.5% in relative terms) or around 8 and 13 million additional consumers. Additional annual spending of €40 per consumer would mean an increase of online cross-border sales growth of 14%. As the consumer would enjoy a wider selection of products, more competitive prices would follow. The fall of consumer prices is projected ranging from 0.05% to 0.35% in single Member States and 0.25% on average. Private consumption would rise in all Member States, ranging from +0.05% to +0.38%, with an average of +0.23 for the EU28 (corresponding to about €18 bn). Additional welfare gains would result due to expanded choices of goods and services.⁶³

The effects on trade and consumption would be mirrored in higher GDP and employment. GDP is projected to permanently increase in real terms by 0.03% or about €4 bn per year, ranging from 0.0% to 0.06% in separate countries. The net present value of additional output over a 10-year period would be around €28 bn. The increase in GDP would result in a net increase in employment level of around 60,000 jobs. A sectoral breakdown of those numbers is not available, yet it is possible that in some sectors negative effects would occur, for example resulting from a drop of in-store sales.⁶⁴

If less ambitious scenarios are adopted, the resulting economic impact would be reduced. Nonetheless, the impact is significant and remains even in the most conservative option, though in the last case quantitative results are not available due to voluntary adoption associated with this option.

⁵⁹ EC 2015b, p. 26.

⁶⁰ Ibid., p. 27.

⁶¹ Ibid., p. 28.

⁶² Ibid., p. 27.

⁶³ Ibid., p. 29.

⁶⁴ Ibid., p. 30.

3.1.4. Directive on injunctions for the protection of consumers' interests

A. Name and summary of legislative measure

Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests. The act is aimed at introducing EU wide measures enabling termination of infringements harmful to the collective interests of consumers and removing their effect.

B. Available assessment studies.

This subchapter is based on the following document:

- Study for the Fitness Check of EU consumer and marketing law, Civic Consulting, 2017
- Report concerning the application of Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interest, European Commission, 2012a
- Study on the application of Directive 2009/22/EC on injunctions for the protection of consumers' interest, IBF International Consulting, 2011

C. Key objective and barriers eliminated

For the seamless functioning of the single market it is crucial that infringements, internal and cross-border ones, harming collective consumer interests are effectively terminated and prohibited. The infringements covered relate to consumer credit, package travel, unfair terms in contracts concluded with consumers, distance contracts, unfair commercial practices and some other issues. Entities qualified to act encompass independent public bodies, specifically responsible for protecting the collective interests of consumers, or consumer protection organisations.⁶⁵ Those act on behalf of individual consumers as it is well-known from an economic perspective that decentralised, disperse, individual action for enforcing consumer protection legislation may result in significant under-deterrence of infringements.⁶⁶

According to analysed studies, the legislation has been broadly successful. Nevertheless, several obstacles remain that limit positive impact of the regulation (especially in a cross-border dimension), namely financial risk related to proceedings, their length and complexity, and enforcement of the ruling and their limited scope.⁶⁷

D. Economic impact.

The studies that have been analysed provide no monetary or quantitative estimates of economic impact on any scale beyond anecdotal case level evidence. Qualitative information is also narrow, frequently being only a description of theoretical mechanisms expected to emerge due to the Directive application. That is due to the following two causes.

As the Directive provides only an enforcement mechanism, it should be stated that its positive effects largely stem from preventing the under-application of various consumer related laws covered by the Directive and as a result strengthening their positive impact. The number of injunctions used is significant and indicates that this may be an important channel.⁶⁸

⁶⁵ EC 2018e.

⁶⁶ EC 2012, p. 4.

⁶⁷ See EC 2012, p. 13, CC 2017, p. 113.

⁶⁸ CC 2017, p. 103.

Unfortunately this also makes identifying and quantifying those effects extremely difficult. Furthermore, instantaneous observable effects of injunctions basing on the legislation are limited and the major channel of impact seems to be directed towards prevention rather than past misbehaviours⁶⁹, so it is very difficult to pick any meaningful quantitative measure of the economic impact.⁷⁰

Nevertheless, perception of a fair marketplace, however difficult to attribute to a particular regulation, is in our opinion an important driver of consumer behaviour and thus potentially a source of additional purchases. Also, thanks to the regulation, consumers are presented with an improved market offering both in terms of price and quality, and therefore likely to spend more than in an alternative case without the directive. Finally, traders applying the law will profit from a resulting level playing field, which we believe to be a significant contribution to further development of a genuine single market. Also, cases of successful damage claims, though rare, would provide consumers with additional financial means. These impact channels should result with higher sales, GDP and employment.

For those to occur it is important that the Directive is being successfully applied and studies generally confirm that the condition was met.⁷¹ They also provide evidence of some further effect, however they are barely unanimous in an assessment of their extent and scope. The directive has been judged to have brought substantial benefits to consumers as a whole, however those benefits are difficult to measure due to unknown number of consumers concerned and the fact that many injunctions are not related to the price paid. Examples of substantial monetary effects for consumers were provided for selected cases, however it was not possible to extend those to obtain a wider aggregate measure of the directive impact. Other positive financial developments from the consumer point of view may result from a possibility of obtaining financial compensation.⁷²

Another study seems to be less optimistic about economic effect of the measure (IBF 2011). It found no particular advantage due to accrued powers apart from a dissuasive effect for consumers generally. Furthermore, no particular benefits were reported for individual consumers. The regulation appears to have little impact on cross-border litigation, but much more in the national scope, especially for selected sectors.⁷³

The most recent study provides some measurable evidence on positive effects of the regulation (CC 2017). As in previous studies, qualified entities (entities acting on behalf of consumers) judge the directive to effectively reduce the number of infringements.⁷⁴ An important support for the hypothesis that the regulation increases consumers' perceived security has been provided. 81% of consumers in the open public consultation agreed that the right of consumer organisations and public bodies to take legal actions which can stop infringements was beneficial for consumers. Almost no actual reduction in consumers' detriment was found.⁷⁵

⁶⁹ Negative developments avoided are much more difficult to spot for a consumer than directly observable positive results.

⁷⁰ EC 2012a, p. 7-9.

⁷¹ See the number of application for example in CC 2017, p. 103.

⁷² EC 2012a, p. 7.

⁷³ IBF 2011, p. 70-71.

⁷⁴ Again, this applies mostly to the national scope (effectiveness rated 2.4 out of 5 versus 1.2 for the international scope meaning almost no reduction), CC 2017, p. 132.

⁷⁵ CC 2017, p. 132.

The directive can be expected to significantly reduce costs of litigation as collective action due to economies of scale entails lesser expenses than the sum of costs of individual actions.⁷⁶ Costs on the traders side related to the directive have been limited and result from necessary compliance checks. No evidence of unmeritorious claims has been identified. Also, no support has been established for a hypothesis of traders' savings thanks to costs of collective action being lower than that of per-case litigation.⁷⁷

The studies analysed allows authors to consider the directive being an effective tool preventing infringements of consumer rights thus leading to a better regulatory environment. Those should lead to greater perceived consumers' security while making purchases. We consider that to be the most important for channelling the law to positive economic effects in terms of bigger sales or economic growth. Any direct financial effect for consumers (for example resulting from compensation) is probably less important as in many instances it affects only those directly involved in litigation. Another important conduit for positive economic development is making the marketplace fairer, thus more attractive for companies playing by the rules. That should lead to more competition with all its benefits for the economy in the long term.

Finally, it should be clearly stated that an almost complete lack of measured evidence of economic impact is in this case a deficiency of the apparatus and not of the regulation itself.

3.1.5. Better enforcement of consumer rights

A. *Name and summary of legislative measure*

To enhance the protection of consumers' rights, the EU introduces specific measures that modernize and ensure better enforceability of existing legislations and aims to establish common European legal standards. There are several applicable directives, that address the common goal of better enforcement of consumer rights, such as these included in the Single Market Strategy as well as in the New Deal for Consumers regulation, for example Alternative Dispute Resolution (Directive 2013/11/EU), Consumer Protection Cooperation Regulation ((EC) 2006/2004) or proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules.

B. *Available assessment studies*

The following assessment studies have been employed in this subchapter:

- Impact Assessment accompanying Directives Of The European Parliament And Of The Council (1) amending (...), European Commission, 2018b
- Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules, European Commission, 2018c

⁷⁶ Ibid, p. 160-161.

⁷⁷ Ibid, p. 162.

C. *Key objective and barriers eliminated*

Despite the existence of regulations aimed at protecting consumer rights, two following issues have been identified: 1) relatively high level of lack of compliance by traders with the EU consumer law caused by ineffective mechanisms for the individual consumers redress and the inefficiency to stop and deter infringements; 2) ineffective consumer protection and unnecessary costs for compliant traders due to the i.a. lack of transparency and legal certainty for B2C transactions on online marketplaces and for "free" digital services.⁷⁸

To counteract this factors, better enforcement of consumer rights entails the improvement of compliance with the EU consumer law and modernisation of consumer protection and aims to eliminate unnecessary costs for compliant traders through harmonisation of rules and penalties for infringements, increased transparency for consumers in online marketplaces, removal of disproportionate burdens imposed on businesses by existing legislation. It also provides a right to individual remedies for consumers when they are harmed by unfair commercial practices.⁷⁹

D. *Economic impact*

Due to data limitations, instead of an evaluation of an overall economic impact of regulations pertinent for the better enforcement of consumers' rights an in-depth assessment of a New Deal for Consumers has been prepared as a case study (see 4.1.4.1).

Importantly, the available documents show, that the costs of adjustments resulting from the implementation of these regulations, such as transparency requirements or strengthened rules on penalties and a more effective injunctions procedure may require initial familiarisation costs, are likely not to be significant.⁸⁰ In turn, the introduction of individual Unfair Commercial Practices remedies would have a positive effect both on cross-border trade and lower costs for complaint handling. According to the analysed study, SMEs indicated one-off savings of €1 405 on average and annual savings of up to €10 000 due to the recommended changes.⁸¹

3.1.6. A New Deal for Consumers

A. *Name and summary of legislative measure*

A New Deal for Consumers – revision of the Injunctions Directive (proposal), Unfair Commercial Practices Directive and Price Indication Directive. The Consumer Rights Directive also constituting part of the New Deal has been presented in chapter 4.1.1. Apart from this one only the Injunction Directive has been given form of precise proposal and will be described in greater detail in this chapter, however some assessment of company level effects of other regulations are available and will be presented. The initiative is aimed at ensuring cheaper and more effective means to stop and remedy breaches harming multiple EU consumers simultaneously. The major objectives of the initiative are to increase consumer trust along with bolstering the functioning of the Single Market by enhancing business compliance with EU rules providing concrete consumer rights, reducing consumer detriment and contributing to a level playing field for traders.⁸²

⁷⁸ EC 2018b, p. 17-27.

⁷⁹ EC 2018 Y, p. 2-4.

⁸⁰ EC 2018b, p. 65.

⁸¹ EC 2018b, p. 63.

⁸² EC 2017a, p. 3.

B. *Available assessment studies*

This subchapter is based on the following document:

- A New Deal for Consumers – revision of the Injunctions Directive, Inception Impact Assessment, European Commission, 2017a
- Impact Assessment accompanying Directives Of The European Parliament And Of The Council (1) amending (...), European Commission 2018b

C. *Key objective and barriers eliminated*

The proposal envisages improving the provisions of the Injunctions Directive in several areas. Available options include actions to enhance the qualified entities' capacity to prepare and manage both injunction and redress actions, making the law more adaptive to future market developments, facilitating access to justice for underfunded qualified entities by providing dedicated financial support, establishing a single procedure ("one stop shop") in which qualified entities could simultaneously ask the courts and/or administrative authorities to stop the breach and ensure redress for the victims.⁸³

D. *Economic impact*

Little quantitative assessment of possible economic impact is available. Initial studies describe theoretical mechanisms providing a link between the proposed law stipulation and various aspects of market functioning. Those include shifting costs of breaches harming the collective interests of consumers to infringers and stimulating greater compliance with EU rules relevant for the protection of collective interests of consumers. When accomplished, a reduced consumer detriment and a more level playing field for traders should be expected, leading to fairer competition, essential for the effective functioning of the Single Market and fostering innovation and investment.⁸⁴

Savings on the consumers' side are expected due to greater efficiency resulting from redress actions in the collective interests of consumers making superfluous a significant number of individual actions and to an overall reduction of consumer law breaches caused by an increased deterrent effect. That in turn would lead to a reduced economic detriment suffered by consumers, so that consumers would have more financial means available for spending on compliant goods or services and to better allocation of resources, greater economic efficiency, increased innovation and lower prices. The proposal also expects the law to have positive impact on vulnerable consumers (disabled, elderly people or people with a migrant background).⁸⁵

More detailed study provides basic quantitative evidence that those effects are likely to occur. 58% of all respondents (in a survey related to the Injunction Directive) agreed that revising the injunctions procedure would have a positive impact on increasing deterrence. Even a greater share of Member States authorities and consumer organisation agreed to that opinion (83% and 92.8% respectively). A majority of them agreed that stronger rules on penalties would lead to greater consumer trust and more effective enforcement of consumer protection rules.

⁸³ Ibid., p. 3-4.

⁸⁴ Ibid., p. 4.

⁸⁵ Ibid., p. 4-5.

However, business organisations disagreed with the last statement. As far as the consumer costs are concerned, consumer organisations expected lower consumer cost of obtaining redress (25% to 57% significant cost reduction, depending on the option being adopted).⁸⁶

For traders, initial one-off costs of adopting new regulations are expected, however probably limited to some Member States. Consulted SMEs expected that strengthening penalties would have no impact on their cost but also expected increased premiums for coverage against claims in mass harm situations. The possibility of frivolous claims was also mentioned.⁸⁷ The study provides estimates of company level savings and loses due to proposed solution without any generalisation to the economy level.⁸⁸

It should be mentioned that surveyed SMEs generally expressed supportive opinions of the possible alteration of Unfair Commercial Practices Directive and other directives within package. They expected improvements resulting from replacing the present penalty system they deem to be favourable to larger companies and view the intended regulations as introducing level playing field. Respondents asked about financial impact of the regulations indicated savings ranging from €0 to €10 tn. a year and costs of €8 tn. a year (with median €655).⁸⁹

The quantitative analysis provide further support for possible efficiency of the proposed solutions. It is indicated that consumers living in countries where remedies are in place experience a lower probability of both reporting a UCP and experiencing any kind of problem while shopping.⁹⁰

We have no doubt that other effects of the envisaged law will emerge. We expect it will lead to improved consumer finances both by increased effectiveness and deterrence. In addition to improved consumer trust those factors should result in greater purchases from law abiding traders. On the other hand, a more level playing field should strengthen the latter additionally, leading to a more competitive, broader market, increased economic activity and investment. Also, similar effect would result from the regulations better balancing traders' obligations and consumer rights (for example the right of withdrawal).

3.2. Economic impact of the legal acts within the sectoral frameworks

3.2.1 Regulation concerning the rights of passengers in bus and coach transport

A. *Name and summary of legislative measure*

Regulation (EU) No 181/2011 of the European Parliament and of the Council of 16 February 2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004. Since 1 March 2013 the regulation applies various rights for passengers who travel by bus and coach within the European Union on regular services and was introduced with an aim of giving members of the public a guaranteed minimum level of protection when they travel in Europe. The rights concern among others transport conditions, information, complaint rules and sanctions.⁹¹

⁸⁶ EC 2018b, pt. 1, p. 51-52.

⁸⁷ Ibid, p. 53.

⁸⁸ Ibid, p. 89-91.

⁸⁹ Ibid., pt. 1, p. 76.

⁹⁰ Ibid., pt. 3, p. 3.

⁹¹ EC 2015c, p. 2-3.

B. *Available assessment studies.*

This subchapter is based on the following document:

- Report on the application of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, European Commission, 2015c
- The impact assessment of the regulation (...), European Commission, 2008c

C. *Key objective and barriers eliminated*

The key objectives of the regulation included:

- asserting the principle of non-discrimination and assistance to disabled persons and persons with reduced mobility,
- asserting the principle of liability of operators in the event of death or injury of passengers,
- ensuring a level of quality standards of services, defining information obligations and asserting the principle of assistance in the event of cancellations, delays, etc,
- setting up a procedure for handling complaints,
- ensuring appropriate enforcement.⁹²

D. *Economic impact.*

A very limited information of possible or actual economic impact of the regulation is provided by available assessment documents. Some qualitative insights can be gained from scattered information related to its application.

The regulation seems to have produced expected results in terms of changing transport condition. The most visible part is connected with complains and sanction handling due to creation of national enforcement bodies. The number of complaints handled is limited (in some countries surprisingly low). This partly results from limited awareness of passenger rights and particularities of local law in some member states. That could be also caused by satisfactory handling of complaints by companies.⁹³ The later effect may be partially attributed to the new regulation as the act's expected important channel of impact is its preventive character. However, there is no information on the number of complaints that are handled by industry itself, so no firm conclusion in that aspect can be drawn.

The regulation is of particular importance for various categories of disadvantaged passengers as they tend to use the mode of transport covered by it relatively more frequently. Those groups include but are not limited to people of low income, disabled, living in geographically isolated areas or unable to use a different mode of transport (for example because of not holding drivers licence or inability to afford a car). As a result, their options for participation in the labour market, schooling or enjoying leisure or tourism are negatively affected.⁹⁴ We believe that by improving both physical and financial/regulatory conditions of the services, the regulation can be expected to help (re)integrate such persons into a wider society. Not only that would counter further exclusion but also widen the available pool of qualified workers willing and being able to work, through improved mobility, access

⁹² Ibid., p. 14.

⁹³ Ibid., p. 6.

⁹⁴ Ibid., p. 3.

to education and labour markets. In the long term that would lead to more effective allocation of resources, particularly labour, additional employment and consumer welfare gains.

It should be noted, that public consultation revealed available infrastructure to be an obstacle for the disabled, making it harder to enjoy all the rights resulting from the regulation and thus reducing its positive economic impact. Carriers opined that the regulation strikes the optimal balance between the carriers' obligations and passenger rights. Representatives of passengers noted limited applicability of the regulation due to numerous exclusions, reducing some rights applicability to certain types of travel only, thus depriving passengers of legal certainty.⁹⁵ Therefore some of the possible positive economic effects probably have not been achieved due to both actual application of the law and its construction.

The impact assessment accompanying the regulation proposal expected additional costs for carriers up to 2.7% of industry revenue, 0.5% increase in revenue due to additional travel (a net loss of 2.2%). An additional revenue of coach manufacturers amounting to €139 ml and increased employment of 780 FTEs was expected. Finally, a huge potential for impact for accessible coach tourism was indicated up to €12.6 bn of additional tourism revenues and 141.000 additional tourist jobs.⁹⁶ However, due to numerous exceptions allowed by the regulation, the actual impact is probably lower.

A significant impact of the regulation on the SMEs is expected since such companies constitute a bulk of the industry. Additional costs would result from liability issues, assistance but also from costs of fleet adaptation.⁹⁷

Taking into account the limited success of the regulation's application complemented by possible further improvements of the act and developments in its application, an improved balance between price and quality could be expected. The regulation allows better policing of the market that should in our opinion result with eliminating some of offending carriers. A better quality and security for the customer could in the long term induce a more frequent use of collective transportation modes. That presages benefits due to better efficiency and an improved use of resources (also environmental ones).

3.2.2. Regulation concerning the rights of passengers when travelling by sea and inland waterway

A. Name and summary of legislative measure

Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004. It aims to ensure the basic protection of passengers who travel by sea and inland waterway using passenger services or cruises and became applicable on 18 December 2012. Those basic rights are related to non-discrimination on the grounds of nationality, access to information, assistance in the event of transport disruption and persons with disabilities.⁹⁸

⁹⁵ Ibid., p. 9.

⁹⁶ EC 2008c, p. 33, 43.

⁹⁷ Ibid., p. 49.

⁹⁸ EC 2016b, p. 4.

B. Available assessment studies

This subchapter is based on the following document:

- Report on the application of Regulation No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004, European Commission, 2016b
- The impact assessment of the regulation of the European Parliament and of the Council concerning (...), European Commission, 2008b

C. Key objective and barriers eliminated

The major specific objectives were defined in the following way:

- asserting the principle of non-discrimination and assistance to disabled persons and persons with reduced mobility,
- asserting the principle of assistance in the event of travel cancellations and delays,
- ensuring a level of quality standards of services and defining information obligations,
- setting up a procedure for handling complaints and ensuring appropriate enforcement of applicable legislation.⁹⁹

D. Economic impact

Available information indicates that the regulation achieved its major objectives. Both representatives of transport companies and passengers' organisations judge its workings as being satisfactory. The latter appreciate the job done by both carriers and port terminal operators related to implementation of the regulation. Some common obstacles to more efficient application of the regulation results from limited awareness of passenger rights and particularities of local law and enforcement in some member states.¹⁰⁰

The impact assessment provides some estimates of the probable economic impact of the regulation. The additional costs for the industry seem to be limited and mostly data on adopting specific requirements are available. In opposition to many studies complementing proposals for regulation, in the case of the water mode of transport it is explicitly indicated that adoption costs borne by the industry will be shifted to clients at least to some extent. It was expected that due to improved accessibility, the number of persons travelling would increase. Additional revenue of the tourism industry would be marginal at best in relation to the EU economy as a whole (due to limited share of the water mode of transport), but quite significant, when compared with the scale of maritime travel industry. In comparison to a limited impact on the condition of industries involved in terms of costs, relatively important and to large extend permanent effects concerning employment were expected. Requirements resulting from the regulation would imply additional employments on ships, in ports and in the tourism estimated in case of the later at up to 201 thousand FTEs.¹⁰¹

It is worth noting that due to the fact that the industry is mostly concentrated in large companies and requires large, costly infrastructure (as opposed to bus and coach industry) the eventual costs will be shifted to passengers thus reducing any positive effect to consumer welfare. As the measure forces minimal standards on service providers it should not be necessarily viewed negatively that the

⁹⁹ EC 2008b, p. 30.

¹⁰⁰ EC 2016b, p. 8-9.

¹⁰¹ EC 2008b, p. 48-49, 52-56.

passengers would ultimately pay for those. We deem the major long term economic impacts stemming rather from opportunities uncovered by application of standards in the form of lesser uncertainty of customers resulting with a higher willingness to travel and better travel conditions.

The major cost will be borne by the infrastructure operators, usually large companies. Therefore impact on the SMEs will be limited. Some additional costs will be incurred on operators but those are expected to be in line with those borne by large ones.¹⁰²

3.2.3. Financial markets

A. *Name and summary of legislative measure*

The enlargement and integration of the European Union's internal market require an updated legal framework to ensure cross-border financial flows. Therefore, a number of directives have been established which provided a harmonised statutory structure for financial entities such as banks or commercial financial companies. The directives fall into two categories – these that address financial markets instruments (investment services, short selling, securitisation or investment funds legislations) such as Regulation No. 600/2014 on markets in financial instruments, Regulation 2015/2365 on transparency of securities financing transactions or Directive 2013/50/EU on the harmonisation of transparency requirements, and these that regard consumer finance and payments regulations (and legislation regarding insurance and pensions) such as Directive 2015/2366/EU on payment services (PSD 2), Regulation 924/2009 on charges for cross-border payments euro and Directive 2016/2341 on the activities and supervision of institutions for occupational retirement provision.

B. *Available assessment studies*

This subchapter is based on the assessment of individual case studies, namely the Directive on the comparability of fees related to payment accounts, payment account switching (...) and the Directive on markets in financial instruments (see 4.2.3.1 and 4.2.3.2)

C. *Key objective and barriers eliminated*

Currently, the EU financial market faces many problems that hinder the emergence of a single EU financial market. These include i.a. regulatory, supervisory and integration gaps, market fragmentation or ineffective competition in certain areas of card and internet payments. Thus, the main objectives of the directives concerning financial markets, among others, include:

- increased protection and stability of investors and the financial system,
- increment of transparency and confidence in the financial system (including price and costs of insurance products),
- providing a harmonized framework towards a financial single market,
- advanced protection against fraud, abuse, and payment problems,
- facilitation of cross-border credit transfers and card payments under the same conditions,
- introduction of innovative mobile and internet payment services.

¹⁰² Ibid, p. 61.

D. *Economic impact*

Due to data limitations, the economic impact of regulations focused on the financial market has been presented only using several selected examples. To provide a more comprehensive overview, an in-depth assessments of the Directive on the comparability of fees related to payment accounts, payment account switching (...) and Directive on markets in financial instruments have been presented as case studies in the following sub-sections (see 4.2.3.1 and 4.2.3.2).

Report from the Commission to the European Parliament and the Council on the implementation and impact of Directive 2009/110/EC in particular on the application of prudential requirements for electronic money institutions indicates that compliance costs for e-money institution are relatively high, ranging from €25,000 to €0.5 million. However, it is likely that these costs will be offset by the reduction in capital requirements expected in the amount from €1 million to €350,000.¹⁰³ The report highlights that provided solutions do not have an impact on consumers' confidence in the offered products and do not affect their quality and price.¹⁰⁴

According to the impact assessment accompanying the Proposal for a directive of the European Parliament and of the Council on payment services in the internal market (...), the full integration of the cards market (including card standardisation) can generate savings for merchants and consumers of up to €25 billion over 6 years.¹⁰⁵ Moreover, due to the voluntary removal of Honour All Cards Rule by card schemes, it is estimated that merchants can save between €370 million and €1.5 billion.¹⁰⁶ Addressing diverse charging practices between the Member States, the large part of €731 million of annual surcharges can results from consumers following measures to ban surcharging on payment instruments with regulated interchange fees.¹⁰⁷

Furthermore, it is expected that a standardised m-payments market could have almost 70% more transactions than a non-standardised market.¹⁰⁸ Limitation of surcharges, increased availability of online-banking and mobile payments in parallel with strengthened consumer protection will make merchants and consumers the main beneficiaries of the proposed solutions. On the supply side, introduced measures to reduce barriers to market access will be the most beneficial for new entrants and payment institutions.¹⁰⁹

The above-described negative economic impacts for consumers may be a result of the potential market failures, such as asymmetric information, information costs or ambiguous contracts. Additionally, consumers have to face large entities that have greater bargaining power. In 2006 it was estimated that the influence of market power in the financial sector (particularly loan and deposit markets) contributed to the loss of 0.54% GDP in the EU-15.¹¹⁰

¹⁰³ EC 2018d, p. 4.

¹⁰⁴ *Ibid.*, p. 4.

¹⁰⁵ EC 2013b, p.46.

¹⁰⁶ *Ibid.*, p. 59.

¹⁰⁷ *Ibid.*, p. 62.

¹⁰⁸ *Ibid.*, p. 49.

¹⁰⁹ *Ibid.*, p. 78.

¹¹⁰ EU 2014a, p. 30-31.

3.3. Directive on the comparability of fees related to payment accounts, payment account switching (...)

A. Name and summary of legislative measure

Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features. The Directive establishes rules concerning the transparency and comparability of fees charged to consumers on their payment accounts held within the Union, rules concerning the switching of payment accounts within a Member State and rules to facilitate cross-border payment account-opening for consumers. It also defines a framework for the rules and conditions according to which Member States are required to guarantee a right for consumers to open and use payment accounts with basic features in the Union (article 1).

B. Available assessment studies

This subchapter is based on the following document:

- The impact assessment of the directive on the comparability (...), European Commission, 2013c

C. Key objective and barriers eliminated

Objectives of the directive concern following issues:

- enhancing consumer confidence,
- broadening consumer choice both in terms of the quality of the products available and in terms of price reductions,
- facilitation of financial inclusion and thereafter customer mobility,
- facilitation of the cross-border activity of payment account providers,
- ensuring a level playing field between market actors.¹¹¹

D. Economic impact

According to the impact assessment, the directive would induce a significant changes in terms of costs and benefits. Adoption of the measure lead to additional costs both to consumers (possible account management fees) and service providers. The later costs would be a result of necessary changes to IT systems, changes to marketing and pricing and staff training. Some losses of the revenue caused by consumers switching to better suited accounts were also assumed possible. Finally, minor costs for Member States were expected.¹¹²

The total benefits of access to basic payments account were estimated at up to €3 bn a year and mostly accrued by consumers. That compares with additional costs of €1 bn a year, again mostly borne by consumers. The effects of additional information requirements are similar in magnitude. However those additional costs would be mostly covered by credit institutions, while consumers would remain major beneficiaries.¹¹³

¹¹¹ EC 2013c, p. 51.

¹¹² Ibid., p. 65.

¹¹³ Ibid, p. 89-90.

A wide range of economic effect was expected, however those were not quantified. Obviously, as the consumers' benefits would widely exceed costs induced by the directive, the welfare of consumers would be significantly improved. Better access to financial services and reduction of the number of unbanked citizens would lead to various economic and social gains such as increased level of security, an increased choice of goods and services (at markets) where electronic payments are obligatory, the possibility to access employment and accommodation more easily, and a reduced sense of financial, economic and social exclusion. Creation of a switching mechanism in combination with better information would lead, through a more effective market, to a general reduction in prices, meaning that consumers could access the best product for them at the best price. A strong positive effect on consumer confidence leading to increased demand for payment accounts and encouraging consumer mobility both at national and cross-border level was expected.¹¹⁴ We believe that - as in case of other regulations - more confidence will result in additional consumption on the consumer side and sales on the industry's side.

Credit institutions would carry a significant part of the costs, yet in the long term those would be recovered through adjusted pricing and intensified use of financial services. Competitive banking markets promotion would improve the efficiency of the single market, further reinforcing consumer and business confidence thus stimulating growth.¹¹⁵

Regarding SMEs, significant benefits are envisaged. However the regulation doesn't cover their accounts it is very probable that many small companies or one person enterprises will enjoy many of its benefits. That will be a case of firms employing owners' personal account.¹¹⁶ We believe that some indirect impact positively affecting SMEs should occur. The directive is expected to bolster online trade. Taking into account that small firms constitute a majority of online traders, they will be probable to reap benefits resulting from additional online activity.

Although a range of economic impacts of the directive is similar to those of other regulations bolstering consumer confidence and reducing legal insecurity at marketplace, we strongly underline a particular channel at work in this case. Going beyond direct effects related to consumer financial services, it should be underlined that an ability to use at least basic financial services cheaply and effectively is crucial to gain access to various areas of digital markets, to purchase online or more broadly, to participate in the digital world and to a growing extent, also in the physical one. Financial exclusion can be named as one of the reasons for digital exclusion. Therefore, in addition to direct impacts, an amplification of numerous economic effects related to digital space should be expected. The possibility of a deeper digital inclusion of some persons underserved financially prior to the directive adoption might be considered to be a driver for much bigger economic impact than the direct one related to participation in financial services.

3.4. Directive on markets in financial instruments

A. Name and summary of legislative measure

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU. The directive was intended to strengthen investor confidence, reduce the risks of market disorder, reduce systemic risks, and increase efficiency of financial markets and reduce unnecessary costs for participants.

¹¹⁴ Ibid, p. 91.

¹¹⁵ Ibid, p. 92.

¹¹⁶ Ibid., p. 95.

B. *Available assessment studies*

This subchapter is based on the following document:

- Proposal for directive of the European Parliament and of the Council on markets in financial instruments (...), European Commission, 2011a

C. *Key objective and barriers eliminated*

Objectives of the directive concern among others the following issues:

- ensuring a level playing field between market participants,
- increasing market transparency for market participants,
- raising investor protection.¹¹⁷

One of the key results of the directive from a consumer protection point of view is providing a proper regulation for all market and trading structures taking into account the needs of smaller participants, especially SMEs. This is to be achieved among others by regulating possibility for investment firms to accept incentive by third parties, by cross-selling practices, by reinforcing the requirements concerning the handling of funds or instruments belonging to clients and finally by improving the information related to services.¹¹⁸

D. *Economic impact*

Due to a very short time since the directive entered into the law (at the beginning of 2018) there are very few assessment of actual economic effects of its implementation. Some basic estimation of additional compliance costs were provided along the proposal of legislation. The one-off costs of adoption between €512 and €732 ml were expected and ongoing costs of between €312 and €586 ml. In terms of total operating spending of the banking sector it equals to 0.10% to 0.15% and 0.06% to 0.12% respectively.¹¹⁹ No particular impact on the SMEs was indicated.

Such a level of costs, even if underestimated (it is hinted that cost of compliance to the directive's predecessor were significantly higher), caused no obvious lasting harm to the bottom line of the banking sector. Moreover, it is probable that in the long term additional cost will be shifted onto clients (not necessarily being retail consumers). The direct effect of the directive on the well-being of consumers seems to be far from certain and in any case limited. However, we would argue for gains prevailing ultimately as benefits for other stakeholders trickle down to consumers. This could be the case of pension funds and investment funds having access to more effective and transparent financial markets (and also facing more requirements regarding transparency themselves). Lower long term investment costs (for example resulting from inability to shift costs of inducements onto clients), should directly benefit their participants, affecting long term returns on investment, even if the improvement were tiny. That would be an especially important development regarding pension savings, providing benefits for potentially vulnerable parts of society and taking into account the extended duration of pension investments.

The introduction of the directive has also probably had a temporary effect in the form of increased economic activity related to compliance for specific sectors, namely consulting, legal advice and IT.

¹¹⁷ EC 2011a, p. 174.

¹¹⁸ Ibid., p. 8.

¹¹⁹ Ibid., p. 4.

3.4.1. Product Safety and Market Surveillance

A. Name and summary of legislative measure

The Product Safety and Market Surveillance Package covers almost all non-food consumer products with an aim to improve product traceability throughout the supply chain and to enhance applicability and efficiency of existing safety legislation. It includes a proposal for a regulation on consumer product safety and a proposal on a multi-annual action plan for market surveillance covering the period 2013-2015.¹²⁰ Moreover, in addition to the existing directives, specific safety rules that apply to electrical and electronic goods, cosmetics, chemicals and other specific product groups have been added.

B. Available assessment studies

This subchapter is based on the following document:

- The impact assessment accompanying the Product Safety and Market Surveillance Package A proposal for a Regulation of the European Parliament and the Council on consumer product safety and a proposal for a Regulation of the European Parliament and of the Council on market surveillance for products, European Commission, 2013a

C. Key objective and barriers eliminated

Due to the fact that 75% of trade in the EU is in goods, their security is one of the priority issues requiring the determination of the appropriate legislative frameworks. Currently, the product safety requirements in some cases are inconsistent, fragmented and ineffective, therefore the unsafe and non-compliant products circulate on the internal market.¹²¹ Therefore, the main aims of the Product Safety and Market Surveillance Package are as follows: consolidation and reinforcement of the EU product safety requirements, enhancement of the effectiveness of market surveillance activities on the single EU market for goods and simplification of the EU legislative framework.¹²² Apart from that, the reform of the EU's rapid alert system for non-food dangerous products (RAPEX) has been announced allowing for simplification of the process of identifying potentially unsafe products.

D. Economic impact

It is important to emphasise that the available assessment studies does not offer sufficient data to comprehensively evaluate the economic impact of regulations of the Product Safety and Market Surveillance Package.

Given that consumers generate as much as 56% of the GDP of the European Union, and thus in turn act as an accelerator of the economic growth, the Eurobarometer data showing a decrease in confidence of consumers in the safety of products sold in the EU is concerning and carries economic consequences. Thus measures that ensure consumer's safety are likely to entail economic benefits, as they enable a sustained level of consumption.¹²³

Moreover, the analysed impact assessment indicates that coordination of cross-border enforcement of measures resulting from "in the-field" market surveillance would contribute to the consistency of protection of consumers and other users, improve the coherence of market surveillance practices within the Member States. In turn, this enhancement can also reduce unfair competition by non-

¹²⁰ EU 2019.

¹²¹ EC 2013a, p. 12.

¹²² Ibid., p. 26.

¹²³ EC 2013a, p. 12, 21.

compliant economic operators.¹²⁴ Nevertheless, the provided solution might slightly increase the costs of market surveillance authorities due to the necessity to answer the request for assistance by a collaborator in the other Member States, but it might be compensated by its benefits.

Additionally, moderate economic effects are expected from the centralisation of EU market surveillance in the area of non-food products. The establishment of general auditing system regularly verifying the fulfilment of pre-established common performance indicators and a European Market Surveillance Agency in the non-food area would entail significant costs connected with the construction of coordination infrastructures (such as building and maintenance) and capacity.¹²⁵ At this point the estimations of these costs are impossible. No particular impact on the SMEs was indicated.

Finally, the alignment between the requirements of the consumer product safety with harmonised product safety would result in a reduction of information-research costs, expenditures on legal advice for economic operators and would eliminate the existing overlap between inconsistent requirements. For market surveillance authorities, this would facilitate the enforcement measures directly at the source of the risk which represents the most effective and the least discriminatory enforcement approach.¹²⁶ However, these adjustments can have an impact in the form of a slight cost increase for a limited group of producers.¹²⁷

The in-depth assessment of the Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys has been provided as a case study, to illustrate the economic impact of a regulation included in the Product Safety and Market Surveillance Package (see 4.2.4.1)

3.5. Directive on the safety of toys

A. *Name and summary of legislative measure*

Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys. The directive focuses on improving the safety requirements for toys and improving enforcement with a view of better functioning of the internal market. The core of the proposal comprises among others safety requirements for chemicals in toys, more stringent safety related warnings/information and a necessity of hazard/risk analysis prior to marketing.¹²⁸

B. *Available assessment studies*

This subchapter is based on the following document:

- The impact assessment of the proposal for a directive of the European Parliament and of the Council amending Directive 88/378/EEC on the safety of toys, European Commission, 2008a

C. *Key objective and barriers eliminated*

The directive addresses a very specific group of consumers that are particularly vulnerable to potential product faults or mischief. Children themselves lack an ability to make informed decisions, and parents also frequently are unable to assess toy safety. Thus, the most important objective from the consumer protection point of view is strengthening, completing, clarifying and modernising the safety

¹²⁴ EC 2013 X, 41

¹²⁵ Ibid., p. 43.

¹²⁶ EC 2013, 36

¹²⁷ EC 2013 X, 37

¹²⁸ EC 2008a.

requirements for toys in order to respond, in particular, to scientific progress, to market developments and an increased awareness of health and safety issues.¹²⁹ Those requirements relate to objective toys characteristics (i.e. chemicals used, choking hazard or special treatment toys in food) and also about necessary related information and marketing accompanying toys.

D. Economic impact

As the directive is a modification and is building on the prior law, it is expected to improve efficiency, reliability and transparency and to benefit all stakeholders. From the industry point of view, better definitions, scope and responsibilities should reduce legal uncertainty and future cost, as some potentially costly legal issues may never arise in the first place. As for international trade and competitiveness of the EU toys sector effect are probably less obvious. On one hand, some industry representatives were worried by the possibility of increased cost making the EU toy industry less competitive (production of toys of different, inferior quality for extra-EU exports might not be cost effective). On the other hand, some expected the directive would present an opportunity leading to market growth, due to discouragement of low quality toys imports.¹³⁰ It should be underlined that the most of toys sold on the EU market is imported thus the later is a valid point. The last effect can be viewed in terms of providing a level playing field for market participants, thus inducing innovation, development and investment.

On the consumer side, strengthening of essential safety requirements is likely to result in significant public health and safety benefits, due to reduction of number of toy-related accidents. Another important public health gain would relate to a ban of using certain chemicals that might migrate to children, possibly creating a long term detriment to their health that is difficult to detect.¹³¹ Such a development leads to apparent negative effect for children affected and their families, but also to public finance loss as part of the health care costs is borne by Member States. In our opinion it is worth noting, that in case of the directive potential gains are extremely long lasting, as they would accrue during all the remaining life of children.

Industry representatives pointed out that rules on chemicals may lead to job losses between 1200 and 3000 jobs.¹³²

The toy industry consists mostly of small and medium firms and these will be affected by the regulation. In terms of administrative costs SMEs will bear the burden higher than that affecting larger companies. Also SMEs were expecting higher manufacturing cost increases probably as a result of having less opportunities of enjoying economies of scale.¹³³ The smaller companies may be also affected by possible reduction of noncompliant toys import as they are frequently direct importers. We believe the regulation being relatively less beneficial for the SMEs than for larger companies due to SMEs not being able to harvest all its possible benefits while being affected by many of its costs.

We judge one positive economic impact of the directive as of particular importance. Consumers' perceived safety and security related to toys is always crucial as potential harm is done to children.

However, it is also especially important in relation to purchases on distance and online, the part of sales that have been developing explosively in the recent years. That mode of sale offers a limited possibility

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

of personal inspection of toy characteristic, assuming it is possible at all for an ordinary consumer. However existing right of return mitigates that to some extent, the problem doesn't disappear fully (for example in the case of toys of low individual value). Assurance that toy products bought online are safe and of decent quality bolsters that channel of sales as it partly removes asymmetry of information between a trader and a customer.

3.6. Mortgage credit directive

A. *Name and summary of legislative measure*

Directive 2014/17/EU of the European Parliament and of the Council on credit agreements relating to residential property. The legislation introduced rules for creditors and other institution engaged in the residential lending process (such as credit intermediaries) with a view to create a fair single market for mortgage products and protect consumers by preventing irresponsible borrowing.¹³⁴

B. *Available assessment studies*

This subchapter bases on the following document:

- The impact assessment of the directive of the European Parliament and of the Council on credit agreements relating to residential property, European Commission, 2011 b

C. *Key objective and barriers eliminated*

The directive set two major objectives, one referring to creation of effective and competitive single market competitive Single Market for consumers, creditors and credit intermediaries with a high level of consumer protection and the other being a promotion of financial stability through ensuring responsible operation of various agents. The regulation introduced various documentation and proceeding requirements for lenders and intermediaries related to residential mortgage. Those include among others requirement to provide the standardised information sheet and annual rate of charge, introduction of the reflection period and regulates advertisement, foreign currency mortgages and assessment of creditworthiness.¹³⁵ Those should improve consumer confidence and mobility, incite cross-border activity of creditors and provide a level playing field for involved agents.¹³⁶

D. *Economic impact*

One of the declared objectives of the regulation is improvement of the financial stability and an important however unobservable economic effect of its introduction is in our opinion that of possibly avoiding major economic perturbations. As events leading to the 2008 financial meltdown exemplify, a lack of appropriate consumer protection allows both lenders and creditors to behave irresponsibly with dire consequences not only for parties involved but potentially also for a financial system and economy as a whole. Possible effects of such a wide conflagration are enormous. Even if the directive only limits chances of it emerging and is only one of various preventive measures (for example playing along with macro prudential regulations), its contribution to that field should be judged to be the major economic benefit of its introduction. It is not possible to provide quantitative assessment of the economic impact through this channel. However, calamitous implications of the 2008/2009 financial crisis provide a rough indication of a likely magnitude of effects.

¹³⁴ EU 2014b.

¹³⁵ Ibid.

¹³⁶ EC 2011b, p. 21.

According to the available study the regulation should provide a significant reduction of the consumer detriment. That will result from improved consumer confidence possibly affecting positively credit and by extension, economic activity. On the other hand the regulation by design imply a reduced possibility of consumer purchasing unsuitable product which acts in opposite direction (apart from the fact of aforementioned greater financial stability), thus the cumulative effect is unknown due to the difficulty to model consumer behaviour.¹³⁷

The study provides some financial dimension for possible costs or benefits. The former accrue mostly to lenders and credit intermediaries and are estimated to in range of €381-€619 ml. (one-off costs like that of staff training, IT systems, new procedures) and €266-€325 ml. (recurring costs mostly resulting from compliance). Minor costs in low single digits for Member States were expected, amounting between €1.8-€2.8 ml. of one-off costs and €2.4-€4.7 ml. of recurring costs.¹³⁸ This include the costs of introducing new guidelines and their enforcement, as well as additional potential cost of establishing a register.¹³⁹ Major beneficiaries of the directive are consumers and wider society resulting mostly from lower number of defaults. Their monetary dimension was calculated to be between €1,272 and €1,931 ml, of which the most benefits ranging from €442-€553 ml. are generated by the requirement to warn the borrower if the chosen credit product is not suitable to him/her.¹⁴⁰ According to the benefits of creditors, they result mainly from the reduced costs of operating cross-border and increased consumer confidence and demand.¹⁴¹

Some other effects were expected yet not quantified. The regulation may reduce access to credit for groups of borrowers, particularly those with low income. That reduced access should be perceived as reduction of irresponsible lending and therefore would not represent a wider cost to society as it would address the overextension of credit to certain borrowers who may not have been in a position to repay, and would have incurred extra charges due to default penalties and higher interest rates.¹⁴² In our opinion, that argument is only partially true, since such vulnerable borrowers may be forced to migrate to lenders not covered by the directive (such as unofficial lenders) and incur even higher cost as a result.

Some minor impact is expected to affect employees of the financial sectors due to changes in remuneration policies.¹⁴³ No particular impact on SMEs was indicated.

3.7. RAPEX

A. *Name and summary of legislative measure*

The European Union Rapid Information System (RAPEX) has been established on the base of the Article 12 of Product Safety Directive. The system allows free exchange of compliance status, data and infringement information within the Member States and the Commission on a wide variety of products posing a threat to consumers' health and safety or to different public interests.

The latest update of the directive guidelines on 9 November 2018, contained the development of new tools and inclusion of operating arrangements, covering deadlines for the various steps of the notification and follow-up notification procedures.¹⁴⁴

¹³⁷ Ibid., p. 50.

¹³⁸ Ibid., p. 53.

¹³⁹ Ibid., p. 25-26.

¹⁴⁰ Ibid., p. 53.

¹⁴¹ Ibid., p. 27.

¹⁴² Ibid., p. 54.

¹⁴³ Ibid.

¹⁴⁴ EC 2018a, 2-3.

B. Available assessment studies

This subchapter is based on the following documents:

- Commission implementing the decision of 9.11.2018 laying down guidelines for the management of the European Union Rapid Information System 'RAPEX' established under Article 12 of Directive 2001/95/EC on general product safety and its notification system, European Commission, 2018a
- Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, European Union, 2001
- The impact assessment accompanying the document Product Safety and Market Surveillance Package A proposal for a Regulation of the European Parliament and the Council on consumer product safety and a proposal for a Regulation of the European Parliament and of the Council on market surveillance for products, European Commission, 2013a

C. Key objective and barriers eliminated

The emergence of RAPEX is connected with the need to eliminate from circulation or recall products, which pose a risk to the health of consumers and to the public interests. Its main objective is the exchange of information on risk assessment, test methods and results, recent scientific developments as well as other aspects relevant for control activities in line with the establishment of joint surveillance and testing projects. Apart from RAPEX provides an opportunity to exchange expertise and best practices as well as for cooperation in training activities and to improve cooperation at the Community level with regard to the tracing, withdrawal and recall of threatening products.¹⁴⁵

D. Economic impact

According to the provided documents, there is no available quantitative evaluation of RAPEX functionality. However, the studies indicate that only 44% of Member States comply fully with their obligations under the RAPEX system to notify all measures taken which pose risk. Moreover, 28% of Member States notify between 75 to 99% of measures, 5% between 50 and 75% and 14% notify less than 50% of measures taken that they should have notified, which indicates system inefficiency.¹⁴⁶ The low impact of RAPEX may be due to its ambiguous criteria, too complex notification procedure and lack of financial resources to follow-up the notifications.¹⁴⁷ Thus, it is declared that RAPEX procedure will be simplified and transformed into a more cost-effective direction in parallel with a clearer follow-up obligation.¹⁴⁸ In turn, in the most ambitious scenario, the costs for national market surveillance authorities and for the EU will decrease and effectiveness in tracking down unsafe products will be improved.¹⁴⁹

The RAPEX system has been financed under the Directorate General for Health & Consumers, whose operational budget is estimated at €3 ml. for 2014-2020.¹⁵⁰

¹⁴⁵ EC 2001, p. 8.

¹⁴⁶ EC 2013a, p. 18.

¹⁴⁷ Ibid., p. 18.

¹⁴⁸ Ibid., p. 33.

¹⁴⁹ Ibid., p. 54.

¹⁵⁰ Ibid., p. 47.

4. FUTURE POTENTIAL OF CONSUMER PROTECTION IN THE EU

KEY FINDINGS

The analysis of individual regulations presented in the above sections indicated that the positive economic impact in the form of, among others, job creation, increased consumer confidence and reduction of costs for both consumers and producers, translates into monetary effects ranging from €1.3 bn to €13.1, depending on the sector. To maintain and enforce further implementation, appropriate measures are needed to facilitate subsequent evaluation and regulatory control.

A few areas requiring future legislative actions are proposed. The most important include the following topics:

- redefining concepts of ‘consumer’ and ‘market’ in response to economic and societal trends to make them ‘future proof’;
- addressing on-going technological developments such as the gig economy, emergence of prosumers, sharing economy and blockchain, among those the issue of gig economy seemingly having the widest impact;
- further attention to the digital economy in areas such as unpaid services, under-regulated digital players moving into new fields or issues of digital security related to Internet-of-Things;
- possible risk arising from the Brexit process;
- a general recommendation for future actions aimed at improving certain aspects of application and enforcement of existing laws and of future policy initiatives to extend awareness of applicable law and thus expand its positive impact.

Suggestion of improvements of assessment and evaluation processes in the field of consumer protection legislation are suggested with a view to better explain and uncover their positive economic impact.

The provided analysis indicates that regulations related to consumer protection induced positive economic effects that for selected sectors varied between €1.3 bn and €13.1 bn. These calculations were based on the available data on i.a. number of new employees (net), average labour productivity and sales volume. However, it is necessary to emphasise that the uneven quality of impact assessments concerning specific regulations and associated lack of data, make calculations of the economic impact challenging and only possible for a limited number of regulations. Thus, before moving to potential initiatives falling directly into consumer policy field itself, we feel obliged to strongly underline a necessity to develop a more robust analytical apparatus to study empirical economic effects of consumer policy intervention. Currently most studies stop at calculating direct financial costs and benefits for groups of stakeholders at best, which – taking into account weight of the issue – amounts to mere bean counting. As far as wider economic effects are concerned, the best one can obtain is only a theory based evaluation, with some worthy exceptions. Faced with growing populist tendencies that exploit easy to indicate compliance costs and burdens and omit positive but not so easily observable effects cry for a much more robust body of evidence supporting future policy decisions. Direct financial costs are simply more obvious, while abstract economic benefits and harm that would have been prevented stand no chance in comparison.

Some simple improvements to the situation could be suggested.

- The most important aggregated financial effects should be provided (at minimum for consumers and producers) allowing for inserting them into a typical economic model.
- At least qualitative information about expected impact on prices (including expected changes, information about to whom the costs accrue) should be required.
- In the case of sectoral regulation a clear guideline providing context and allowing a comparison of scale and a judgment of effects' importance should be supplied.
- In the case of sectoral regulation more information on effects of diversion of sales/trade should be provided.¹⁵¹

A general recommendation for future actions relates to improving certain aspects of application and enforcement of existing laws and of future policy initiatives. A common and recurring theme of limited results compared to what could have been achieved resurface throughout the body of evidence. Suboptimal performance results from two issues. A lack of knowledge of the consumer side of applicable consumer rights resulting from legislative initiatives can partly be mitigated by explicit provisions requiring active, well targeted information campaigns and securing financing for such an endeavour.¹⁵² That can be accomplished in at least two ways. One would target a potential consumer by a wide dissemination of information across different communication channels. Another option worth considering is placing an obligation on a seller to provide the consumer willing to make a purchase (especially of big-ticket items or particularly complex products/services) with a simple direction (for example in form of a link to Internet site) to concise information about applicable rights presented by an official body or consumer organisation.¹⁵³

A second issue arising as a limiting factor for actual economic effects of policy initiatives is enforcement and to a large extent monitoring of it. As stated before, consumers frequently lack knowledge of their rights and awareness of producer or seller obligations. Therefore it is not rational to expect them to monitor the law compliance notwithstanding the facts that as a party to transaction they are entitled to do so. A need for explicit provision mandating third parties (i.e. consumer organisations) to police the market should be considered in legislation related to consumer protection.

The ultrafast development of the market, its growing complexity and recent technological progress have created a need for a careful reconsideration and possibly redefinition of two key concepts, that of *consumer* and *market*. Especially in the case of the former, a notion of a natural person paying for a product or service is largely outdated and one encompassing much wider relation is required. That would also have a benefit of making definition 'future proof', encompassing yet unknown economic relations falling outside of present definition scope. We believe those seemingly obvious notions to be long due for reconsideration, as their increasingly widening gap with current economic and societal trends opens a possibility of huge consumer abuses without actually infringing the law. We also think the issue to be among the most important as to some degree it affects many of those described below.

¹⁵¹ Some regulations clearly entail moving trade or demand from one sector or market to another yet its effects are rarely recognised or quantified.

¹⁵² One could argue that information on consumer rights is widely available, however it usually requires a conscious effort on part of consumer.

¹⁵³ That would have an advantage over requiring a seller to provide the information directly, as it would leave the control of the form of presentation to a third party, therefore preventing seller from presenting them in the way that might be difficult or confusing to a consumer.

In this context the following developments should be mentioned both as source of inspiration and potential areas for policy action.

- **Gig economy.** A fast growing and widely differentiated framework allowing natural persons to provide services or paid labour to both companies and consumers poses a significant challenge to both consumer protection and the labour law. A novel definition combining those two bodies of law quickly becomes a necessity, also with a purpose of preventing exploitation of vulnerable agents by platform providers enjoying excessive market power. We judge the issue to be the most important to be tackled as it is scarcely regulated in terms of consumer protection and develops at a staggering pace.
- **Emergence of prosumers.** A number of markets where a person is both making purchases and providing goods or services is constantly growing and frequently regulated in an ad-hoc manner, if at all. Relations between professional providers and occasional providers is particularly delicate area. Relations between occasional providers and consumers also call for a scrutiny. A valid and potentially disruptive case to the point is peer-to-peer lending.
- **Development of sharing economy.** Obligations and rights of various parties taking part in a transaction or process require at least a basic definition.¹⁵⁴ That is especially important from a perspective of smooth functioning of Single Market as more and more of this activity take a cross-border form.
- **Blockchain.** Rapid emergence of an innovative digital solution meandering between forms of digital mean of payment, digital security (ICO) and a way of gambling has unsurprisingly met regulators of all levels unguarded. Being by its very nature a cross-border activity, it has been so far regulated by Member States in varying and frequently partial or even opposing way and requires some supranational regulation. This area openly calls for an updated consumer definition. Clearly, possibility of using blockchain as a mean of securing, monitoring and enforcement in business-consumer relations also requires scrutiny. Finally, possible criminal use of the technology is also a concern.

The last issue is just one of the areas of potential activity related to protection of digital consumers as growing and constantly evolving as part of our lives move online. Urgent action, in spite of recent initiatives specifically related to data portability and protection, is needed in the field of unpaid services provided in 'service for data' model, with particular attention placed on smartphone apps and ways those gather and transfer user data. That field is ripe for action to avoid collision between rights and obligations of both users and platforms (i. e. policing social networks and removing/propagating user input). Another forceful trend requiring attention from the consumer protection perspective is encroaching of digital companies into various new spheres, where they are not necessary covered by or applying the laws that are binding for traditional incumbents. Finally, issues of digital security increases along with the approaching Internet-of-Things era.

Attention is required due to the impending Brexit process. As a result of its pressing timetable and messy negotiation process (both intra UK and UK – EU), some fundamental issues remain unsolved and consumer policy issues can easily fall victim to more critical issues. This concerns both how consumers rights and producers/providers obligations related to transaction prior to Brexit will be affected and which law will be applied to future transactions.¹⁵⁵ However, at this stage a bit of patience should be

¹⁵⁴ That could be a natural person that shares goods or services, a participant in collective consumption or a platform facilitating process. We deliberately avoid using the word 'consumer' in that context.

¹⁵⁵ Both in case of UK-EU transaction and intra-EU transaction, for example ability to use the English Law.

advised until the ultimate form of Brexit takes shape, as its various scenarios entail different risks for consumers.

Finally, as most of acts analysed in the report are relatively new or not enacted yet, a degree of vigilance to their possible harmful impact (both resulting from their intended characteristics and unanticipated ones) could be advised. Some of those were described in more detail in parts of the report dedicated to individual acts, but it's essential to mention again those of particular importance.

- Impact of various acts affecting digital trade on traditional sales channel, especially in-store employment.
- Clearly, as some regulation require considerable costs of compliance, those should be monitored, especially in case of industries capable of transferring them to consumers.
- In case of directive on toys possibility of negative effects on competitiveness on extra-EU markets is an issue and industry representatives pointed out that rules on chemicals may lead to job losses between 1200 and 3000 jobs.
- The mortgage credit directive may reduce access to credit for groups of borrowers, particularly those with low income, as a result those could be forced to turn to unofficial lenders.

REFERENCES

- CC, Study for the Fitness Check of EU consumer and marketing law, Civic Consulting, 2017
- EC, The impact assessment of the proposal for a directive of the European Parliament and of the Council amending Directive 88/378/EEC on the safety of toys, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008SC0038&qid=1539871863298&from=EN>, access 18 Oct 2018, European Commission, 2008a
- EC, The impact assessment of the regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, European Commission, 2008b
- EC, The impact assessment of the regulation of the European Parliament and of the Council on the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, European Commission, 2008c
- EC, Proposal for directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council, European Commission, 2011a
- EC, The impact assessment of the directive of the European Parliament and of the Council on credit agreements relating to residential property, European Commission, 2011b
- EC, Report concerning the application of Directive 2009/22/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interest, European Commission, 2012
- EC, The impact assessment accompanying the document Product Safety and Market Surveillance Package A proposal for a Regulation of the European Parliament and the Council on consumer product safety and a proposal for a Regulation of the European Parliament and of the Council on market surveillance for products, European Commission, 2013a
- EC, The impact assessment of accompanying the document Proposal for a directive of the European parliament and of the Council on payment services in the internal market and amending Directives 2002/65/EC, 2013/36/UE and 2009/110/EC and repealing Directive 2007/64/EC and Proposal for a Regulation of the European Parliament and of the Council on interchange fees for card-based payment transactions, European Commission, 2013b
- EC, The impact assessment of the directive on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features, European Commission, 2013c
- EC, Proposals for Directives of the European Parliament and of the Council on (1) certain aspects concerning contracts for the supply of digital content and (2) on certain aspects concerning contracts for the online and other distance sales of goods, Executive Summary Of The Impact Assessment, European Commission, 2015a
- EC, Proposals for Directives of the European Parliament and of the Council on (1) certain aspects concerning contracts for the supply of digital content and (2) on certain aspects concerning contracts for the online and other distance sales of goods, The Impact Assessment, European Commission, 2015b

- EC, Report on the application of Regulation (EU) No 181/2011 concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004, European Commission, 2015c
- EC, Report on the application of Regulation (EU) No 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004, European Commission, 2016
- EC, A New Deal for Consumers – revision of the Injunctions Directive, Inception Impact Assessment, European Commission, 2017a
- EC, Consumer Conditions Scoreboard. Consumers at home in the Single Market, European Commission, 2017b
- EC, European Economic and Social Committee, Information Report on Consumer Rights Directive (evaluation), European Commission, 2017c
- EC, Impact Assessment accompanying the document Proposal for a regulation of the European parliament and of the Council on establishing a single digital gateway to provide information, procedures, assistance and problem solving services and amending Regulation (EU) No 1024/2012, European Commission, 2017d
- EC, Inception Impact Assessment for targeted revision of EU consumer law directives, European Commission, 2017e
- EC, Report from the Commission to the European Parliament and the Council on the application of Directive 2011/83/EU of the European Parliament, European Commission, 2017f
- EC, Study on measuring consumer detriment in the European Union, European Commission, 2017g
- EC, Study on the application of the Consumer Rights Directive 2011/83/EU. Final Report, European Commission, 2017h
- EC, Commission implementing decision of 9.11.2018 laying down guidelines for the management of the European Union Rapid Information System 'RAPEX' established under Article 12 of Directive 2001/95/EC on general product safety and its notification system, European Commission, 2018a
- EC, Impact Assessment accompanying Directives Of The European Parliament And Of The Council (1) amending Council Directive 93/13/EEC, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules and (2) on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, European Commission 2018b
- EC, Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules, European Commission, 2018c
- EC, Report from the Commission to the European Parliament and the Council on the implementation and impact of Directive 2009/110/EC in particular on the application of prudential requirements for electronic money institutions, European Commission, 2018d

- EC, Summary of injunctions protecting the collective interests of consumers, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:co0007&from=GA>, undated, access 11 Oct 2018 (e)
- EU, Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, European Union, 2001
- EU, Consumer Protection Aspects of Financial Services, European Parliament, 2014a
- EU, The directive of the European Parliament and of the Council on credit agreements relating to residential property, European Union, 2014b
- EU, Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012, European Union, 2018
- EU, Legislative Train Schedule. Market Surveillance of Products, <http://www.europarl.europa.eu/legislative-train/theme-deeper-and-fairer-internal-market-with-a-strengthened-industrial-base-products/file-market-surveillance-of-products>, undated, access 16 Apr 2019
- IBF, Study on the application of Directive 2009/22/EC on injunctions for the protection of consumers' interest, IBF International Consulting, 2011
- ICF, Empowered Consumers and Growth: Literature Review – Final Report, ICF GHK, 2012
- IMPA, Common European Sales Law. Detailed Appraisal by the EP Impact Assessment Unit of the European Commission's Impact Assessment, 2013
- Jackson, Rothstein, The Analysis of Benefits in Consumer Protection Regulations, H. E. Jackson, P. Rothstein, unpublished manuscript, 2015
- JRC, The Economic Impact of Removing Geo-blocking Restrictions in the EU Digital Single Market, Néstor Duch-Brown, Bertin Martens, Institute for Prospective Technological Studies, Joint Research Centre. Digital Economy Working Paper 2016/02, 2016

The following in-depth analysis explores economic benefits of policy achievements related to European Consumer Protection. Theoretical background indicates that measures aimed at improving consumer protection should provide mostly positive wider economic impact. Analysed studies related to EU legislation provide numerous evidence that it is the case indeed, however frequently lack quantification of effects. Some areas open for additional intervention are suggested in the study.

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