1. Study to support the Fitness Check of EU Consumer law – Country report LATVIA

1.1. Unfair commercial practices and marketing

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

What is the effectiveness of the UCPD (i.e. the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive;

The stakeholders have underscored that the implementation of the UCPD in Latvia has been successful. The stakeholders have unanimously praised the principle-based approach under the UCPD. The reasoning behind this approach is focused on the inability of specific rules to regulate adequately each and every case. The principle-based approach, on the other hand, gives administrative authorities and adjudicators the necessary freedom and flexibility to decide cases, paying due attention to all the relevant circumstances. The only disadvantage is that the principle-based approach may diminish legal certainty, but overall this disadvantage is outweighed by advantages related to the use of the principle-based approach.

The practice of the Consumer Rights Protection Center (hereinafter – CRPC) illustrates application of the principle-based approach. The CRPC had established that once consumers make air ticket reservations, an airline company offered automatically activated check boxes for additional services or receipt of optional price supplements. The administrative case was initiated. In its decision the CRPC stated that the airline company had violated a well-known fair commercial practice and good faith principle and this significantly influenced the economic conduct of the average consumer.[1] In the case at hand, the principle-based approach and the concept of 'average consumer' were successfully applied.

The stakeholders have likewise noted that the European Commission's Guidance document concerning the Directive[2] facilitates more effective application of the implementing national legislation. Moreover, the CRPC has developed its own Guidelines, helping the traders to follow or to be aware of the fair commercial practices.[3]

- The practical benefits for consumers of the black list of unfair commercial practices annexed to this Directive, in particular its application in practical cases;

According to the stakeholders, the black list facilitates identification of unfair commercial practices. This provides certainty to traders. Thus, while the stakeholders have supported the principle-based approach under the UCPD, they have equally supported the use of the black list.

[1] Consumer Rights Protection Centre's decision in the case No. E03-PTU-K115-39 dated 23 October 2012. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lieta_air_baltic_keksi_lemums_izraksts_23_10_12_2_.pdf (last seen on 30.07.2016). The decision was appealed before a court and the court affirmed the decision.

[2] DG Justice Guidance document concerning Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council. European Commission, DG Justice, June 2014; Commission Staff Working Document Guidance on the Implementation/Application of Directive 2005/29 EC on Unfair Commercial practices. SWD (2016) 163 final, 25 May 2016.

[3] For example, Guidelines on Implementing Fair Commercial Practices in Consumer Crediting, Guidelines on Implementing Fair Commercial Practices in Area of Electronic Communication, Guidelines on Implementing Fair Commercial Practices in Price Identification of Goods and Services etc.

- The practical benefits for consumers arising from the Member States' use of the minimum harmonisation clauses for financial services and immovable property;

The minimum harmonisation rules allow governments to construe an appropriate solution for specific problems arising in a particular Member State, which may be non-existent or less prevalent in other Member States.

The Latvian Government has adopted specific restrictions of consumer crediting.[4] They also indicate the non-exhaustive list of advertising encouraging irresponsible borrowing.[5] However, these rules are not adopted under the UCPD, but are implementing the Directive 2008/48/EC, dated 23 April 2008 on credit agreements for consumers.[6]

There are no cases concerning immovable property.

- The effectiveness and practical benefits for consumers of the application of Directive's rules in tackling misleading environmental claims / in addressing misleading practices in the energy market; [*Key aspects to consider are: To what extent has the UCPD been applied in the context of environmental claims/in the energy market? How effective was it? What are the problems, if any?*]

The CRPC has been actively involved in the supervision and monitoring of the opening of the electricity market from the point of view of consumer protection in Latvia as from 1 January 2015, thus the transposed rules of the UCPD were intensively applied. In addition, the CRPC has developed the Guidelines for traders. Moreover, the CRPC actively participated in consumer information activities on the opening of this market. The involvement of the CRPC ensured that application of the UCPD in the electricity market was very effective. The stakeholders have emphasized that currently there are no specific problems with application of the UCPD in this area.

There is no practice concerning environmental claims in Latvia and at the moment the issue is not topical. However, the authorities are planning to focus on this area, making more detailed studies about the state of affairs therein. The CRPC is currently preparing national guidelines on unfair commercial practices in this area, while the Ministry of Agriculture has focused on the use of words 'bio', 'eco' and has developed the Guidelines on using these words in the labels of food supplements.[7] The new rules limit the use of those words in the names of the companies.

- The practical benefits for consumers of the "average consumer" as the reference point for assessing whether a commercial practice is likely to materially distort economic behaviour; [*Key aspects to consider are: How does the concept of "average consumer" work in practice? Is the concept applied rigidly?*]

The stakeholders gave positive assessment of the concept 'average consumer'. The concept creates the framework of reference for assessing economic behaviour of the consumer. The concept is actively used in practice.

The latter statement is confirmed by the publicly available case-law of the CRPC. The concept of 'average consumer' is referred to in a majority of its cases. In its practices,

[4] Regulations on Consumer Crediting [Noteikumi par patērētāja kreditēšanu]. Regulations of Cabinet of Ministers No. 1219 adopted 28 December 2010. On application of these rules, see also the Consumer Rights Protection Centre's decision in the case No. 18-pk dated 30 June 2016. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemuma_izraksts4finance.pdf (last seen on 30.07.2016).

[5] Article 11, Regulations on Consumer Crediting [Noteikumi par patērētāja kreditēšanu]. Regulations of Cabinet of Ministers No. 1219 adopted 28 December 2010.

[6] B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, 264-265.

[7] Vadlīnijas par terminu „bioloģisks", „ekoloģisks" un vārdu daļu „bio" un „eko" lietošanu uztura bagātinājuma marķējumā [Guidelines on Use of Terms „Biological", „Ecological" and Parts of Words „bio" and „eco" in Labels of Food Supplements]. Guidelines of Ministry of Agriculture adopted 9 March 2016.

the CRPC often refers to Recital 18 of the UCPD and the case-law of the Court of Justice of the European Union (hereinafter – CJEU)[8] to clarify the meaning of the concept. Notwithstanding these references, the practice of the CRPC, usually, does not explain how specific facts of the case were assessed in light of the concept of 'average consumer'. As emphasized by a consumer organisation, the concept remains very uncertain. For this reason, it seems impossible make a general statement as to how the concept is applied in the Member State.

There are two main problems with application of this concept. Firstly, the stakeholders observe that businesses often consider that consumers are more advanced than established through the practice of the CRPC. This may be, *inter alia*, due to sometimes not easily perceivable content of the concept of 'average consumer'. In other words, for a layperson it may be difficult to grasp how the concept is applied in a particular case. Secondly, the stakeholders consider that it is often difficult to apply the concept of 'average consumer' in cases concerning groups of consumers, for example, persons of older age.

The use of the concept allows authorities to render a flexible decision, specifying the content of the concept of 'average consumer' in a manner that is best suited for the specific case. This is an obvious advantage given to the authorities that are not bound by formalistic and overly specific rules, when evaluating the nature of the supposedly unfair practice. The disadvantage is that nuances of that evaluation often remain unknown to those who read the practice of the CRPC, since the precise limits of the concept are usually not uncovered.

- The practical benefits for consumers of the specific protection of "vulnerable consumers" introduced by the directive; [*Key aspects to consider are: Have enforcement authorities/courts in your country recognised new categories of vulnerable consumers not listed in the UCPD (such as poor/indebted)?*]

No new categories are introduced by law. However, the concept of 'vulnerable consumers' has been used in the practice of the CRPC, most notably in respect of persons with serious diseases.[9] Likewise, children and young persons have been often described as 'vulnerable consumers' in the practice of the CRPC. However, the CRPC has also characterized unemployed persons (actively seeking employment) as 'vulnerable consumers' since their income, on average, is below minimal income determined by the state.[10]

- How and which self-and co-regulation actions in EU countries or at EU level have been effective in addressing unfair commercial practices. [*Key aspects to consider are: To what extent do self/co-regulation actions work in practice, are they useful according to stakeholders?*]

According to the stakeholder, the co-regulation actions are employed in practice. The CRPC plays the central role in their employment. This institution, together with traders and other institutions, develops guidelines for fair commercial practices. These guidelines also address issues related to advertising. Two important examples are the

[8] E.g., CJEU case No. C-112/99 dated 25 October 2001, para. 52 ([…] the perception of an average individual who is reasonably well informed and reasonably observant and circumspect. Account should be taken of the type of persons at whom the advertising is directed."); CJEU case No. C-44/01 dated 8 April 2003, para. 55; CJEU case No. C-356/04 dated 19 September 2006, para. 78; CJEU case No. C-381/05 dated 19 April 2007, para. 23.

[9] E.g., Consumer Rights Protection Centre's decision in the case No. E03-REUD-31 dated 13 August 2009. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/bioaktivators.pdf (last seen on 30.07.2016); Consumer Rights Protection Centre's decision in the case No. E03-REUD-53 dated 10 December 2009. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/izraksts.pdf (last seen on 30.07.2016).

[10] Consumer Rights Protection Centre's decision in the case No. E03-KREUD-49 dated 16 September 2010. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_nr-e03-kreud-49_sia_baltic_euroex_izraksts.pdf (last seen on 30.07.2016).

2010 Guidelines on Preparation of Fair Loan Agreements[11] and 2013 Guidelines on Implementing Fair Commercial Practices in Consumer Crediting.[12]

These guidelines are not binding, but contain recommendations, explaining the requirements set by the law and provide examples of unfair commercial practices. These guidelines help traders make preventive assessments of their activities and avoid unfair commercial practices. Moreover, during the drafting stage, the CRPC receives useful information from traders, identifying problems in the market. However, some stakeholders have stated that it would have been better, if the CRPC were allowed to draft binding instruments.

In addition, traders sometimes directly contact the CRPC to obtain its opinion on legality of their practices. For example, to verify whether content of a particular advertisement could cause non-compliance with consumer protection laws.

The most important tool for self-regulation is the creation of Good Practice Codes. The traders may develop such a code - a voluntary agreement of the traders or a body of provisions - regulating the behaviour of such performers of commercial practices, who have undertaken to fulfil the commitments specified in the good practice code in one or several types of commercial practices, as well as in one or several fields of economic or professional activity. The CRPC, upon its own initiative or upon a request of professional associations of traders, evaluates content of such codes and provides a recommendatory opinion. Such codes are developed by traders in consumer credit and advertising markets.

The stakeholders, however, note that the use of such codes does not always achieve its goal. The codes may simply reproduce requirements set out in laws, while being presented to consumers as encompassing good practices beyond those imposed by law, hence misleading consumers. Scholars also observe that only few industries use such codes and even when they exist they are not effective.[13] Moreover, in some cases, industries create their own bodies for assessing compliance of businesses with such codes. In practice, these bodies sometimes fail to limit their assessment to such codes and, likewise, assess compliance with laws in force. This creates confusion within the industry and among consumers as such decisions may differ from the practice of the CRPC, rendering consumer law standards more ambiguous.[14] However, there are also positive examples. In 2013, large associations of traders voluntary agreed to the memorandum 'Fair Euro Enforce'. This memorandum did function in practice and helped smooth transition from the former national currency to the euro.

The practice of the CRPC shows that often the CRPC must intervene first in order to provide an initial cause for establishment of self-regulatory instruments within the industry. For that reason, the CRPC monitors different areas of commerce in accordance with annually set priority areas. To give an example, in 2008 the CRPC, with assistance of phone operators, scanned 14 websites that were offering mobile content services (melodies of calls, pictures, games etc.). The CRPC concluded that the websites provided unclear or incomplete information about the services or prices, violating the fair commercial practice rules. In order to tackle the problem, the CRPC rendered individual decisions in these cases and also developed advice package for consumers. Only after the CRPC took these measures, mobile phone operators developed their own Code of Conduct, eliminating these practices. Overall, the stakeholders expressed scepticism about self-regulation measures.

[11] Vadlīnijas taisnīga patērētāja kreditēšanas līguma sastādīšanai. Consumer Rights Protection Centre, 2010. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/vadlinijas_taisniga_pateretaja_kreditesanas_liguma_sastadisanai.pdf (last seen on 16.07.2016).

[12] Vadlīnijas godīgas komercprakses īstenošanai patērētāju kreditēšanas jomā. Consumer Rights Protection Centre, 03.09.2013, No.8. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/fin_vadlinijas_komercprakse.pdf (last seen on 16.07.2016).

[13] B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, 250.

[14] Ibid., 250-251.

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

The stakeholders have not signalled the existence of major difficulties with the black list of the UCPD. The existing list does not require changes. However, the list has to be adjusted to modern trends in commerce, i.e., developments of modern technologies, like e-commerce, digital tendencies and innovative marketing methods. The changes should be introduced through the standard procedure of amending directives.

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

Firstly, as it was stated above, one improvement – amendments to the black list dealing with development of modern technologies. Secondly, the UCPD should have more elaborate regulation on new economic forms. For example, the sharing economy – peer-to-peer traveling/shopping/car sharing, price comparing webpages etc. and blogs popularizing the particular goods or services or using (often fake) endorsements of previous consumers.

Another particular problem that should be addressed are the so called 'rogue traders', who offer goods or services to consumers, collect monies but then vanish from the market. Currently, there are no efficient tools against this practice. So far, the competent authorities have attempted initiating criminal proceedings against them, but with no success. It is also problematic to deal with a situation when a trader provides certain services for free and while the service is performed offers goods to the customer. In such a situation, the consumer may be forced to buy goods.

Thirdly, just as with other Directives studied here, the stakeholders have underscored the need for more harmonization to ensure better cross-border cooperation. Successful cross-border cooperation is difficult if standards vary across Member States. Thus, in general full harmonization is preferable to minimum harmonization.

Fourthly, sometimes there are problems with delimitation of competences among enforcing authorities. For example, the CRPC has established that the branch of an Estonian bank had distributed the advertisement inviting to conclude the crediting contract and the particular advertisement was recognized as unfair commercial practice thus the penalty was imposed on the mother bank as a supervising entity of the branch.[15] In some cases even the criminal proceedings are initiated because the foreign branch continues the unfair commercial practice and does not comply with a CRPC decision.[16] In more general terms, there is a need for harmonisation and clarification of issues arising during the enforcement of the UCPD. Notably, questions of penalties, allocation of enforcement authority, etc.

Finally, the CRPC develops guidelines for the traders – that is the good practice that can be shared with other Member States. While these guidelines do not automatically reduce the number of infringements, they ensure more rapid resolution of disputes and promote legal certainty.

[15] Consumer Rights Protection Centre's decision in the case No. E03-PTU-F342-10 dated 2 July 2015. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_par_administrativa_soda_uzliksanu_bigbank_izraksts.pdf (last seen on 21.06.2016).

[16] Consumer Rights Protection Centre's decision in the case No. 7-nk dated 27 August 2010. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_nr-7-nk_viasat_izraksts.pdf (last seen on 21.06.2016).

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

What is the effectiveness of the PID (i.e. the national laws transposing it) in terms of:

- Whether and to what extent consumers are effectively informed about the unit selling price;

First, it shall be noted that the Cabinet of Ministers has adopted the Regulations No. 178 "Procedures for Indication of Prices of products and Services" prescribing the procedure by which selling price and price per unit of measurement for products and services offered to a consumer shall be indicated.[17] Thus Latvia extended the application of the PID to services. Moreover, the Regulations provided for the procedure of dual display of prices of products and services during the period of Latvia's accession to the Euro zone.

The Regulations states that the price does not have to be indicated, *inter alia*, for a product which is utilised in providing a service and which is part of the service, in auctions and in marketing of works of art and antiques (Article 12). The price per certain unit of measurement does not have to be indicated at small points of sale where it is not possible to ensure the indication of the price per certain unit of measurement in the manner easily identifiable and clearly legible for a consumer (Article 12.[1]).

According to the stakeholders, consumers are effectively informed about the unit selling price in Latvia. Certain difficulties were foreseen when Latvia joined the euro-zone in 1 January 2014. The law provided for special parallel price identification requirements as from 1 October 2013 – 30 June 2014. From 1 January until 30 June 2014, the CRPC performed 15'768 inspections and in 4890 cases (31%) violations were ascertained but the discrepancies in parallel identification of the prices were cured in 87% cases. Consumers' complaints were received in January 2014, including complains against carriers of the transport as it was not clear how the price for carriage has changed (change of tariffs) and it was considered as increase of price and violation of the law providing that conversation from the Latvian Lats to euro was to be conducted pursuant to rate set by the Council.[18]

The CRPC has adopted the 'Guidelines on Price Identification in Selling the Goods and Providing Services, Taking into Account Fair Commercial Practice' in 2015. The guidelines are not an official interpretation of the relevant norms, however, they are recommendations by the CRPC based on the practice, complains and understanding of the norms.[19]

- Where a recognised measurement unit for a product's performance exists and is displayed to consumers (e.g. number of washloads for detergents), should the "unit price" for such product be indicated per such "performance" measurement units rather than per 1 kg or 1 litre?

Such an approach is not adopted in Latvia. Pursuant to the stakeholders, discussions about its introduction were initiated, but it was established that it would be an enormous burden for traders.

[17] See: Kārtība, kādā norādāmas preču un pakalpojumu cenas [Procedures for Indication of Prices of Products and Services]. Cabinet of Ministers Regulations No.178 adopted 18 May 1999. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/MK_Noteikumi/Cab._Reg._No._178_-_Procedures_for_Displaying_Prices_of_Products_x_Services.doc (last seen on 21.06.2016).

[18] Patērētāju tiesību aizsardzības centra 2014. gada pārskats [Report of the Consumers' Rights Protection Centre of 2014]. Consumer Rights Protection Centre, p. 34. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/publiskais_parskats_2014.pdf (last seen on 21.06.2016).

[19] Vadlīnijas preču un pakalpojumu cenu norādīšanai, tostarp godīgas komercprakses īstenošanā. Consumer Rights Protection Centre, 1.10.2015, No. 21. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/nr_21.pdf (last seen on 21.06.2016).

- The effects of the regulatory choices/derogations allowed by the Directive and applied by Member States. [*Note: Key aspects to consider are: Is the derogation relevant? Do companies make use of it? Are there consumer complaints because of this? If so, approximately how many per year?]*

N/A

1.1.3. Effectiveness of the MCAD in providing protection for businesses

What is the effectiveness of the MCAD (i.e. the national laws transposing it) in terms of:

- The scope of protection under the Directive, in particular whether the scope limited to the notion of 'advertising' provides effective protection for businesses;

First of all, it is necessary to explain the current legal framework in Latvia. Misleading commercial practices, encompassing misleading advertising, is regulated by the Unfair Commercial Practice Prohibition Law.[20] This law is implementing the UCPD. The Advertising Law deals with misleading and comparative advertisement in non-consumer cases and implements the MCAD.

Article 1 of the Advertising Law states that '[a]dvertising is any form or any mode of announcement or endeavor associated with economic or professional activity, intended to promote the popularity of or demand for goods or services (including immovable property, rights and obligations).'[21] Thus, in essence (though not in precise wording), the definition of 'advertising' used in said law is identical to that of Article 2(a) of the MCAD.

In general, the scope of the MCAD is rather broad and provides effective protection for traders. In practice two problems have been identified. Firstly, currently in Latvia, there is a discussion about drawing a line between political statements and advertisements. Recently, the Non-bank Creditor Association made statements criticizing the practice of the CRPC in relation to non-bank crediting. The statements were distributed through media via advertisements. The obvious objective of these statements was to protect non-bank financial institutions from more rigorous practices of the CRPC. In such cases, the problem is to distinguish between an economic or professional activity intended to promote goods or services and expression of opinion by businesses and their associations. This is, of course, a very specific problem, closely related to issues of constitutional legal order and is thus difficult to solve at the supranational level.

The second problem is that monitoring and supervision of the area is difficult in practice. The competing traders use advertisements against each other and sometimes breaking ethical rules or using illegal forms of advertisement when replying to advertisement campaigns by other traders. Moreover, there are suspicions that complaints by traders against each other are overloading the supervising authorities.

- The overall effectiveness of the principle-based approach to misleading advertising under this Directive;

The stakeholders have positively evaluated the principle-based approach, as it allows finding a reasonable solution for each particular case. The downside of the approach is a lower level of legal certainty. However, benefits of the approach outweigh this disadvantage.

[20] Negodīgas komercprakses aizlieguma likums [Unfair Commercial Practice Prohibition Law]. Latvian Law adopted 22 November 2007 Available in English at http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Unfair_Commercial_Practice_Prohibition_Law.doc (last seen on 17.07.2016).

[21] See Reklāmas likuma [Advertising Law]. Latvian Law adopted 20 December 1999. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Advertising_Law.pdf (last seen on 21.06.2016).

- The effects of the minimum harmonisation provisions on misleading advertising; [*Key aspects to consider are: Which national rules that go beyond the MCAD, if any, have been providing a higher level of protection? If so, how? Are there other rules protecting B2B transactions applied by Member States (e.g. through extending the UCPD)?*]

Articles 8 and 9 of the Advertising Law almost *verbatim* reproduce Articles 3 and 4 of the MCAD when defining misleading and comparative advertisement.[22] Hence, substantive scope of protection under the national law does not go beyond that of the Directive. It is, however, important to mention that there are other provisions giving protection to businesses in case of misleading advertising. For example, Article 2352[1] of the Latvian Civil Law[23] protects honour, respect and business reputation. In some cases, misleading advertising may be considered to cause damage to other market participants.

The UCPD is not extended to B2B transactions. There are no other rules protecting B2B transactions. The majority of the stakeholders have observed that the current situation is adequate. However, the stakeholders dealing with competition law consider that while there is no hard data about the need for such extension, in principle, it would be considered a positive development.

- The effects of the full harmonisation provisions on comparative advertising;

The stakeholders consider that full harmonisation provisions on comparative advertising effectively allow to tackle problems linked to comparative advertising. At the same time, the stakeholders have underscored the need for further guidelines on application of the MCAD.

- Whether the comparative advertising rules provide an effective legal framework for modern types of marketing where a competitor or a product offered by a competitor can be identified;

In principle, the answer is positive. However, it was stated above in respect of the UCPD, there may be some problems in regards to use of blogs or webpages with consumer (often fake) endorsements of products comparing them to competing products. As the stakeholders have noted, in respect to the UCPD, current legal instruments in the area of advertising are difficult to enforce in such cases. Possibly, a more elaborate regulation is needed for these types of comparative advertising.

- Whether the current rules on enforcement set in the MCAD provide an effective enforcement framework, especially in the context of cross-border transactions.

As with other Directives, the functioning of the MCAD in cross-border transactions is subject to successful cooperation among enforcement authorities in different Member States. So far, this cooperation is not without problems. For example, in some cases foreign traders are using methods of advertising in breach of Latvian law, but not of that in other Member States. In such cases, foreign authorities cannot impose any sanction, if requested so by Latvian authorities. This allows traders to evade any sanction whatsoever.

The stakeholders note that to ensure better cooperation, full harmonization provisions must be preferred to minimum harmonization, even if limiting the marge of appreciation. Similarly, issues of territorial competence, penalties and matters of enforcement must be harmonized.

[22] Ibid.

[23] Latvijas Republikas Civillikums [Civil Law]. Latvian Law adopted on 28 January 1937. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/The_Civil_Law.doc (last seen on 17.07.2016).

- Are there measures that could improve the effectiveness of the MCAD in providing protection for businesses (see also 1.1.6 below)? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

For measures that could improve the effectiveness of the MCAD see the previous answer. While the CRPC is elaborating guidelines for laws implementing consumer protection, similar guidelines may be useful for the MCAD.

1.1.4. Effectiveness of current rules in eliminating obstacles to the Internal Market

What is the effectiveness of the UCPD (i.e. the national laws transposing it) in eliminating obstacles to the Internal Market in terms of:

- Whether the application of the principle-based approach under this Directive in different Member States shows disparities in the understanding of its principles and, if so, whether these disparities have an impact on cross-border trade;

The Unfair Commercial Practice Prohibition Law, implementing the UCPD, transposes its provisions almost verbatim. Moreover, the practice of the CRPC shows that it often refers both to the text of the law implementing in Latvia and the UCPD itself. Now, the problem is that principle-based approach provides a large margin of appreciation to Member State authorities. Even the practice of the CJEU does not solve the issue as it likewise operates with rather ambiguous notions. Had the CJEU acted otherwise, it would render the principle-based approach meaningless, substituting it by formalized rules. It is important to note that the practice of the CRPC and case-law of the Administrative Courts do not show that these institutions would refer to practice of foreign courts or institutions. Thus, disparities among Member States in application of the principle-based approach are inevitable.

However, the stakeholders have not indicated that application of the principle-based approach would create particular problems. According to the stakeholders, usually, the minimum harmonization provisions or gaps in EU rules create disparities in the market. Theoretically, the principle-based approach may be prone to disparities, although there are no specific statistics or studies about the issue.

- The effects of the uniform black list of unfair commercial practices annexed to this directive on the free movement of goods and services;

The stakeholders have, in general, considered the black list to be an efficient tool, complementing the principle-based approach. The fact that the black list contains an exhaustive and precise list of unfair commercial practices should, in principle, aid free movement of goods and services as it provides more uniformity. As stated above, while the principle-based rules of the UCPD are also harmonizing the legal environment, their application may differ among Member States. The black list with it precise rules generates lesser disparities among Member States.

- Whether the minimum harmonisation derogation under this directive allowing national rules on financial services and immovable property represents a barrier to cross-border trade. [*Do the national differences play a role in a business perspective? Have they caused problems?*]

The stakeholders have indicated that while in principle full harmonization is preferred by enforcement authorities, in respect of financial services minimum harmonization provides important advantages as the Latvian legislator was able to implement measures dealing with troublesome development in the market of non-bank crediting. However, currently a special regime for consumer crediting is established through implementation of the Directive 2008/48/EC, dated 23 April 2008 on credit agreements for consumers.

As there is no practice on immovable property and this is not a topical issue in Latvia, there is also no significant effect on cross-border trade.

What is the effectiveness of the MCAD (i.e. the national laws transposing it) in eliminating obstacles to the Internal Market in terms of:

- Whether the application of the principle-based approach under this Directive in different Member States shows disparities in the understanding of its principles and, if so, whether these disparities have an impact on cross-border trade;

The stakeholders have not indicated that the principle-based approach would genuinely create disparities. However, it must be taken into account that Latvia is a small market and it may be difficult to spot certain problems due their scale. In future, if practice among Member States authorities varies, such disparities could affect cross-border trade. However, in any case, the affect would most likely be negligible.

- Whether the minimum harmonisation character of provisions on misleading advertising represents a barrier to cross-border trade;

The stakeholders have noted that the use of minimum harmonisation is creating barriers. It allows traders to escape from the application of more stringent rules.

It is not known to what degree businesses exporting into Member States with higher requirements are suffering from varying regulations.

- Whether the fully harmonised provisions on comparative advertising provide an appropriate legal framework in cross-border trade for advertising where a competitor or a product offered by a competitor can be identified;

The full harmonization rules, in principle, are satisfactory and ensure equal treatment of the market participants.

- Whether the lack of cross-border enforcement mechanism in B2B relations constitutes a barrier to cross-border trade.

According to the stakeholders, this is not so much a problem of barriers to cross-border trade, but rather a problem of evasion from enforcement by certain traders. This, however, may negatively affect cross-border trade indirectly, by distorting competition among traders in different Member States.

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

Regarding the information requirements according to Article 7(4) UCPD ("invitation to purchase") in the advertising stage, please analyse:

- The level of awareness of traders as regards information requirements at the advertising stage, as in particular demonstrated by their practical application; [*Key aspects to consider are: How are these rules applied in practice? To what extent do traders implement these rules? Are these information requirements under the UCPD useful in view of the more comprehensive pre-contractual information requirements of the CRD?*]

According to the stakeholders, there is no research uncovering the level of awareness among traders. However, the everyday observations of the stakeholders enforcing consumer protection rights show that the level of awareness is comparatively low. The study of the practice of the CRPC also shows that disregard of requirements set out on Article 7(4) UCPD is not the main infringement of consumer law, but it is a recurrent

infringements.[24] The practice of the CRPC shows that traders frequently do not indicate prices.[25] In one case, a trader did not indicate precise prices in its internet advertisements, claiming that clients could find the price by clicking on additional links.[26] Also traders have failed to indicate sufficient information about the payment, delivery, performance and other provisions of the contract.[27] These cases show that the level of awareness is probably low.

The usefulness of the information requirements in view of the more comprehensive pre-contractual information requirements of the CRD is not studied in Latvia and is not a topical issue.

- Is there any overlap with the provisions of the Services Directive and the E-commerce Directive that apply to advertising? If so, are there any costs arising for public authorities and/or businesses due to this multiplicity of information obligations?

The stakeholders have noted that no such overlap has been established. The practice of the CRPC shows that these instruments are occasionally applied. For example, in respect of E-commerce the concept of advertising the Law on Information Society Services (implementing the E-commerce Directive) and the Advertising Law (implementing the MCAD) complement each other.[28] Complementary application of different laws make it complicated for businesses (especially, smaller ones) to navigate among different legal regimes.

This implies two problems. First is related to implementation of the Directives. All three directives (the MCAD, Service and E-commerce Directive) are implemented via three different laws with multiple cross-references and provisions determining their mutual interplay. Implementation in a single law might simplify the situation, making the legal regime more transparent. Second is related to the Directives themselves. The fact that they contain complementary legal regimes makes it difficult to determine their scope.

1.1.6. Relevance for business-to-business transactions

Regarding the area of unfair commercial practices/marketing, please analyse:

- Whether an extension of the Unfair Commercial Practices Directive to B2B transactions or a revision/extension of the Misleading and Comparative Advertising Directive would bring benefits for cross-border trade;

This problem has not been discussed in Latvian scholarship or among enforcement authorities. However, theoretically, there are both advantages and disadvantages to

[24] E.g., Consumer Rights Protection Centre's decision in the case No. E03-PTU-K204-4 dated 9 April 2015. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_komercpr_k-204izraksts.pdf (last seen on 21.06.2016).

[25] Consumer Rights Protection Centre's decision in the case No. E03-PTU-L13-L34-14 dated 23 July 2015; Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_rigas_satiksme_23_07_2015_izraksts_majas_lapai_000000003.pdf (last seen on 21.06.2016). Consumer Rights Protection Centre's decision in the case No. 11–pk 4 April 2016. Available in Latvia at http://www.ptac.gov.lv/sites/default/files/04_04_2016_sia_promotion_studio.pdf (last seen on 21.06.2016).

[26] Consumer Rights Protection Centre's decision in the case No. 11–pk dated 4 April 2016. Available in Latvia at http://www.ptac.gov.lv/sites/default/files/04_04_2016_sia_promotion_studio.pdf (last seen on 21.06.2016).

[27] Consumer Rights Protection Centre's decision in the case No. E03-PTU-K20-5 dated 14 May 2015. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_komercpr_k-20izraksts.pdf (last seen on 21.06.2016).

[28] Consumer Rights Protection Centre's decision in the case No. E03-PTU-P65-7 dated 2 March 2012. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_nr-eo3-ptu-p65-7.pdf (last seen on 21.06.2016).

such extension. On the one hand, the extension would have helped to level the playing field among Member States in B2B transactions. On the other hand, it is not without its problems.

B2B transactions are a broad category. Some of them may, in principle, require application of such rules. These would be transactions between smaller and larger businesses. The former may have level of competence and bargaining power similar to those of consumers. For example, Latvian tax law recognizes the so-called 'patent tax payers' regime. A patent tax payer is a natural person registered in the State Revenue Service, whose annual turnover does not exceed EUR 50 000, who does not employ other persons and does not provide services to other traders (for example, mushroom pickers). Patent tax payers are unprotected and for them such new legal regime may be helpful.

The problem is to design objective criteria making it possible to identify those traders that need additional protection. These criteria should be harmonized and be efficient, notwithstanding very different national regulations of commercial forms.

As there are no studies on the need for such extension in the market, it is impossible to make an unequivocal conclusion, whether such extension is needed.

- Whether it is appropriate to keep separate legal regimes for B2B and B2C transactions in the area of commercial practices and to what extent both regimes could be aligned;

The B2C regime is based upon the premise that a consumer is a weaker and less competent party. The B2B regime cannot be based upon the same premise as all parties involved are businesses. For example, Article 5(5) of the UCPD provides that Annex I contains the list of those commercial practices which shall in all circumstances be regarded as unfair. It may be questioned whether all practices enumerated therein could be considered unfair in B2B transactions, where parties should normally have a higher level of competence than consumers. Similarly, the concept of the average consumer is probably not a good benchmark to assess B2B transactions. Thus, both regimes should remain distinguished.

For the sake of uniformity both regimes could be based upon similar terminology and similar categories (unfair commercial practices, misleading actions/omission and aggressive commercial practices), but thresholds used within each category must differ for B2B transactions.

Finally, since 1 January 2016 Latvia has adopted Unfair Retail Trade Practice Prohibition Law restricting the use of buying power of retailers against suppliers in order to balance the interests of suppliers and retailers in retail trade.[29] The existence of such national laws, creates problems with alignment of B2B and B2C regimes.

- The appropriate scope of the protection in B2B transactions – whether the protection should cover only the pre-contractual stage (i.e. misleading or aggressive marketing) or should also cover unfair commercial practices during and after the transaction;

There are no studies analysing the need and effects of such an extension and its possible scope. Thus, it is impossible to draw unequivocal conclusions.

- Whether there is a need to have a black-list of practices in the business-to-business marketing area;

[29] Negodīgas mazumtirdzniecības prakses aizlieguma likums [Unfair Retail Trade Practice Prohibition Law]. Latvian Law adopted 21 May 2015. Available in English at http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Unfair_Retail_Trade_Practices_Prohibition_Law.pdf (last seen on 21.06.2016).

As was stated above, the stakeholders consider the black-list of practices to be useful for B2C transactions. The list could be likewise used for B2B transactions. However, in Latvia advertising is almost exclusively targeted at consumers. Thus, the need for such a list is questionable.

- What should be the enforcement cooperation mechanism in the business-to-business marketing area;

Currently, in Latvia there is no authority that would deal with the matter in respect to B2B transactions. Thus, it is impossible to speak of any cooperation mechanism at this moment.

- Whether there is a need to develop contractual consequences linked to the breaches of the Misleading and Comparative Advertising Directive;

The stakeholders have in general expressed their preference for contractual consequences. If the scope of the MCAD is extended, then introduction of contractual consequences would be reasonable.

- Whether there is a need to adapt the rules on comparative advertising of the current Misleading and Comparative Advertising Directive.

The stakeholders have not indicated that this is necessary.

1.1.7. Relevance of contractual consequences of unfair commercial practices

Please analyse whether there are in your country:

- Any national law provisions providing contractual consequences in case of breaches to the Unfair Commercial Practices Directive or national provisions on the avoidance of the contract e.g. in cases of usury or other immoral behaviour;

Latvian law does not provide contractual consequences for the breaches of the UCPD. Similarly, the law does not provide the right to avoid the contract due to such infringements.

However, Article 25(8) of the Consumer Rights Protection Law provides that, if the CRPC establishes a violation of the consumer rights, which affects group consumer interests (collective interests of consumers) and may cause losses or harm to consumers, as well as to a particular consumer, the CPRC, having evaluated the nature and essence of the violation, as well as other aspects, may take, *inter alia*, the following measures: '1) propose that the manufacturer, trader or service provider makes a commitment in writing to rectify the violation within the specified time period; 2) take a decision, by which the manufacturer, trader or service provider is required to cease the violation, and to perform specific activities in order to rectify the impact thereof and which determine the time period for the implementation of such activities […].'[30]

If the manufacturer, trader or service provider makes a commitment in writing to rectify the violation, it is considered that he/she has acknowledged the infringement of consumer rights and the CPRC abstains from making a decision requiring to cease the violation and perform specific activities in order to rectify the impacts of the infringement. However, if the commitment is not fulfilled, the CPRC requests to cease the infringement and to perform specific activities in order to rectify the impact and establishes a period for its implementation.

[30] Patērētāju tiesību aizsardzības likums [Consumer Rights Protection Law]. Latvian Law adopted 18 March 1999. Available in English at http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Consumer_Rights_Protection_Law.pdf (last seen on 21.06.2016).

- Any case law (enforcement decisions, court rulings) providing for such consequences;

Contractual consequences are not provided for in Latvian law; hence, no case-law on the matter.

- Whether there is, based on past experience in your country, a need and potential to develop contractual consequences linked to the use of unfair commercial practices.

The stakeholders consider that introduction of contractual consequences would be beneficial for consumer protection in Latvia. Indeed, contractual consequences may be an efficient measure to strengthen protection of consumers and, notably, have a preventive effect upon businesses attempting to infringe consumer protection law. Notwithstanding that, the stakeholders have also pointed out certain problems related to the introduction of contractual consequences. For example, the stakeholders have indicated the difficulty of establishing that goods were bought due to the (misleading) advertisement.

1.2. Contract conclusion and performance

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

What is the effectiveness of the UCTD (i.e. the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive;

According to the stakeholders, the principle-based approach, all things considered, is more effective than the use of specific rules, as the latter would always contain gaps. The principle-based approach allows the authorities and adjudicators to apply the law in a flexible manner, taking into account all factual circumstances. Moreover, the approach adjusts to the changing values of society about legal, social and political processes.[31]

This flexibility is illustrated by the following example. In one case, the court *ex officio* evaluated the principle of legal equality of the contracting parties (Article 5(1) of the Consumer Rights Protection Law). This rule provides that contractual terms shall be deemed to contradict the principle of legal equality of the contracting parties, if the terms reduce the liability of the parties prescribed by law, restrict the rights of the consumer to enter into contracts with third parties, stipulate privileges to the manufacturer, trader or service provide, and restrictions to the consumers and put the consumer in a disadvantageous position and are contrary to the requirements of the good faith (Article 5(2) of the Consumer Rights Protection Law). The Court acknowledged that the Consumer Rights Protection Law is not intended to release the consumer for any and all liabilities arising from the breach of the contract but the purpose of the law is to protect the consumer against the application of contractual terms, providing disproportionate liability for the non-execution of the contract. If all terms unfavourable to consumers were to be considered unfair, it would violate the principle of legal equality. The judge concluded that in the case at hand the consumer

[31] Vadlīnijas taisnīgu elektronisko sakaru pakalpojumu līguma sastādīšanai [Guidelines on Drafting Fair Electronic Communication Service Agreement] Consumer Rights Protection Centre, 2012, p. 48. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/vadlinijas_elektroniskie_sakari_ligumu_sastadisana.pdf (last seen on 11.07.2016).

had not fulfilled their obligations under the contract, thus had not acted in good faith. The creditor's claim against the consumer was satisfied.[32]

In certain areas, creating particular concern for consumer protection, the application of the principle-based approach has achieved notable results. For example, the supervision of contracts used in non-bank crediting has been an effective means of debtor protection.

- The practical effectiveness of the indicative list of unfair terms annexed to the Directive, in particular its application in practical cases; [*Key aspects to consider are: How is the indicative list of the Directive interpreted in your MS? Does this work in practice or are there problems?*]

In 2014, the CRPC received 132 complaints regarding unfair terms. In 2015 the number increased to 164. In 2015, the majority of complaints (37 %) was about consumer crediting[33] considered to be one of the most problematic sectors, even though since the introduction of the licensing in 2011 consumer crediting agreements are scrutinized by the CRPC. Namely, when the CRPC decides whether to issue licenses or not, it evaluates draft contracts, thus eliminating the unfair contractual terms.

In the opinion of stakeholders and in practice a non-exhaustive black list of unfair terms is incorporated in Article 6 of the Consumer Rights Protection Law. It suggests that, contrary to the Directive, the list in the national law is not only indicative, i.e. providing examples for unfair terms, but also bears a mandatory character.[34] Namely, unfair contractual terms listed in the law shall be regarded as unfair and not in effect if they are not mutually discussed by the contracting parties.

The Supreme Court has stated that this Article provides just for the general list of possible violations of the principle of legal equality, describing their main characteristics; but it is impossible to indicate all unfair contractual terms.[35]

Part 3(7) of Article 6 provides that contractual terms, which have not been mutually discussed by the contracting parties, shall be deemed to be unfair if they exclude or hinder the right of the consumer to apply to consumer rights protection institutions or to courts or to use rights protection means, especially those providing for adjudication of disputes only by arbitration tribunals, unjustifiably restrict the use of proof available for a consumer or impose a burden of proof on a consumer which in accordance with the laws and regulations is an obligations of other contractual party. However, the Article 10(2) of Law on Arbitration Courts provides freedom for any party to conclude an arbitration agreement.[36] It is stated that the norm included in the Consumer Rights Protection Law is a special norm in connection with the norm included in the Civil Procedure Law (general norm)[37]. Thus in accordance with national law and para 1(q) of the Directive's Annex[38] contractual term providing only for the dispute settlement in

[32] Dobele region court's judgment in the case No. C30624015 dated 30 May 2016. Available in Latvian at https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/271015.pdf (last seen on 11.07.2016). See also Supreme Court's judgment in the case No. C10100611 dated 14 September 2016. Available in Latvian at http://at.gov.lv/files/uploads/files/archive/department1/2016/SKC-116-2016.doc)last seen on 01.02.2017).

[33] Official statistics of the CRPC. Available in Latvian at http://www.ptac.gov.lv/lv/content/statistika-par-patereta ju-sudzibam-un-konsultacijam (last seen on 11.07.2016).

[34] See, B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, 110-111.

[35] Administrative Cases Department of the Supreme Court's judgment in the case No. C30519003 dated 7 March 2006.

[36] Šķīrējtiesu likums [Law On Arbitration Courts]. Latvian Law adopted 11 September 2014.

[37] Civilprocesa likums [Civil Procedure Law]. Latvian Law adopted 14 October 1998. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Civil_Procedure_Law.pdf (last seen on 11.07.2016).

[38] Unfair term (q) excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by

arbitration can be deemed unfair.[39] The Constitutional Court has also indicated: 'when interpreting the restrictions determined in the Directive to bind the consumer with a jurisdiction clause, the European Court of Justice has pointed out that the potential unfairness and validity of such a clause shall be assessed by the court of its own motion [...]. The Constitutional Court holds that the courts of general jurisdiction of Latvia shall also act in the similar manner [...].'[40]

The CRPC, frequently, faces contractual terms imposing upon consumers disproportionately large contractual penalties or other compensation for non-performance or improper performance of the contractual obligations. These terms are considered unfair under Latvian law.[41]

There is a recent example from the CRPC's practice. The CRPC received number of consumer complaints regarding the parking services contracts. The parking contracts placed in the parking sites and on the web page of the service provider established that consumers were to pay several penalties for the same breach and their total amount was disproportionate and exceeded the contractual penalties provided by law. The services provider declined the CRPC's proposition to eliminate the breach of consumer rights and to submit the written acknowledgment providing that the service provider would not offer or apply particular unfair terms. Taking into account that particular violation affected collective interests of the consumers, the CRPC decided to consider the specific contractual terms and required the service provider to stop applying the terms, to change them and to submit a new version of the contract for a review.[42] The decision of the first instance court has been appealed and the litigation is pending.

The list has helped eliminate the use of arbitration clauses in consumer contracts without them being individually negotiated.[43] The state of arbitration in Latvia, in the eyes of the public, does not ensure comprehensive implementation of high ethical standards among arbitrators. Thus, the use of arbitration is considered to be non-transparent and sometimes plainly unjust method of dispute settlement. This is even more so in consumer contracts, where the consumer would usually not understand all the consequences of the having the dispute decided in arbitration (in particular, when there is a risk that arbitrators/arbitration institution have certain links with the trader). The stakeholders have considered this to be the single most important improvement of the consumer practice in Latvia.

- Whether the "black" and/or "grey" list of unfair contract terms adopted in certain Member States represent an advantage for consumer protection compared to the

legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract.

[39] Vadlīnijas taisnīga patērētāja kreditēšanas līguma sastādīšanai [Guidelines on Drafting Fair Consumer Credit Agreement] Consumer Rights Protection Centre, 2010, Available in Latvia at http://www.ptac.gov.lv/sites/default/files/docs/vadlinijas_taisniga_pateretaja_kreditesanas_liguma_sastadisanai.pdf (last seen 11.07.2016), p. 32.

[40] The Constitutional Court of the Republic of Latvia judgment in the case No. 2004-10-01 dated 17 January 2005, para. 9.3.2. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/05/2004-10-01_Spriedums_ENG.pdf (last seen on 11.07.2016).

[41] See: Administrative district court's judgment in the case No. A42765709 dated 31 May 2012 available in Latvian at https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/125753.pdf (last seen 01.02.2017); Administrative regional court's judgment in the case No. 420563412 dated 16 October 2013. Available in Latvian at https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/118686.pdf (last seen on 01.02.2017).

[42] Consumer Rights Protection Centre's decision in the case No. 2-pk dated 8 October 2015. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemuma-izrakts-europarklatvia_2pi.pdf (last seen on 30.07.2016). The decision was appealed by the service provider; however, the first instance court denied the appeal. See: Administrative regional court's judgment in the case No. A420336415 dated 17 June 2016. Available in Latvian at https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/270650.pdf (last seen on 01.02.2017).

[43] Consumer Rights Centre's decision in the case No.1/06 – 5338 dated 24 August 2005. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_nr106_5338_2005_08_24._aas_baltijas_apdrosinasanas_nams.pdf (last seen on 30.07.2016).

purely indicative list of the Directive; [*Note: If a black/grey list exists in your country, key aspects to consider are: How does the list work in practice? Does it make a difference to have such a list?*]

The black list is necessary for a number of reasons. Firstly, the list simplifies the task of the CRPC of creating uniform practice on unfair contract terms and provides information to public. For example, currently the CRPC keeps a database of unfair contractual terms, which is available on the CRPC's webpage. Moreover, in selected sectors the CRPC develops Guidelines on Drafting the Consumer Contracts, containing examples of unfair contract terms.[44] This allows consumers and traders alike to assess contractual terms. An indicative list would provide lesser legal certainty and clarity.

Secondly, the list has helped to eradicate certain practices, notably, the use of arbitration clauses in consumer contracts. Their almost complete eradication from consumer contracts was positive development, bearing in mind that arbitration in Latvia is often short of highest international standards and its use in consumer disputes exposed consumers to unreasonable risk of denial of due process and access to justice. An indicative list would make such eradication slower, due to the case-by-case assessment. The use of the black list provides a faster and more efficient solution.

The practical application of the black list may be illustrated by the following example. The contract for telecommunication services provided that '[i]nformation about the changes in contract will be provided on [services provider's] webpage. Information on prices, tariffs and additional costs of the service will be provided in writing or, if it is not against normative acts of the Republic of Latvia, via [services provider's] webpage, mass media and/or in other suitable way.' The CRPC referred to Article 6(3)(12) of the Consumer Rights Protection Law, providing that the term permitting service provider to unilaterally amend the contractual terms shall be considered unfair. Further the CRPC stated that this norm in national law shall be interpreted within line of Annex 1, Article 1(j) and 2(b) of the Directive and Article 23 (3) Electronic Communications Law.[45] The CRPC established that the law explicitly did not provide in which way the consumer shall be informed about the changes in electronic communication service agreement, but it was determined that the consumer should have 'receive[d] an individual' notice about changes in contract thus the CRPC imposed an obligation to change the particular term of the contract to the service provider and inform about the decision's enforcement.[46]

However, the introduction of the black list in national law does not mean that all terms listed therein are always unfair. The CRPC has published the cases when the term was not considered as unfair. For instance, in one case, the consumer complained that the contract provided for the contractual penalty of 2.5 % per day from the debt in case the consumer delays the payments.[47] The CRPC evaluated the proportionality of the contractual penalty within the context of the Article 6(3)(4) of the Consumer Rights Protection Law, providing that the contractual term imposing a disproportionately large contractual penalty for non-performance of the contractual obligations upon a

[44] For example, Vadlīnijas taisnīgu elektronisko sakaru pakalpojumu līguma sastādīšanai [Guidelines on Drafting Fair Electronic Communication Service Agreement]. Consumer Rights Protection Centre, 2012, p. 48. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/vadlinijas_elektroniskie_sakari_ligumu_sastadisana.pdf (last seen on 11.07.2016).

[45] Elektronisko sakaru likums [Electronic Communication Law]. Latvian Law adopted 28 October 2004. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Electronic_Communications_Law.doc (last seen on 11.07.2016). Article 23(3) provides: „Subscribers have the right to terminate an electronic communications services contract without the application of penalties if the subscriber, upon receipt of a notification from the electronic communications merchant regarding changes in the conditions of the contract, does not agree to the offered changes in the contract conditions."

[46] Consumer Rights Protections Centre's Decision No. 25-lg dated 7 August 2006. Available in Latvian http://www.ptac.gov.lv/sites/default/files/lemums_nr.25_lg_2006.08.25_sia_bite_latvija.pdf (last seen on 11.07.2016).

[47] The CRPC does not decide on individual claims anymore.

consumer was unfair. In the case at hand taking into consideration the circumstances of the case, it was decided that the contractual penalty was fair.[48] Thus the terms themselves allow to maintain certain flexibility in their application.

- The effects of limiting a court decision establishing the unfairness of an unfair term to the individual relationship between the specific trader and the consumer, rather than, for example, extending the effect of such court decision to all contracts concluded with a given trader, even outside injunctions under Article 7(2) of the Directive, or to all contracts containing the same contract term; [*Key aspects to consider are: In your country, have the effects of court decisions establishing the unfairness of an unfair term been extended to all contracts of the trader concerned or to the contracts of any other trader containing such a term? If so, how does this work in practice? What are the impacts on businesses? If there are no such effects of court decisions on unfair terms: what are the effects of this situation?*]

A judgment concerns only a particular consumer. This is illustrated by the following case. A consumer - the contracting party to a pledge agreement -, submitted the request to the CRPC, requesting to acknowledge that a number of the contractual terms were void. The CRPC decided not to initiate an administrative case, because some of the terms were fair, while in respect of the arbitration clause, the trader had given a public acknowledgment that it will not apply it. The consumer submitted the claim to the court. The case was reviewed by three instances, including the Supreme Court as cassation. The Supreme Court stated that in accordance with the law, the consumer itself cannot initiate the administrative case on breach of collective consumer interests in accordance with Article 25(8^1) of the Consumer Rights Protection Law.[49] Secondly, in case of individual consumer disputes about unfair contract terms, the CRPC evaluates the complaints and replies stating its opinion regarding unfairness of the particular terms. Such a reply is not binding and does not constitute an administrative act. The CRPC protects collective consumer interests as provided in Directive No. 2009/22.[50]

Some of the stakeholders, in particular consumer organisations, have indicated that after recent amendments, the dispute resolution of the individual disputes became more complicated.

However, if the violation of the consumer rights, affecting group consumer interests (collective interests of consumers), has been established, and it may cause losses or harm to consumers, as well as to a particular consumer, the CRPC, having evaluated the nature and essence of the violation, as well as other aspects, is entitled *inter alia* to propose that the manufacturer, trader or service provider makes a commitment in writing to rectify the violation within the specified time period (Article 25(8) of the Consumer Rights Protection Law). The CRPC has published 16 such written commitments in 2015. The system helps curing amicably infringements and eliminating unfair terms from contracts, simultaneously protecting traders from punishment proceedings and fines.

Moreover, while judgments concern only specific cases, the practice of the Supreme Court is normally followed by lower courts in similar cases. However, not always is there a dominant practice followed by all courts in all similar cases. While the precise

[48] Consumer Rights Protection Centre's decision No.19-lg dated 07 June 2006. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/ptac_lemumi/2006/lemums_nr.19_lg_2006.06.07_sia_maksinet.pdf (last seen on 11.07.2016).

[49] This Article provide that the CRPC can initiate collective interest case upon its own initiative, on the basis of a submission of the association for consumer rights protection, on the basis of the information provided by such institution within the competence of which is the supervision and control of the relevant sector; on the basis of a submission of such institution of the European Union Member State which is included in the list referred to in Article 4(3) of Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests.

[50] Administrative Cases Department of the Supreme Court's decision in the case No. A420299513 dated 11 July 2014. Available in Latvian at http://at.gov.lv/files/uploads/files/archive/department3/2014/472-ska-2014.doc (last seen on 13.07.2016).

effect is unknown, it could be speculated that this creates uncertainty for both traders and consumers, inflates costs of litigation, but equally motivates traders to use potentially unfair terms, expecting favourable court decisions. Thus most probably there is a need for the mechanism to extend the finding in one case to all consumer contracts, for example, in the national level the Supreme Court could publish summary of the judicature, i.e., recommended judiciary practices.

- The overall effectiveness of the contractual transparency requirements under the Directive;

Article 6(2) of the Consumer Rights Protection Law provides that contractual terms shall be expressed in plain and comprehensible language. This implements the transparency requirement of the Directive. Within the meaning of this law, the principle of transparency means that an average consumer must be able to read and understand a consumer contract without lawyer's assistance, and none of its terms is putting the consumer in disadvantageous position because he/she does not understand a particular term and cannot imagine that it can be applied against him/her.[51]

The CRPC rarely deals with assessment of the contractual transparency requirements in practice. However, in some sectors, e.g., insurance, the use of non-transparent contractual clauses is a problem that is addressed by the institution.

However, it must be noted that the CRPC, in its publicly available materials and guidelines for traders, underscores the need for transparent contractual language. The existence of such a legal requirement, even if not always easy to apply in practice, nevertheless, draws attention of traders to the language used in their contracts.

- Whether the extensions of the application of this Directive (to individually negotiated terms or to terms on the adequacy of the price and the main subject-matter) put in place in certain Member States represent an advantage for consumer protection. [*Note: Question only relevant for MS that have put in place extensions of application of UCTD*]

In principle, Article 5(1) of the Consumer Rights Protection Law established equality between parties and extends to all terms, whether individually negotiated or not, if they are causing effects enumerated in Art. 5(2) of the said law. This means that, formally, Latvia has extended the application of Directive to individually negotiated terms and terms on the adequacy of the price.

However, Article 6 of the said law, dealing with unfair terms, tackles only terms that were not individually negotiated. However, it still encompasses terms on the adequacy of the price and the main subject-matter, but only if they are not formulated in clear and understandable manner.

In practice this means that the CRPC is dealing only with terms that were not individually negotiated. It may deal with terms on the adequacy of the price and the main subject-matter terms, provided they were not individually negotiated and were not formulated in clear and understandable manner. This means that these terms, for practical purposes, may only be assessed by a court. The court will assess whether the term is contrary to the principle of equality of parties. In practice this is a very unlikely occurrence. Thus, the effect of the extension is minimal, if any.

- The effectiveness of the sanction foreseen by the UCTD for unfair contract terms (term is not binding). [*Key aspects to consider are: How does this sanction work in*

[51] Vadlīnijas taisnīga patērētāja kreditēšanas līguma sastādīšanai [Guidelines on Drafting Fair Consumer Credit Agreement]. Consumer Rights Protection Centre, 2010, p. 9. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/vadlinijas_taisniga_pateretaja_kreditesanas_liguma_sastadisanai.pdf (last seen on 11.07.2016).

practice? Does it help consumers? Do the national courts take up the active role imposed by the Court of Justice (invoking unfairness ex officio, taking measures of instruction)? Is it sufficient to have CJEU guidance in this regard? Is there administrative remedy in this area for consumers?]

As was mentioned above, the sanction foreseen by the UCTD have been effective in some areas. For example, the invalidity of non-negotiated arbitration clauses in consumer contracts to a large degree has alleviated problems related to their use in consumer contracts.

However, there are a number of problems with application of these sanctions in practice. Firstly, while the CRPC may find that certain terms are unfair, it is sometimes hard to trace whether the trader has discontinued using the particular term in its contracts. Similarly, in cases when traders submit written commitments, it is not easy to control their observation.

Secondly, for the majority of consumers, it is difficult to establish whether a contractual term is unfair or not. This subjects consumers to serious risks, if they incorrectly consider the term to be invalid and refuse to perform it. For example, if the consumer considers that the contractual penalty is unfair and refuses to pay, this may lead to litigation. If the court finds that the term was not unfair, the consumer will be found to have breached the contract. Thus, to avoid the risk, the consumer would need first to contact the CRPC or bring a claim in a court. In accordance with the Article 26 of the Consumer Rights Protection Law, the CRPC cannot issue administrative decisions in cases of infringement of rights of individual consumers. Here, the CRPC can only consult the consumer and express its opinion about the alleged infringement. This means that at the end of the day, if the consumer believes that a contractual term is unfair, he/she will have to commence litigation. This makes application of sanctions difficult and costly.

Pursuant to the observations of the stakeholders, the court practice is becoming more inclined to invoke unfairness of the contractual terms *ex officio*. This is due to two factors. Firstly, the line of reasoning has been approved by the Supreme Court.[52] Previously judges hesitated or were not informed about this principle, now there is an established case law by the Supreme Court. For example, the Supreme Court, interpreting Article 6(11) of the Consumer Rights Protection Law[53], established that the court shall evaluate the compliance of the terms in consumer contracts to requirements of good faith and shall not apply unfair terms, even if the consumer had challenged the term.[54] The same was confirmed by the Constitutional Court.[55] Secondly, judges become more active participants of judicial training programs in consumer law.

As it was stated above, the CRPC does not issue administrative decisions in individual cases. However, in accordance with Article 25(8) of the Consumer Rights Protection

[52] E.g., Civil Cases Department of the Supreme Court's judgment in the case No. SKC – 94/2016 dated 3 March 2016. See also Civil Cases Departement of the Supreme Court's judgment in the case No. Skc-108/2013 dated 12 March 2013.

In this case, the Supreme Court ruled that a court must invoke invalidity of the unfair terms *ex officio*. In order to justify this conclusion, the Supreme Court referred to four cases by the CJEU: Court of Justice case No. C-618/10 dated 14 June 2012; Court of Justice case No. C-472/11 dated 21 February 2013; Court of Justice case No. C-488/2011 dated 30 May 2013; Court of Justice case No. C-169/2014 dated 17 July 2014.

[53] "Upon resolving a dispute or carrying out other procedural actions arising from the contract entered into between a manufacturer, trader or service provider and a consumer, the court shall evaluate the terms of the contract and for the resolution of the dispute shall not apply the unfair terms provided for in the contract in relation to the consumer".

[54] Civil Cases Department of the Supreme Court's judgment in the case No. SKC-98/2015 dated 21 September 2015. Available in Latvian at http://at.gov.lv/files/uploads/files/archive/department1/2015/SKC-98-2015.doc (last seen 14.07.2016).

[55] The Constitutional Court of the Republic of Latvia judgment in the case No. 2004-10-01 dated 17 January 2005, para. 9.3.2. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2004/05/2004-10-01_Spriedums_ENG.pdf (last seen on 11.07.2016). See reference in footnote 42.

Law, if a violation of the consumer rights has been determined, which affects group consumer interests (collective interests of consumers) and it may cause losses or harm to consumers, as well as to a particular consumer, the CRPC, having evaluated the nature and essence of the violation, as well as other aspects, is entitled to carry out one or several following activities: 1) to propose that the manufacturer, trader or service provider makes a commitment in writing to rectify the violation within the specified time period; 2) to take a decision, by which the manufacturer, trader or service provider is required to cease the violation, and to perform specific activities in order to rectify the impact thereof and which determine the time period for the implementation of such activities; 3) to publish the decision taken either fully or partially on the home page of the Consumer Rights Protection Centre and in the newspaper *Latvijas Vēstnesis* [the official Gazette of the Government of Latvia] (the costs associated with the publication shall be covered by the manufacturer, trader or service provider).[56]

If the CRPC takes a decision on the basis of said provision, it issues an administrative act.

Finally, it should be noted that term 'consumer' appears only once in the Civil Procedure Law. Namely, Article 405 of the law provides that if the judge finds that the application for the undisputed enforcement is unfounded or the amount of penalty indicated in the application is disproportionate to the principal debt, or the document to be enforced contains unfair contractual provisions violating consumer rights, he or she shall take a decision on dismissal thereof. Therefore, it can be suggested that not only guidance by the CJEU is valuable, but also the national procedural law shall be adjusted to be more favourable for the consumers. Also a consumer organisation indicated that there are no procedural reliefs for the NGO's protecting consumer interests – no reduction of court fees etc.

Moreover, in the interviews it was suggested that there is a need for Commission's guidelines.

- In a forward looking perspective: Are there other measures that could improve the effectiveness of the UCTD in establishing a high level of consumer protection in your country? Would a graphical presentation model improve the readability and comprehension by consumers of the T&Cs? Are there best practices or lessons learnt in your country that could be relevant for other EU countries?

The European Consumer Centre already provides graphical presentations and easy-to-understand layouts of EU consumer law.[57] However, it is questionable whether all contract terms can be expressed in graphical presentation.

The CRPC provides a useful database of unfair contract clauses on the internet.[58] Currently the webpage contains information on all unfair clauses included in the list. Of course, a greater number of examples, preferably derived from practice, giving guidance to both consumers and traders about the state of law in this area, would further strengthen legal certainty.

In addition, the CRPC webpage provides a database of unfair terms across different industries. These examples are also very useful to obtain an overview of the current state of affairs in the case law. Presentation of a large number of typical unfair clauses with commentaries by the relevant authority in a simple and understandable manner,

[56] According to scholars, the home page of the Consumer Rights Protection Centre is considered more accessible to general public; therefore, the CRPC does not use its right to publish decisions in the official Gazette of the Government of Latvia. See, B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, 351.

[57] Information provided by the European Consumer Centre is available in Latvian at http://www.ecclatvia.lv/lv/publikacijas/bukleti-brosuras (last seen on 17.07.2016).

[58] The databased of the CRPC is available in Latvian at http://www.ptac.gov.lv/sites/default/files/docs/2014.11.26.%20pielikums_netaisnigu%20noteikumu%20piemeri.pdf (last seen on 17.07.2016).

may be considered to be the best practice relevant for other Member States. Also, before issuing the licence to non-bank consumer creditors, the CRPC evaluates contractual templates, establishing whether the contractual terms are fair.

1.2.2. Effectiveness of the current rules in eliminating obstacles to the Internal Market

What is the effectiveness of the UCTD (i.e. the national laws transposing it) in eliminating obstacles to the Internal Market in terms of:

- Whether the application of the general fairness clause in different Member States shows disparities in the understanding of this principle and, if so, whether disparities have an impact on cross-border trade; [*Key aspects to consider are: Do national differences in the application/implementation of the Directive play a role for businesses? Have these differences led to changes in their business strategy? Have these differences caused problems?]*

The stakeholders have not indicated such effects on cross-border trade. In general, any divergence may have a negative impact. However, cross-border trade develops slowly and traders hesitate to address new consumers in other Member States due to other obstacles such as lack of resources and knowledge of laws or particularities of the specific market. Due to the slow development of cross-border trade, Latvian traders do not have extensive experience of application of the general fairness clause in other Member States.

- Whether any of the extended indicative lists, "black" and/or "grey" lists of unfair contract terms adopted in certain Member States represent a barrier to cross-border trade;

Pursuant to the view of the stakeholders, the black list of unfair contract terms is easier to understand as they set the clear proscriptive rules. The grey list, establishing just a rebuttable presumption of unfairness, may be more open to interpretation on a case by case basis that may vary among Member States. This may be a barrier to cross border trade as traders have to investigate the approach taken by the other Member State. However, there are no studies or information obtained from the stakeholders, providing any real life examples of such effects.

- Whether the other extensions of the application of this Directive (i.e. to individually negotiated terms and to terms dealing with the adequacy of price and main subject matter) in certain Member States represent a barrier to cross-border trade.

There are no studies or information received from the stakeholders implying that other extensions of the application of the UCTD would represent a barrier to cross-border trade.

1.2.3. Relevance for business-to-business transactions

Regarding the area of contractual fairness and in relation to the Unfair Contract Terms Directive, please analyse:

- Whether there is a need to strengthen the protection of businesses, especially SMEs and in particular micro enterprises, with regard to unfair contract terms;

This issue has not been discussed by legal scholars in Latvia. Thus, there is no clear academic opinion. However, Article 4^1 of the Consumer Rights Protection Law provides that the provisions of Chapters III (Conformity of Goods and Services to Provisions of a Contract) and IV (Information about the Goods and Services) of the law shall be applicable to such legal regulations, which are established between a trader or a service provider and a consumer, and also any other subject who expresses a wish to purchase goods or services for a purpose which is not related to economic of

professional activity of such subject. Thus, there is already protection for businesses, but only in the cases in which they are not acting in their business interests.

Creation of wider protection may be questionable. Large businesses rarely will need it as their contracts are often prepared or reviewed by in-house lawyers. On the other hand, small businesses in regard to competence or bargaining power may be in a position similar to that of consumers. However, at least in Latvia, it is difficult to distinguish between businesses in need of such protection and those that do not. For example, in Latvia certain legal services may be provided by jurists established in the form of an enterprise with only a few people involved. Such an enterprise would hardly need additional protection.

Moreover, if the protection is extended to certain categories of businesses, it may pose a problem of legal certainty. Normally, the larger businesses would need to know in advance whether their counterparties have only limited private autonomy.

In addition, commercial law tradition underscores private autonomy. Across the board application of the UCTD in respect of such transactions would bring serious changes in traditional understanding of private autonomy and its limits in commercial law. At best, this approach could be acceptable for standard terms, but not for individually negotiated terms.

- Whether the system of protection established by the Directive, based on the concept of good faith and the significant imbalance in the parties' rights and obligations, would be appropriate for B2B transactions;

Neither authorities, nor scholars have seriously considered and discussed this issue, thus it is hard to provide a definite answer. Overall, the use of good faith principle could be acceptable.

The principle of good faith is also embodied in Article 1 of the Latvian Civil Law, making it part of private law. The use of a similar notion (although with an autonomous content due to its EU origins) in B2B transactions would not be something extraordinary for Latvian legal culture. The notion would give enforcement authorities and courts a sufficiently wide margin of appreciation to apply the law in a nuanced manner.

At the same time, in B2B transactions parties, usually, have lesser disparities of bargaining power and competence. Normally, imbalance of rights and obligations would be attributed to free exercise of private autonomy. Thus, if the concept of imbalance of rights and obligations is used it could apply only to most manifest cases. Otherwise, it would disrupt the basis of the market economy, where parties can design their own contracts.

- The appropriate scope of B2B protection against unfair contract terms – should the protection, if at all needed, extend to individually negotiated terms, the main subject-matter of the contract and the adequacy of the price;

In B2B transactions, the standard terms carry the highest risk of creating imbalance between parties. If the scope of the UCTD is extended at all, this area should be tackled first. However, in Latvia use of standard terms in a commercial setting is not widespread.

In principle, Latvian legal tradition would not favour wide-scope intervention into the contract law. Theoretically, if applicable to individually negotiated terms, it could extend only to terms manifestly unfair, beyond reasonable doubts, e.g., extremely high penalty clauses, extremely broad exemptions from liability, etc.

- Whether there are specific contractual terms often used in B2B transactions which could be regarded as unfair in all circumstances or presumed to be unfair;

Some of such terms are already provided in the Latvian general civil law. E.g., Article 1643 of the Latvian Civil Law provides that an agreement between parties excluding liability for intentional infringements is invalid. Similarly, terms that eliminate access to courts all together should be treated as unfair. However, most such manifestly unfair terms would be invalid in accordance with Latvian law anyway.

These examples show that only terms that are outright incompatible with the most fundamental understanding of justice can be regarded as unfair in all circumstances. Other clauses, e.g., penalty clauses, may be unfair, if they provide extremely high penalties.

- Whether there is a need for contractual transparency requirements in B2B transactions, similar to the requirement of plain, intelligible language in the Directive;

In practice many B2B transactions are drafted in a heavy language with extensive use of legalese. But while transparency is welcomed, it is not obvious that the duty of transparency should be legally imposed upon parties.

Firstly, B2B transactions are usually much more complicated than consumer contracts. Secondly, in B2B transactions, from the perspective of the current legal culture in Latvia, parties have freedom to choose the wording of their contract. This follows from the principle of private autonomy. It would seem that imposition of contractual transparency would function as serious restriction upon private autonomy. It is doubtful whether such a policy is appropriate for B2B transactions. B2B contracting should, in principle, remain controlled by parties.

- Whether an extension of the Unfair Contract Terms Directive to B2B transactions can bring benefits for cross-border trade;

In cross-border transactions, the bargaining power among parties may vary more drastically than in domestic transactions. The extension of the UCTD to B2B transaction could eradicate some of the negative effects arising from this disparity. However, the practice of implementation and application of the EU directives may also vary, thus the benefit should not be exaggerated. It is also necessary to study the effect of such extension on the application of other international substantive private law instruments like the Convention on International Sales of Goods and UNIDROIT Principles of International Commercial Contracts. Thus, currently, it is impossible to foresee the benefits and drawbacks.

- Whether the consequences of such an extension would have an effect on innovation by or market opportunities for SME providers/suppliers;

There is no assessment of the possible effect of the extension of the UCTD to B2B transactions. However, on somewhat speculative bases, it has to be noted that fragmentary unification of contractual law would hardly provide sensible effect upon the conditions of SME providers/suppliers in Latvia. This type of harmonization would not eliminate legal barriers among Member States. Their full elimination would require across the board harmonization of private law.

- Whether the benefits of extending the scope to business-to-business transactions would exceed the negative consequences of such an extension.

As stated above, such extension currently is not justified. It strongly interferes with private autonomy and makes it difficult to identify businesses that are protected by the extension.

1.3. Injunctions

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

What is the effectiveness of the ID (i.e. the national laws transposing it) in terms of:

- To what extent is the use of the injunction procedure in your country contributing to the reduction in the number of infringements to consumer protection rules and reduction in consumers' detriment?[59]

According to the stakeholders, the out-of-court injunction procedures are effective and reduce the number of infringements.

In 2015, the CRPC initiated 180 cases dealing with infringements of collective interest of consumers, including cases regarding commercial practices and contractual terms in consumer crediting, commercial practice in e-commerce and electronic communication etc.[60] There have been 4 cases where traders were registered in other EU countries and in 3 cases infringements were amicably resolved.[61]

The following case illustrates that some obstacles remain. Upon a number of complaints regarding two internet stores, collecting money without sending the goods ordered, the CRPC established that the trader conducted unfair commercial practice, *inter alia*, the trader did not send ordered goods on time and did not repay the received monies to a consumer. The CRPC made a decision requesting to end the unfair commercial practice and inflicted a penalty. After this decision, the webpages were closed, but the monies were not paid back to the consumers.[62] In other words, although, the unfair commercial practice was terminated, the damages of the consumers were not compensated. Thus the problem of 'rogue traders' remains and has been acknowledged as topical by the interviewed stakeholders.

The Health Inspectorate conducted 194 planned controls on advertisement of medicine products and in 35 % (67 cases) the infringements were established.[63]

In contrast, there are no explicit special procedural rules on collective claims submitted in the court what is considered as fundamental disadvantage.

- What measures in your national legislation on injunction procedure are considered to be particularly effective, if any: measures regarding the cost of the procedure, the summary procedure, the publication of the decision and/or the publication of a corrective statement, the sanctions for non-compliance with the injunction order (Art. 2(1) of the Injunctions Directive), the prior consultation (Article 5 of the Injunctions Directive), and the effects of the injunction order?

The most effective and widely used measure is the publication of corrective statements on the webpage of the CRPC. In 2015, 16 written commitments were published.

[59] Consumers' detriment should be understood as consumers' financial loss caused or that could have been caused by the infringements as defined by article 1(2) of the Injunctions Directive.

[60] Patērētāju tiesību aizsardzības centra 2015. gada pārskats [Report of the Consumers' Rights Protection Centre of 2015]. Consumer Rights Protection Centre, p. 30. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/ptac_publiskais_parskats_2015.pdf (visisted 17.07.2016).

[61] Ibid., p.39.

[62] Consumer Rights Protection Centre's decision in the case No. E03-PTU-K20-5 dated 14 May 2015. Available in Latvian at http://www.ptac.gov.lv/sites/default/files/lemums_komercpr_k-20izraksts.pdf (visisted 17.07.2016).

[63] Veselības Inspekcijas 2015. gada pārskats [Report of Health Inspectorates of 2015], p. 32. Available in Latvian at http://www.vi.gov.lv/uploads/files/2015g_publiskais_parskats.pdf (last seen on 17.07.2016).

- Has your country extended the scope of application of the injunction procedure beyond the pieces of EU legislation listed in the Annex I to the Injunction Directive? If yes, what are the additional consumer rights covered?

No, the scope of application is not extended.

- Analysis of the obstacles to the effective use of the injunction procedure, in particular by analysing which progress in removing obstacles has been made and/or new difficulties that have emerged in your country since 2012.

In general, the same obstacles are in places as mentioned in the report on the Directive in 2012.

According to the stakeholders, there were certain problems with the total amount of penalties for breaching the law. Namely, the Administrative Violations Code[64] provided a penalty only up to EUR 14 000 for violation of the fair commercial practice rules, but after recent amendments in the Unfair Commercial Practice Prohibition Law[65], the penalty was increased to 10 % from the last year's net turnover but not more than EUR 100 000. Now the penalty is reasonable, as the infringement can cause millions in damages. However, there are indications that some of the traders are not complying with the decision of the CRPC thus enforcement of the decisions is burdensome in some of the cases.

- In a forward looking perspective: Should the coverage of the Injunctions Directive be extended (by including additional legislation into Annex I to the Directive)? If so, which EU legislation should be included? Are there other measures that could improve the effectiveness of the ID in establishing a high level of consumer protection? Should the scope of the Injunctions Directive be extended to the protection of collective business' interests? Are there best practices in your country that could be relevant for other countries and considered as model for the injunction procedure at EU level?

Pursuant to the opinion of the stakeholders, the new Consumer Directive shall be included in the Directive's annex.

There were important amendments to the injunction procedure in Latvia, thus, currently; it is difficult to indicate the best practices.

1.3.2. Effectiveness of the current rules in eliminating obstacles to the Internal Market

What is the effectiveness of the ID in eliminating obstacles to the Internal Market in terms of:

- How effective is the injunction procedure in addressing infringements originating in another EU country?

According to the stakeholders, there is no extensive practice of addressing infringements originating in other EU countries. It is problematic to address this issue because the legal rules and their interpretation differ among Member States.

[64] Administratīvā pārkāpuma kodekss [Administrative Violation Code]. Latvian Law adopted 25 October 2001. Available in English at http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Administrative_Procedure_Law.doc (last seen on 17.07.2016).

[65] Negodīgas komercprakses aizlieguma likums [Unfair Commercial Practice Prohibition Law]. Latvian Law adopted 22 November 2007 Available in English at http://vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Unfair_Commercial_Practice_Prohibition_Law.doc (last seen on 17.07.2016).

- How effective is it to address infringements originating in another EU country that qualified entities in your country are enabled to seek injunctions in the other Member State (Article 4 of the Injunctions Directive)?

Some of the Member States try to protect their nationals. The interest of competent entities in different Member States to cooperate is also an important factor.

- In a forward looking perspective: Are there non-legislative or/and legislative measures that could improve the effectiveness of the injunction procedure in addressing infringements originating in another EU country? Are there best practices in your country that could be relevant for other EU countries and could be considered as a model for the injunction procedure at EU level?

According to the stakeholders, harmonisation of rules would be advisable. That would help addressing infringements more effectively.

1.3.3. Interplay between the Injunctions Directive and other enforcement instruments of consumer law

Please analyse:

- Is the injunction procedure as designed by the Injunctions Directive regulated separately in your country (in a separate legal act or as a separate procedure regulated within the same legal act) from the enforcement procedures foreseen by other EU Consumer Law Directives (UCPD, UCTD and by the Consumer Rights Directive)?

The Injunction procedures are regulated separately.

Article 25 of the Consumer Rights Protection Law provides injunction proceedings.

Article 15 of the Unfair Commercial Practice Prohibition Law states that the CRPC shall supervise commercial practices, assessing the impact of the potential violation on the collective interests of consumers, as well as ensuring balanced supervision of activities of persons implementing commercial practices.

Article 21^3 of the Electronic Mass Media provides that if the audio-visual services threaten the consumers' protection, the National Council of Electronic Mass Media informs media, other EU countries and the European Commission *inter alia* about the injunction.[66] The Council is the responsible institution within the meaning of the Directive No. 89/552/EEC.

Article 37 of the Cabinet of Ministers' Regulations No. 378 Procedures for Advertising Medicinal Products and Procedures by Which a Medicinal Product Manufacturer is Entitled to Give Free Samples of Medicinal Products to Physicians establishes that the Health Inspectorate is the responsible institution as concerns the Directive No. 2001/83/EC.[67]

[66] Elektronisko plašsaziņas līdzekļu likums [Electronic Mass Media Law]. Latvian Law adopted in 12 July 2010.

[67] Zāļu reklamēšanas kārtība un kārtība, kādā zāļu ražotājs ir tiesīgs nodot ārstiem bezmaksas zāļu paraugus [Procedures for Advertising Medicinal Products and Procedures by Which a Medicinal Product Manufacturer is Entitled to Give Free Samples of Medicinal Products to Physicians]. Cabinet of Ministers Regulations No. 378 adopted 17 May 2011. Available in English at http://vvc.gov.lv/export/sites/default/docs/LRTA/MK_Noteikumi/Cab._Reg._No._378_-_Advertising_Medicinal_Products.pdf (last seen 21.07.2016).

- If these procedures are regulated separately: What are the main differences between them? How is the coherence between these procedures ensured? If these procedures are regulated in a single legal act (possibly as a single procedure): In what way do these procedures (or this procedure) go beyond measures foreseen by the Injunctions Directive?

The CRPC is the institution responsible for the injunction proceedings concerning all Directives included in the Annex 1 of the Injunction Directive, with the exception of the Directives No. 89/552/EEC and Directive No. 2001/83/EC. For the latter two Directives, responsible authorities are different and the procedures are simplified as explained above.

There are minor differences between the injunction proceedings provided in the Consumer Rights Protection Law and Unfair Commercial Practice Prohibition Law. For example, in case of violations of consumer rights affecting group consumer interests, the CRPC can initiate the case also upon request of Consumer Rights Protection Association; however, in the unfair commercial practice case there is no such provision. Those two procedures are coherent as there is one enforcing authority (the CRPC).

1.4. Cross-cutting issues

1.4.1. Cost and benefits of the directives covered by the study

- To what extent is there evidence for benefits for consumers stemming from the protection provided by both the minimum harmonised and the fully harmonised consumer rules, e.g. in terms of benefits for consumers from the protection against unfair commercial practices and unfair standard terms in contracts; [*Note: a relevant aspect in this context is whether the costs for consumers in exercising their rights under these directives are limiting these benefits or not.*]

There are no studies calculating benefits and costs for consumers. The costs are usually associated with litigation. They involve legal costs: costs of legal services and comparatively high court fees, as consumers have no remissions. These costs are sometimes prohibitive. High costs of litigation are, possibly, also preventing the court practice from reaching the necessary level of uniformity to have preventive effect upon traders. If the court only rarely intervenes, many unfair terms and practices remain outside the purview of courts, diminishing preventive effect upon traders.

The practice shows that in some cases mentioned above (elimination of arbitration agreements, excessive penalty clauses, elimination unfair commercial practices in non-bank crediting, etc.), implementation of the EU consumer law has allowed to eradicate widespread abuses of consumers. These are clear benefits for consumers.

- To what extent is there evidence for benefits for traders stemming from both the minimum harmonised and the fully harmonised consumer rules, e.g. in terms of creating a level playing field for honest traders by providing a legal basis to eliminate or at least constrain dishonest market practices, such as the use of unfair standard terms in contracts or unfair commercial practices, including through the application of the Injunctions Directive;

No specific data is available, but see the answer to the previous question.

- What are costs for traders due to the need to respect the requirements under the directives covered by the study? [*Note: Such as costs of research, legal advice and compliance as well as the amount of time necessary to comply with the directives*]

No specific data is available.

Since the awareness of traders of consumer law remains unsatisfactory, it may be doubted whether traders make large investments to comply with the Directives. According to the information provided by the stakeholders, costs of dispute settlement before the CRPC, in cases where collective interests of consumers are concerned, are comparatively low.

Litigation before courts may be long and expensive. Court fees depend upon the type and amount of the claim and lawyer's fees. While the defendant does not pay court fees as such he/she has to reimburse court fees and lawyer's fees (until a certain threshold) of the winning party (that is, a consumer).

If the trader is initiating administrative proceedings against the decision of the CRPC, the court fees are EUR 28.46 to initiate litigation; EUR 56.91 for appeals litigation and EUR 71.14 (called the 'security deposit') for review of the lower court's decision on points of law by the Supreme Court. The court fees are reimbursed, if the claimant succeeds.

In principle, since the costs vary among Member States, this may be an obstacle to cross-border trade.

- What are the costs involved in the public enforcement of these rules?

There are no specific studies calculating such costs. Normally, supervision of the application of consumer law and administrative proceedings generate most costs for the CRPC.

- Are there indications that the directives covered by the study are not implemented in your country in a cost-effective manner?

Implementation of the Directives is not expensive, expenses come with enforcement. However, according to the stakeholders, there are no indications that the enforcement is not cost-effective.

- Could the costs for implementing and enforcing the rules of the directives covered by the study be reduced without lowering the level of protection for consumers? If so, how?

As indicated above, the stakeholders expect further guidelines and commentaries to the EU Directives, as well as summaries of the best practices. This could reduce the costs of implementation and enforcement of the Directives. Better awareness of consumers and traders alike may reduce costs of supervision.

Probably, it may also be considered whether the EU should enact rules harmonising court fees for consumer disputes.

1.4.2. Interplay with EU sector-specific consumer protection legislation

Regarding the interplay of the horizontal EU consumer legislation [mainly UCPD and UCTD] with EU sector-specific consumer protection legislation in the areas of electronic communications, passenger transport, energy and consumer financial services, please:

- Analyse the levels of awareness of the requirements of the horizontal EU consumer legislation (mainly UCPD and UCTD) of businesses and consumers and the specific public enforcement bodies in the relevant sectors, as in particular demonstrated by their practical application; [*Key question here is: Are UCPD and UCTD applied in practice by national authorities and courts as a legal basis to combat unfair commercial practices and unfair standard terms in contracts in the regulated sectors?*]

A 2015 study on Latvian consumers' knowledge about their consumer rights and their experience purchasing non-confirming or unsafe goods, showed that 39% of natural persons are very well informed about their consumer rights, while 58% of the respondents weight their knowledge as low. Even though this study shows the general tendencies, it also can be associated with the awareness of the requirements included in the Directives covered by this research.

There are no statistics about the knowledge of traders. In some sectors the knowledge seems insufficient. In others like non-bank consumer crediting, the law requires that an institution, willing to enter into the market, must first receive a licence from the CRPC. Before providing the licence, the CRPC shall verify whether inner policies of the institution and contractual templates comply with consumer law.

The public institutions enforcing sector-specific policies and the CRPC cooperate in order to implement the directives in practice. There are regular meetings held to discuss the sector policies and consumer rights. Judges are regularly trained regarding the consumer protection rights and court practice is becoming more uniform and constant.

- Specify whether in your country the same authority is responsible for the enforcement of the horizontal EU consumer law and the sector specific rules, or whether there are different authorities responsible for these two sets of rules; [*If different entities are responsible, key aspects are: Is there an institutionalised cooperation between them? Does the institutional arrangement for enforcement affect the use of UCPD/UCTD in the regulated sectors, as specified in the previous bullet?*]

The Ministry of Economics is a coordinator of the horizontal EU consumer law policies. The Consumer Rights Protection Law is general law and covers all areas of economy. Other ministries are responsible for sector-specific policies. E.g. the Ministry of Agriculture is responsible for the food sector, the Ministry of Transportation – for the transport sector.

The CRPC is subject to the control by the Ministry of Economics. The CRPC is responsible for supervision of unfair commercial practices and unfair commercial terms in all sectors, except medicine. In the latter sector, supervision of unfair commercial practices is administered by the Health Inspectorate. Certain role in consumer protection is also played by other institutions, overviewing regulated industries.[68]

The CRPC does not enforce sector specific rules; this is done by different authorities. According to the information provided by the CRPC, in order to preserve effective implementation of consumer law, the CRPC has regular meetings and discussions with other authorities.

- Assess to what extent the combination of horizontal consumer provisions and sector-specific rules provide for a clear and coherent legal framework concerning contractual fairness, unfair commercial practices, and information obligations regarding advertising; [*Key aspects to consider are: How do they work together with the sectoral legislation? Are there issues/overlaps/conflicts etc.?]*

Consumer legislation is drafted with participation of all authorities involved. This ensures clarity and coherence of legal rules. Currently, there are three overarching consumer protection acts (Consumer Rights Protection Law, Unfair Commercial Practice Prohibition Law and Advertisement Law*)*, these acts are drafted and amended in a manner that ensures their compatibility. Cooperation with other authorities ensures that sector-specific legal acts are compatible with consumer protection law.

[68] B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, 339.

Notwithstanding that, the stakeholders do consider that occasionally there are problems concerning combination of horizontal consumer provisions and sector-specific rules. In 1 January 2015, Latvia opened its electricity market, this has created frictions between sector-specific rules and consumer protection laws, in particular, in regards to consumer rights of withdrawal.

- What are the benefits of the complementary application of the UCPD and UCTD in the regulated sectors? What are the costs due to the complementary application with the sectoral EU consumer protection legislation?

There is no information about benefits or costs related to complementary application of sector-specific legislation and EU consumer protection legislation.

- Assess any need for clarification of the interplay between the EU sector-specific rules and horizontal EU consumer law.

The stakeholders have emphasized that such clarifications are needed. Firstly, there is a need for general guidance on delimitation of different instruments. For example, advertising is both a commercial practice and object of the MCAD directive. This poses a question which instrument applies. Clarifications provided by the Commission's guidelines would be valuable. Secondly, in particular, for Latvia, it is necessary to have clarifications regarding the interplay between EU consumer law and sector-specific rules in the field of the electricity market. It is preferable that such clarifications are made in form of guidelines or commentaries of the relevant Directives.

1.4.3. Relevance of consumer law directives for consumer-to-business transactions

- Please analyse the need and potential for the application of the consumer law directives (mainly UCPD and UCTD) to consumer-to-business (C2B) relations. This concerns situations where the consumer sells goods or provides services to a trader (e.g. where the consumer sells gold jewellery to a trader or supplies digital content to business against remuneration).

Currently, Latvian national law does not extend consumer law to C2B relations. In practice such an extension is of minor importance. On the one hand, such transactions are less frequent as consumers are not normally producers or resellers of goods or providers of services. On the other hand, such relations pose smaller risks to consumers, as usually their main interest is to receive agreed remuneration. This allows evading more complicated questions of quality of goods and services, their return, etc. Moreover, such an extension would require not only extension of consumer law, but creation of new rules specifically protecting consumers in C2B relations. Overall, the stakeholders have considered these developments unnecessary.

1.4.4. Specific protection for vulnerable consumers

Please analyse:

- Whether the concepts of "consumer", "vulnerable consumer" and "average consumer" as currently defined in the consumer law directives and relevant jurisprudence, and as applied by national authorities and courts in your country, continue to be valid and fit for purpose.

According to the information provided by the stakeholders, currently these notions are valid and fit for the purpose. As it was stated above, these notions (in particular, 'vulnerable consumer' and 'average consumer') are sufficiently flexible for authorities to construe them in the light of particular circumstances.

- To what extent the existing rules under the Unfair Commercial Practices Directive are adequate to protect vulnerable consumers and whether, based on the experiences in your country, specific provisions should be introduced in other directives concerned, in particular the Unfair Contract Terms Directive.

The stakeholders did not indicate any specific omissions in these instruments.

1.4.5. EU added value

- Overall, would you consider that protection of consumers against unfair commercial practices and unfair standard terms in contracts has improved in your country since the implementation of the UCPD and the UCTD in national legislation?

As indicated above, the introduction of the UCPD and UCTD into the Latvian legal system has been assessed as an extremely positive development by the stakeholders. To mention few examples: The implementation of the UCPD has introduced the notion of the aggressive commercial practices; this novelty is praised by scholars.[69] The implementation of the UCTD has allowed for eradication abusive use of arbitration clauses in consumer contracts and equally prevents the use of excessive penalties. Implementation of these instruments created the whole environment of consumer protection: 1. Ensured high standard of consumer protection; 2. Established a well-structured system of supervision; 3. Helped (to a certain degree) raise awareness among traders and consumers. Thus, that these instruments have greatly improved consumer protection.

- Overall, would you consider that the information of consumers regarding unit prices has improved since the implementation of the PID in national legislation?

Indeed, the information to consumers regarding unit prices has improved since the implementation of the PID in national laws. As indicated above, the national law covers not only indication of prices but also services that is considered to be a very good solution. Moreover, the transposition of the PID rules helped during Latvia's accession to the euro-zone.

- Overall, would you consider that the protection of businesses against unfair marketing in your country has improved since the implementation of the MCAD in national legislation?

Implementation of all Directives studied herein has improved the legal environment and provided better protection to all market participants (consumers or traders). This is also true for the MCAD. The Directive creates a complex, but flexible legal regime in the area of advertising that effectively reduces unfair competition.

- Overall, would you consider that it has become easier for businesses in your country to directly trade cross-border to final consumers located in other EU countries in recent years? Has it become easier for consumers in your country to directly purchase cross-border from traders located in other EU countries?

The stakeholders were unable to provide specific information on this issue. Likewise, there are no previous studies. In principle, similarity between legal regimes should simplify access to foreign markets. At the same time, a high level of consumer protection makes it safer to purchase goods and services abroad. This should stimulate cross-border trade. However, it is doubtful that harmonisation of consumer law has significantly simplified cross-border trade. Traders and consumers alike are driven by a number of considerations when deciding to participate in cross-border

[69] See, B. Vītoliņa, Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015, 243.

trade not all of them are related to the legal environment and even those that are may be related to other issues (taxation, law applicable to contracts of transportation of goods abroad, etc.).

- To what extent are these improvements, if any, due to the mentioned directives?

See the previous answer.

Annex

A. Transposition fact sheet

Table 1: Fact sheet on transposition of directives in Member States' law – LATVIA

Directive	Transposition legislation (National law, Article)	Comments	Specific provisions going beyond minimum harmonisation requirements/use of exemptions	Included in nati	
	Law on Consumer Rights Protection, (Patērētāju tiesību aizsardzības likums, Latvian Herald, No. 104/105, 15.04.1999)		Specific rules on legal equality of parties	Yes	La Pr
Directive 93/13/EEC on unfair terms in consumer contracts			'Black list' of terms considered unfair in all circumstances (if a contractual term has not been mutually discussed by the contracting parties)	Yes	La Pr
			'Grey list' of terms which may be considered unfair	No	n/
			Extensions of the application of Directive to individually negotiated terms	No	n/
			Extensions of the application of Directive terms on the adequacy of the price and the main subject-matter	No	n/
			Strict regulatory framework of consumer crediting	Yes	La Pr

Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market	Unfair Commercial Practice Prohibition Law (Negodīgas komercprakses aizlieguma likums, Latvian Herald, No. 3775, 12.12.2007).		Provisions regarding financial services going beyond minimum harmonisation requirements	No	
			Provisions regarding immovable going beyond minimum harmonisation requirements	No	
			Application of UCPD to B2B transactions	No	

Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers	Procedures for Indication of Prices of Products and Services. Regulations No.178 of the Cabinet of Ministers, adopted 18.05.1999		Extension of the application also to services Provides dual display of prices (in Lats and euros) and converting during Latvia's accession to euro zone	Yes	Pr of Se
	Law on Consumer Rights Protection, (Patērētāju tiesību aizsardzības likums, Latvian Herald, No. 104/105, 15.04.1999)	Reference that the Cabinet of Ministers shall adopt regulation concerning procedures for indication of prices (see above)		Yes	La Pr
Directive 2006/114/EC concerning misleading and comparative advertising	Advertising Law (Reklāmas likums, Latvian Herald, No. 1918, 10.01.2000)				Ac an
Directive 2009/22/EC on injunctions for the protection of consumers' interests	Law on Consumer Rights Protection, (Patērētāju tiesību aizsardzības likums, Latvian Herald, No. 104/105, 15.04.1999)				
	Unfair Commercial Practice Prohibition Law				

	Article 21[3] of the Electronic Mass Media and Article 37 of the Cabinet of Ministers' Regulations No. 378 Procedures for Advertising Medicinal Products and Procedures by Which a Medicinal Product Manufacturer is Entitled to Give Free Samples of Medicinal Products to Physicians				

Table 2: Fact sheet on Injunctions Directive – LATVIA

Issue	Answer	Comments
Is the injunction procedure as foreseen by the Injunctions Directive regulated in your country separately (as a separate procedure or/and in a separate legal act) from the enforcement procedures foreseen by other EU Consumer Law Directives (the Unfair Contract Terms Directive or/and the Unfair Commercial Practices Directive or/and by the Consumer Rights Directive)?	- Yes, separate procedures in separate legal acts	*Injunction procedure is foreseen in Article 15 of the Unfair Commercial Practices Prohibition Law, Article 25 of Consumer Rights protection Law, Article 213 of the Electronic Mass Media and Article 37 of the Cabinet of Ministers' Regulations No. 378 Procedures for Advertising Medicinal Products and Procedures by Which a Medicinal Product Manufacturer is Entitled to Give Free Samples of Medicinal Products to Physicians*
Who is entitled to bring an action seeking an injunction?	- Designated public bodies	*Consumer Rights Protection Centre can bring this action upon request of the responsible authorities and institution mentioned in list of Directive No.2009/22/EK, Article 4(3)* *Also Health Inspectorate (in accordance with Directive 2005/29 in area of medicine and Directive 2001/83/EC); Council of National Electronic Media (Directive 89/552/EEC)*
Is the injunction procedure a court or an administrative procedure? If your country legislation foresees both forms of the procedure, please explain in the comments column for which infringements the court or administrative procedure is foreseen	- Administrative procedure	*CRPC's decisions on injunctions can be appealed in Administrative court.*
Who bears the costs of an injunction procedure? If qualified entities (or some of their categories e.g. consumer organisations are entitled to an exemption of some/all cost related to the procedure please explain the characteristic of such exemption in the comments column.	-The qualified entities are exempted from costs	*Article 25(11) of the Consumers Rights Protection Centre: The Consumer Rights Protection Centre, in recovering expenses in respect of the laboratory or other type of expert-examination of goods purchased or services utilised by consumers, shall be released from the payment of court costs.*
Is the scope of application of injunctions extended to cover areas of consumer law that are not part of Annex I of the Directive, or consumer law in general?	- No, scope of the Directive not extended	
Is protection of business' interests covered by the injunctions procedure? If scope of application extended to the protection of business' interests, please provide details in the comments column regarding type of business' interests covered by the injunctions procedure	- No	
Is it possible to bring an injunction action jointly against several traders from the same economic sector or their associations	- No	

Is there an out-of-court preliminary stage in the injunction procedures? (not including the consultation stage under Art. 5 of the ID)	- Yes	*Injunction procedure is out-of-court procedure.*
Has your Member State taken specific measures regarding the prior consultation (Article 5 of the Injunctions Directive)?	- No such requirement	
Does the national legislation provide for measures ensuring summary procedure? Please specify main characteristics of the procedure (subject matter/time limits) in the comments column.	- Yes	*Article 25(8) Consumer Rights Protection Law provides that If a violation of the consumer rights has been determined, which affects group consumer interests (collective interests of consumers) and it may cause losses or harm to consumers, as well as to a particular consumer, the Consumer Rights Protection Centre, having evaluated the nature and essence of the violation, as well as other aspects, is entitled to carry out one or several following activities:* *1) to propose that the manufacturer, trader or service provider makes a commitment in writing to rectify the violation within the specified time period* *Article 15 of the Unfair Commercial Practices Prohibition Law states that the Supervisory Authority, evaluating the conformity of commercial practices with the requirements of this Law, is entitled to request and to receive from the performer of commercial practices all information, documents and other evidence regarding the veracity of the information used in commercial practices, the conformity of the activity with the requirements of this Law, as well as to determine the time period for the submission of the documents and evidence necessary for the clarification of the case*
Are there sanctions for non-compliance with the injunction order (Article 2(1) of the Injunctions Directive)? If sanctions in form of penalty or fine foreseen please specify in the comments column to who exactly should they be paid	- Yes, other sanction	*Sanctions are provided in the Latvian Administrative Violation Code. Article 175[9] provides In the case of the non-provision of information at the disposal of a person to an advertisement or consumer rights protection supervisory institution after a request therefrom within a specified time period and in the specified amount or of the provision of false information, as well as of the non-fulfilment of the lawful requests or decisions of the supervisory institution –a fine shall be imposed on natural persons in an amount up to EUR 700, but for legal persons – from EUR 70 up to EUR 14 000. Also Unfair Commercial Practices Prohibition Law provides for the sanctions. Article 15 states that supervising institution shall impose the fine for unfair commercial practice in amount of 10% of the annual turnover but not more than EUR 100 000*

Has your Member State taken specific measures regarding the publication of the decision and/or the publication of a corrective statement?	- Yes	*Article 25(8) of the Consumer Rights Protection Law states that If a violation of the consumer rights has been determined, which affects group consumer interests (collective interests of consumers) and it may cause losses or harm to consumers, as well as to a particular consumer, the Consumer Rights Protection Centre, having evaluated the nature and essence of the violation, as well as other aspects, is entitled to carry out one or several following activities:* *1) to propose that the manufacturer, trader or service provider makes a commitment in writing to rectify the violation within the specified time period. In accordance with Article 15[1] of the Unfair Commercial Practice Prohibition Law (1) A written commitment is a document, which upon proposal of the Supervisory Authority is signed by the performer of commercial practices, committing to eliminate the detected violation within a specified time period. A written commitment may include the commitment of the performer of commercial activities:* *1) not to perform specific activities;* *2) to perform specific activities, also to provide additional information necessary in order to ensure the conformity of commercial practices with the requirements of this Law, to publish a notification in a communication medium conforming to the respective commercial practices, in which unfair commercial practices are withdrawn;* *3) to reimburse the losses caused to consumers.* *(2) Upon signing a written commitment in which the violation, as well as the way and time period for elimination thereof is indicated, the performer of commercial practices acknowledges that he or she has committed the violation detected. The written commitment shall be deemed received (enter into effect) from the moment when the Supervisory Authority has approved its acceptance, certifying in writing to the performer of commercial activities that the relevant measures are sufficient for elimination of the violation and its impact. The Supervisory Authority shall notify acceptance of the written commitment in accordance with the procedures laid down in the Law On Notification. The time period for elimination of the violation shall not exceed the time period necessary for the performer of commercial practices to take the intended measures and to ensure the conformity with the interests of consumers, and usually may not be longer than three months, except*

		cases when the nature of the intended measures justifies a longer time period. *(3) If the performer of commercial practices commits, in accordance with Section 15, Paragraph five, Clause 2 of this Law, to eliminate the detected violation and the written commitment has entered into effect, the Supervisory Authority shall not take the decisions referred to in Section 15, Paragraph eight of this Law and shall terminate the administrative record-keeping in the part regarding the violation, which the performer of commercial activities is committing to eliminate. If the Supervisory Authority detects that the written commitment is not being carried out, it is entitled to take one or several of the decisions referred to in Section 15, Paragraph eight of this Law.* *(4) The performer of commercial practices shall, without delay but not later than within three working days after the end of the time period laid down in Paragraph three of this Section, inform the Supervisory Authority regarding carrying out, adding proof certifying the carrying out.*
Is it possible to claim within the injunction procedure for sanctions for the infringement?	- Yes	*Article 25 (10) of the Consumer Rights Protection Law provides that if the manufacturer, trader or service provider has not implemented the specified activities by the end* *of the specified time period, or has not informed the Consumer Rights Protection Centre regarding the implementation thereof, the Consumer Rights Protection Centre shall apply the administrative penalty provided for the relevant violation according to the procedures specified by law.* *Article 15^2 of the Unfair Commercial Practices Prohibition Law provides that supervising authority can impose the fine as explained before.*
Can an action for the restitution of profits obtained as a result of infringements, including an order that those profits are paid to the public purse or to other beneficiary be brought within the injunction procedure?	- No	*There is no such possibility provided*
Can an action for damages to be paid to the qualified entity or the public purse be brought within the injunction procedure?	- No	*There is no such possibility provided*
Can an action for damages or redress to be paid to the consumers concerned be brought within the injunction procedure?	- No	*There is no such possibility provided*

Can individual consumers base their individual claims for damages/remedies on the injunctions order?	- No	
Can the qualified entity claim other measures beyond the injunction, e.g. evidence of compliance with the judgment?	- Yes	*Article 25(10) of the Consumer Rights Protection Law states that before of the end of the specific time period in the decision, the manufacturer, trader or service provider shall inform the Consumer Rights Protection Centre regarding the implementation of the specified activities. If the manufacturer, trader or service provider has not implemented the specified activities by the end of the specified time period, or has not informed the Consumer Rights Protection Centre regarding the implementation thereof, the Consumer Rights Protection Centre shall apply the administrative penalty provided for the relevant violation according to the procedures specified by law.*
Are the effects of individual injunctions orders extended to the future infringements and/or same or similar illegal practices (of other traders)?	- No	

B. Data tables

Number of B2C disputes

Please indicate how many B2C disputes have been decided in your country on the basis of consumer law directives covered by this study (UCPD, UCTD, PID) as a proportion of the total number of B2C disputes decided on the basis of other national consumer legislation (based on statistics, or based on estimates by enforcement authorities and other stakeholders, where this is not the available).

Table 3: B2C disputes decided on the basis of consumer law directives covered by this study in comparison with total B2C disputes decided on the basis of other legislation (most recent year for which data is available)

Year	Type of data	Total number of B2C disputes (number of cases)	Share of B2C disputes decided on basis of …					Comments
			UCPD	UCTD	PID	other EU consumer protection legislation (e.g. CRD, Sales Directive, sectoral legislation)	national consumer legislation not based on EU directives	

There are no such data available.

Costs of obtaining redress for a hypothetical case of invoking unfairness of a standard contract term

- Please estimate the costs, including time, for consumers in obtaining redress when invoking the unfairness, and thereby the non-binding character of standard contract terms in a contract they concluded. Please provide the estimate for the hypothetical example below, focusing on costs (and needed time) of a lower court procedure and the use of ADR or other relevant procedure (if applicable).[70]

[70] For the hypothetical example it is assumed that both the provider and the consumer are located in your country.

Table 4: Estimate of costs for consumers in obtaining redress when invoking the unfairness of standard contract terms in a contract they concluded (for the hypothetical example provided in the box below)

Redress mechanism	Estimated court fees (national currency)	Estimated lawyer's fees (national currency)	Other costs, if any (national currency)	Estimated time involved for consumer (hours)	Comments
Lower court procedure	EUR 434.74	Lawyer's fees depend on individual lawyer's fees	Other costs can involve translation/expert costs but they are calculated individually in each particular case	There are no such data and it is impossible to estimate and it might be different in each particular case. 15 days for trader's reply to the consumer's complaint + if the dispute is not resolved the out-of-court dispute resolver shall decide on case within 90 days	
Out-of –Court dispute resolution	For free or for reasonable fee	Lawyers or other representatives shall not assist in out-of-court proceedings	Other costs can involve translation/expert costs but they are calculated individually in each particular case	It is impossible to estimate.	Only since 1 January 2016 out-of- court consumers' dispute resolution was introduced in Latvia.

Hypothetical example: Terms which inappropriately exclude/limit consumers' rights to compensation

A consumer went on a package holiday with a friend to Kenya for which they paid € 2000 per person. The holiday was a disaster. The flight was delayed by 12 hours. The air conditioning in the hotel was not working at all. The safari trip took place but not in the park they had been promised; on top of that, they were transported there by bus instead of by plane. They complained to the tour operator and asked for compensation amounting to a total of €5,000 (€4,000 for the cost of the package and €1,000 for lost time and enjoyment). The tour operator agreed to compensate them €1,000 only, pointing to a provision in the contract limiting the organiser's liability to 25% of the total cost of the holiday. When the consumer asked, her local consumer association told her that terms which inappropriately limit the trader's liability in case of inadequate contractual performance are most probably unfair. The consumer decided to take the tour operator to court to enforce her rights.

[Example adapted from http://europa.eu/youreurope/citizens/consumers/unfair-treatment/unfair-contract-terms/index_en.htm]

- Please estimate how often court and ADR procedures are used in your country for invoking the unfairness, and thereby the non-binding character of standard contract terms (i.e. the number of cases per year)?

There are no particular statistics regarding cases in the courts of general jurisdictions.

In 2015 the CRPC has received 164 complaints regarding unfair contract terms. In 136 cases the CRPC has provided information or consultations. In 13 cases positive solution of the issue has been found.[71]

In 2015 the CRPC has published 13 written acknowledgments by traders admitting that there were unfair terms in their consumer contracts and they are rectified. The acknowledgments are applied to all similar contracts concluded by the trader.[72]

[71] Statistics of the Consumer Rights Protection Centre, 2015 at http://www.ptac.gov.lv/lv/content/statistika-par-pateretaju-sudzibam-un-konsultacijam (last seen on 07.07.2016).

[72] Information on Acknowledgments, 2015 at http://www.ptac.gov.lv/lv/table/rakstveida-apnemsanas (last seen on 07.07.2016).

C. Interviews conducted and literature reviewed

Table 5: Interviews conducted for this study

Organisation	Stakeholder type	Date
Consumer Rights Protection Centre/ ECC Latvia	National consumer enforcement authority / European Consumer Centre	28.06.2016
Ministry of Economics	Ministry	21.07.2016
Latvian Consumers' Association	Consumer organisation	01.08.2016
Competition Council	National regulatory authority	02.08.2016

Table 6: Literature reviewed for country report

Author/Source	Year	Title of publication
B. Vītoliņa	2015	Patērētāju tiesību aizsardzības pamati. [Basics of Protection of Consumer Rights]. Rīga, Zvaigzne ABC, 2015
Administrative District Court	2012	Judgment in the case No. A42765709
Administrative Regional Court	2013	Judgment in the case No. A420563412
Administrative Regional Court	2016	Judgment in the case No. A420336415
Saeima (Parliament) of the Republic of Latvia	1999	Consumer Rights Protection Law
Saeima (Parliament) of the Republic of Latvia	2001	Administrative Violation Code
Saeima (Parliament) of the Republic of Latvia	2007	Unfair Commercial Practice Prohibition Law
Saeima (Parliament) of the Republic of Latvia	2015	Unfair Retail Trade Practice Prohibition Law
Saeima (Parliament) of the Republic of Latvia	2015	Law On Arbitration Courts
Saeima (Parliament) of the Republic of Latvia	1998	Civil Procedure Law
Saeima (Parliament) of the Republic of Latvia	1999	Advertising Law
Consumer Rights Protection Centre	2016	Decision in the case No. 18-pk
Consumer Rights Protection Centre	2015	Decision in the case No. E03-PTU-F342-10
Consumer Rights Protection Centre	2010	Decision in the case No. 7-nk
Cabinet of Ministers	1999	Regulations on Procedures for Indication of Prices of Products and Services
Consumer Rights Protection Centre	2014	Report of the Consumers' Rights Protection Centre
Consumer Rights Protection Centre	2015	Report of the Consumers' Rights Protection Centre
Consumer Rights Protection Centre	2015	Guidelines No. 21 on Indication of the Prices for Goods and Services
Consumer Rights Protection Centre	2012	Guidelines on Drafting Fair Electronic Communication Service Agreement
Dobele region court	2016	Judgment in the case No. C30624015
Consumer Rights Protection Centre	2015	Official Statistics
Administrative Cases Department of the Supreme Court	2006	Judgment in the case No. C30519003
Consumer Rights Protection Centre	2010	Guidelines on Drafting Fair Consumer Credit Agreement
Consumer Rights Protection Centre	2015	Decision in the case No. 2-pk
Consumer Rights Protection Centre	2005	Decision in the case No.1/06 – 5338

The Constitutional Court of the Republic of Latvia	2005	Judgment in the case No. 2004-10-01
Saeima (Parliament) of the Republic of Latvia	2004	Electronic Communication Law
Consumer Rights Protection Centre	2006	Decision No. 25-lg
Consumer Rights Protection Centre	2006	Decision No.19-lg
Administrative Cases Department of the Supreme Court	2014	Decision in the case No. A420299513
Civil Cases Department of the Supreme Court	2016	Judgment in the case No. SKC-116/2016
Civil Cases Department of the Supreme Court	2016	Judgment in the case No. SKC-94/2016
Civil Cases Department of the Supreme Court	2015	Judgment in the case No. SKC-98/2015
Consumer Rights Protection Centre	2014	Data base on Unfair Contractual Terms
Civil Cases Departament of the Supreme Court	2013	Judgment in the case SKC-108/2013
Saeima (parliament) of the Republic of Latvia	1937	Civil Law
Consumer Rights Protection Centre	2015	Decision in the case No. E03-PTU-K20-5
Health Inspectorate	2015	Report of Health Inspectorate

Consumer Rights Protection Centre	2012	Decision in the case No. E03-PTU-K115-39
Cabinet of Ministers	2010	Regulations on Consumer Crediting
Consumer Rights Protection Centre	2016	Decision in the case No. 18-pk
Consumer Rights Protection Centre	2009	Decision in the case No. E03-REUD-31
Consumer Rights Protection Centre	2009	Decision in the case No. E03-REUD-53
Consumer Rights Protection Centre	2010	Decision in the case No. E03-REUD-49
Consumer Rights Protection Centre	2013	Guidelines on Fair Commercial Practices in Consumer Crediting
Consumer Rights Protection Centre	2015	Decision in the case No. E03-PTU-K204-4
Consumer Rights Protection Centre	2015	Decision in the case No. E03-PTU-L13-L34-14
Consumer Rights Protection Centre	2016	Decision in the case No. 11–pk 4
Consumer Rights Protection Centre	2015	Decision in the case No. E03-PTU-K20
Consumer Rights Protection Centre	2012	Decision in the case No. E03-PTU-P65-7
Ministry of Agriculture	2016	Guidelines on Use of Terms „Biological", „Ecological" and Parts of Words „bio" and „eco" in Labels of Food Supplements
Cabinet of Ministers	2011	Procedures for Advertising Medicinal Products and Procedures by Which a Medicinal Product Manufacturer is Entitled to Give Free Samples of Medicinal Products to Physicians
Saeima (Parliament) of the Republic of Latvia	2010	Electronic Mass Media Law

1. Study to support the Fitness Check of EU Consumer law – Country report LITHUANIA

1.1. Unfair commercial practices and marketing

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

What is the effectiveness of the UCPD (i.e. the national laws transposing it) in terms of:

- The overall effectiveness of the principle-based approach under this Directive;

Prior to the UCPD, Lithuania did not regulate fair commercial practices outside private law. Lithuania did not have any particular public law legal act regulating fairness of commercial practices and instead relied on general tort and contract law. Thus, the introduction of the UCPD completely overhauled the legal landscape of fair (unfair) commercial practices. The UCPD was transposed into the Law on Prohibition of Unfair Business-to-Consumer Commercial Practices of the Republic of Lithuania (hereinafter – the LPUBCCP) and the Law on Advertising of the Republic of Lithuania (hereinafter – the Law on Advertising) as well as the Civil Code.

The principle-based approach established under the UCPD is considered to be a positive step for the protection of consumers.[1] Both enforcement authorities and consumer associations praise this approach as it affords protection to consumers against innovative traders and allows for punishing offenders even if their actions do not fall under any of the black-listed actions.

One of the enforcement authorities confirmed that usually it finds an infringement of the general prohibition of unfair commercial practices rather than any particular black-listed activities. Thus, for Lithuania, the principle-based approach met the expectations of the legislator.

According to *travaux preparatoires* of the UCPD and Article 5(4) of the UCPD, one may conclude that usually a three step test should be concluded. Firstly, the practices should be evaluated in the light of the black-list; secondly, if they do not fall into the black-list, then they should be assessed in the light of provisions on misleading actions or omissions; and, thirdly, only if the commercial practices of the trader do not fall into any of the first two categories, they should then be reviewed in the light of the general fairness principle.[2] The practice of the Lithuanian Supreme Administrative Court confirms that the Lithuanian courts tend to interpret the black-list as *lex specialis* compared with the general fairness clause.[3] Thus, the general fairness test indeed acts as a 'catch-all' provision (safety net) and is only applicable when particular commercial practices do not fall into any of the first two categories.

- The practical benefits for consumers of the black list of unfair commercial practices annexed to this Directive, in particular its application in practical cases;

The enforcement authorities consider the black-list to be an effective measure, because both the consumers and businesses are given a list of comprehensive situations in which commercial activities of traders are considered to be unfair without the need to collect any additional evidence.

However, one of the enforcement authorities indicated that in some instances consumers intentionally incorrectly interpret the black-list and abuse their rights even

[1] RIMKEVIČIUS M. „Nacionalinės moralės" išimtis Nesąžiningos komercinės veiklos direktyvoje. Teisė, 2011, t. 79.

[2] RIMKEVIČIUS M. Sąžiningos ir nesąžiningos komercinės veiklos samprata. Teisė, 2011, t. 81.

[3] Ruling of the Supreme Administrative Court of 23 December 2010 in case No A-502-1684/2010.