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Preferences of key actors on key issues in EU consumer policy

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OSLO METROPOLITAN UNIVERSITY
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<p>Summary</p> <p>The aim of this report is to investigate <i>what characterises the perceptions of and preferences in EU consumer policy of various actor types that are involved in shaping and implementing this policy</i>. More specifically, we seek to identify and map the key actor's preferences as well as to investigate whether there is a structure in the preferences of various actor types across issues and whether country differences in actor preferences can be identified. Answers to these questions can contribute to mapping the structures of the political space of consumer policy in the European Union. The actor types investigated are government actors, consumer organisations and business associations.</p> <p>The preferences are measured through an open public consultation conducted by the European Commission as part of the recent fitness check of EU consumer and marketing law. The questions in the open public consultation broadly covered four key issues: 1) The understanding of whether certain issues related to EU consumer and marketing law that are problematic for the protection of the rights of consumers; 2) Satisfaction with the impacts of EU consumer and marketing law; 3) Perceived effectiveness of regulatory tools; and 4) Perception of suggested solutions for future EU consumer policy.</p> <p>The results show that there are significant differences between the types of actors on several key issues. The main differences were found between the two types of interest organisations, and a clear trend in the results is that the consumer organisations tend to</p>		

play up the importance of measures aimed at protecting consumers while the business associations seek to tone down these issues and rather focus on reducing (third-party initiated) regulation. Another interesting finding is that the preferences of the government actors for the most part is closer to the preferences of the consumer organisations than the business associations. Finally, the results show that the structure in the actor preferences varies between the countries investigated. In some countries the preferences of the government actor(s) closely follow the consumer organisations, in some they follow the preferences of the business associations and in some countries any such pattern cannot be identified.

Keywords

Consumer policy, interest groups, consumer organisations, business associations, European union

Preface

This report is a result of the project “Positions in EU consumer policy” financed by the Norwegian Ministry of Children and Families. The aim of this project has been to map the positions and preferences of key actors on key issues in EU consumer policy, and to investigate whether actors can be categorised based on characteristics such as actor type, geographical location, the country’s political system etc.

The project has resulted in two deliverables, of which this report is one of them. This report maps the preferences of three key actor types in European consumer policy, i.e. government actors, consumer organisations and business associations. Furthermore, since the perhaps most important actor in EU consumer policy is the European Commission, this report also introduces the history of consumer policy in the EU and the issues defining EU consumer policy today. The second deliverable of the project is a journal article investigating differences in national preferences in EU consumer policy in a regime perspective (Austgulen, forthcoming).

The project has been conducted by Marthe Hårvik Austgulen (project leader) and Live Standal Bøyum. Both researchers have contributed to the initial analyses of the data from the open public consultation, categorising and constructing variables, and to the organisation and the implementation of the stakeholder interviews¹. Austgulen has written the report, and it has been verified by Bøyum. Together we would like to thank Lisbet Berg who has contributed with support and advice throughout the project, and who has conducted the quality assurance of this report.

The authors take full responsibility for the contents of the report and any remaining errors and shortcomings. The views expressed in this report does not necessarily correspond to those of the funding agencies.

Oslo, December 2019

Consumption Research Norway (SIFO)

Oslo Metropolitan University

¹ The results from the stakeholder interviews are presented in the journal article.

Content

Preface	1
Content	2
1. Introduction	3
2. Defining EU consumer policy	5
2.1 Historical development of EU consumer policy	5
2.2 Understandings of European consumer policy today	9
2.2.1 Market integration as the overarching objective	9
2.2.2 Level of harmonisation	10
2.3 Summary	12
3. Data and methodology: Measuring preferences in consumer policy	13
3.1 Sample	14
3.2 Data treatment	17
3.3 Data limitations	17
4. Results: Overall differences between actors	18
4.1 All topics	18
4.2 Problem importance	21
4.3 Satisfaction with EU consumer policy	22
4.4 Perception of effectiveness of regulatory tools	24
4.5 Solutions	25
4.6 Summary	26
5. Results: Differences within selected countries	27
5.1 Austria	27
5.2 Finland	29
5.3 France	31
5.4 Slovak Republic	33
5.5 United Kingdom	35
5.6 Differences between countries	36
6. Conclusions	37
6.1 Differences between actors	37
6.2 Differences between countries	37
References	39
Appendix: Operationalisation of variables	42

1. Introduction

The overarching objective of the horizontal EU consumer policy is to increase consumer trust and empowerment while contributing to a better functioning of the internal market (European Commission, 2012). However, since the European Community adopted its first programme for a common consumer protection and information policy in 1975, conflicting interests between Member States have repeatedly hampered and challenged the regulatory process. In seeking to simplify the process of reaching common ground, changes have been made to the regulatory structure. The most important changes came with the Single European Act of 1987 that introduced amended legislative procedures including a shift towards qualified majority vote rather than unanimous vote, and the strategy of “minimum harmonisation” that was formalised in the Maastricht Treaty in 1992. Although these changes made it easier to adopt directives on consumer issues, they did not necessarily change the positions and preferences of the Member States.

The shaping of the Member States’ preferences and their positions, both in negotiations on EU policy and in general, have been comprehensively studied and theorised within the field of international relations, and a multitude of potential influencing factors have been pointed to (e.g. Bailer, 2011, Elgström et al., 2001, Keohane and Nye, 2012, Moravcsik, 1997, Putnam, 1988). More specifically, studies investigating decision-making in the EU in general have identified some key dimensions distinguishing country preferences, such as a geographical dimension, a preference for regulatory versus market-based solutions dimension and a redistributive dimension (e.g. Elgström et al., 2001, Kaeding and Selck, 2005, Mattila and Lane, 2001, Thomson et al., 2004, Zimmer et al., 2005).

However, few studies have been undertaken on Member States’ preferences and positions in EU consumer policy², and the preferences of other non-governmental actors that are important for the shaping of both national and EU consumer policy. Interest groups, and the power constellations between them, have been identified as decisive for the shaping of national consumer policy (Trumbull, 2006, 2012), and both national and EU-level interest groups are actively involved in the shaping of EU consumer policy through institutionalised expert groups and consultations. The European Commission relies heavily on expert groups to provide expert policy advice on highly technical issues in the early stages of the policymaking process (Chalmers, 2014). Furthermore, although it is difficult to measure the influence of interest groups theoretical approaches to European integration ascribe a major role to these groups (Grossman 2004 in Dür, 2008). It has been argued that the European multi-level system strengthens the potential influence of interest groups by increasing the number of potential access points and lobbying routes (Pollack, 1997). In October 2019 almost 12.000 groups were

² An exception is *AUSTGULEN, M. H. forthcoming. Understanding national preferences in EU consumer policy: a regime approach.*

registered in the Transparency register of the European Parliament and the European Commission (European Commission, 2019).

When seeking to understand both countries' positions and preferences in EU consumer policy, and the outcome of the EU negotiations, it is therefore important to understand the preferences and positions of the various interest groups that are involved in the shaping of EU consumer policy.

In order to contribute to this understanding, the aim of this report is to investigate *what characterises the perceptions of and preferences in EU consumer policy of various actor types that are involved in shaping and implementing this policy*. More specifically, we are interested in identifying and mapping the key actor's preferences as well as to investigate whether there is a structure in the preferences of various actor types across issues and whether it is possible to identify country differences in actor preferences. Answers to these questions can contribute to mapping the structures of the political space of consumer policy in the European Union.

The data we use to analyse these questions is an open public consultation gathered by the European Commission (EC) as part of their Fitness check of EU consumer and marketing law in 2016. The key actor types investigated in this study are national governments, national and European consumer organisations and national and European business associations.

Following this introduction, the second chapter of this report introduces the historical developments in EU consumer policy as well as the understandings of the policy field today. In addition to providing some historical backgrounds to the issue of EU consumer policy, the aim of this chapter is to present the main preferences of the European Commission (EC) regarding the future of EU consumer policy. The third chapter presents the data and methodology used to investigate actor preferences. The two following chapters present the results, where the fourth chapter presents the overall differences between the actor types, and the fifth chapter takes a deeper look at the differences between the actor types within five countries. The report concludes with a brief summary of the results.

2. Defining EU consumer policy

2.1 Historical development of EU consumer policy

The first references to an EU consumer policy can be traced back to 1972 when the Council of Ministers endorsed the five basic “rights” of consumers. These were rooted in the Kennedy principles from 1962 of the right to protection of health and safety, the right to protection of economic interest, the right of redress, the right to information and education and the right of representation. These rights and the first sketches of an EU consumer policy was further formalised when the European Commission adopted its first programme for a common consumer protection and information policy in 1975 (Micklitz and Weatherill, 1993, Ramsay, 2007, Weatherill, 2013). Several legislative initiatives were proposed in the wake of the first programme, but the lack of a proper legal basis in the Treaty complicated the legislative process. A second programme, largely based on the same premises as those that underlie the first programme, followed in 1981. However, the programme was then extended to include the price transparency of goods and services and the quality of public and private services. The programme also stressed the importance of a better dialogue and increased consultation between consumers, producers and distributors (European Community, 1992). In 1985, the first consumer protection directives, the Directives on Product Liability and Doorstep Selling were enacted. The third programme, constituted by a council resolution in 1986 on the future orientations of EEC consumer policy, linked the consumer interest to the benefits of the planned completion of the internal market in 1992. According to Micklitz and Weatherill (1993) and Weatherill (2013), the most striking change between the third and the two previous consumer programmes was the diminution in the assertion of consumer “rights” as consumer choice, rather than consumer protection, emerged as the dominant theme.

The Single European Act (SEA) of 1987 kept consumer policy as an element in other policies, but stated that the Commission will take as a base a high level of consumer protection in its proposals concerning consumer protection. The Act also strengthened the role of the Economic and Social Committee, who were attributed powers to protect the consumers (Corradi, 2015). Moreover, Article 100a of the Single European Act, also introduced amended legislative procedures including a shift towards qualified majority vote, rather than unanimous vote, in order to achieve the completion of the internal market. According to Micklitz and Weatherill (1993), this shift had a significant, though indirect, impact on the climate for Community consumer protection law and policy as it meant that a qualified majority vote in the council were enough to secure the replacement of divergent national consumer protection laws by a common Community rule. This facilitated the adoption of many long-stalled directives on consumer issues such as toy safety, and the new powers of the European Parliament led to several victories for so-called diffuse interests – collective interests held by large numbers of individuals (Pollack, 1997).

The Single European Act was followed by further soft law initiatives followed. In 1989 an independent consumer policy service was established in order to allow for a more single-minded implementation of consumer policy. Furthermore, a 1989 Council Resolution on consumer protection policy emphasised the link between consumer protection policy and the effective completion of the internal market, and the consumer benefits that would come as a result of the internal market (European Community, 1992, Micklitz and Weatherill, 1993). The resolution on consumer protection policy was followed by the Commission's publication of the first three-year action plan of consumer policy. The action plan focussed on four areas necessary to support for the realisation of the internal market. These were representation, information, safety and transactions (European Community, 1992, Micklitz and Weatherill, 1993).

Consumer protection was first judicially included in a treaty on European Union (TEU) with the Maastricht Treaty that transformed the European Community into the European Union. Until the Maastricht Treaty, no consumer protection policy existed independently of other EU policies, and any directives had to be justified in terms of removing barriers to the completion of the internal market. However, this legislation dedicated a specific title to consumer protection and thereby recognised consumer protection as one of the aims of the European Union. The new provision, presented in article 129a, stated the following:

1. *The Community shall contribute to the attainment of a high level of consumer protection through:*
 - a) *measures adopted pursuant to Article 100a in the context of the completion of the internal market;*
 - b) *specific action which supports and supplements the policy pursued by the Member States to protect the health, safety and economic interests of consumers and to provide adequate information to consumers.*
2. *The Council, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, shall adopt the specific action referred to in paragraph 1(b).*
3. *Action adopted pursuant to paragraph 2 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.*

Although the new title, later known as Article 169 TFEU (Treaty on the Functioning of the European Union), is unquestionably important in formal terms since it embraces consumer protection as a formal EU competence connected to harmonisation policy and market integration, it has been little used since the Maastricht Treaty entered into force in 1993 (Weatherill, 2013). In its legislative dimension, EU consumer policy is predominantly the product of Article 114 TFEU, originally introduced as Article 100a in the Single European Act, which deals with harmonisation of national laws (Weatherill, 2016).

The Treaty of Amsterdam officially mainstreamed EU consumer policy and incorporated changes to the title which recognised the concept of consumers' rights to information, education and to organise themselves in order to safeguard their interests (Ramsay, 2007). The entry into force of the Lisbon Treaty in 2009 furthermore made Article 38 of the Charter of Fundamental Rights binding. This article mandates that "Union policies shall ensure a high level of consumer protection".

Perhaps as a result of the formalisation of consumer policy as an EU competence, a consumer policy directorate was established within the European Commission in 1995. Until then an administrative unit responsible for consumer issues had drifted among different entities since 1968 (Weatherill, 2013). Furthermore, after the Maastricht Treaty, several policy documents concerning consumer policy followed. The second three-year consumer policy action plan, covering 1993-1995, focussed on a commitment to concentrate on areas crucial for consumer confidence in the internal market, and the third action plan, covering 1996-1998, focussed on the need to tie up the loose ends of the internal market and to deal with a broad sweep of consumer issues (Weatherill, 2013). In the fourth action plan, covering 1999-2001, the Commission stated that efforts in consumer policy were ad hoc and focused primarily on product safety. The action plan, as well as the consumer policy strategy for 2002-2006, retained the emphasis on the advantages for the consumers of an integrated internal market, and argued for reinforcing the consumer orientation of its policies (Howarth, 2008, Weatherill, 2013). According to Howarth (2008:92), a heightened emphasis on consumer interests reflected a deliberate aim of increasing EU citizen interest in and support for the internal market in an effort to legitimise market integration. This came as a reaction to the struggles the Commission experienced with governments and economic interests who had hindered progress and watered down pieces of single market legislation (Howarth, 2008). In this period, the priorities of the Commission also shifted towards the need for effective application of existing single market rules rather than the pursuit of significant new legislative initiatives. In the consumer policy programme for 2002 to 2006 the Commission stated a need "to review and reform existing EU consumer protection directives" in order to "minimise variation in consumer protection rules across the EU that create fragmentation of the internal market" (European Commission in Weatherill, 2013:25). This illustrates a shift from a preference for minimum harmonisation, as asserted in Article 129a(3) of the Maastricht Treaty, to maximum harmonisation, meaning that EU sets both the floor and the ceiling of regulatory protection (Weatherill, 2013). However, it also illustrates a shift in the preferred tools to be used to minimise the variation in consumer protection rules away from the classic legislative action programme. More attention would be paid to "implementation and enforcement; further strengthening the impact assessments and consultation of stakeholders; simplifying existing legislation where possible, cutting unnecessary red tape; and subjecting policies and laws to systematic evaluation" (Commission of the European Communities, 2007b:4). This focus was reiterated and buttressed when the Juncker Commission took office in 2014.

The main themes in the Commission's strategy for 2007-2013 include a reiteration of the benefits for consumers of the single market with a focus on the need to improve consumer confidence. It is suggested that this is done by empowering consumers and enhancing welfare and protection from risks that consumers cannot cope with individually (Weatherill, 2013). The empowering of consumers is further elaborated in the Consumer Agenda, published in 2012:

"Empowered consumers who can rely on a robust framework ensuring their safety, information, education, rights, means of redress and enforcement, can actively participate in the market and make it work for them by exercising their power of choice and by having their rights properly enforced." (European Commission, 2012)

The current EU consumer policy is furthermore characterised by a political aspiration towards a high level of consumer protection. This is emphasised in policy documents such as the Consumer Agenda and in the current Treaty through Article 12, 114(3) and 169 TFEU and Article 38 of the Charter of Fundamental rights:

Article 12 TFEU: "Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities".

Article 114(3) TFEU: The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

Article 169 of TFEU: "In order to promote the interests of consumers and to ensure a high level of consumer protection, the union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interest" (emphasis added).

Article 38 Charter of Fundamental Rights: "Union policies shall ensure a high level of consumer protection".

The commitments to consumer protection in the Treaty ensures constitutionally rooting, but are, according to Weatherill (2013), deficient both in legal provision and institutional specificity. This point to the opportunities for various interests to influence the development and the direction of EU consumer policy.

2.2 Understandings of European consumer policy today

2.2.1. Market integration as the overarching objective

Although a high level of consumer protection is expressed as a key aim for EU consumer policy, this has long been coupled with market integration and the single market, and should be viewed within the framework of internal market strategy. According to Weatherill (2013), the main emphasis of EU consumer policy remains rooted in the process of market integration, and the dynamic of market integration can in itself be seen as a form of consumer policy where the consumer is used as a lever to open up markets to cross-border competition (Weatherill, 2016:286).

This can be illustrated through recent European Commission publications, such as the Consumer Agenda, published in 2012, and the Consumer Programme for 2014-2020. Both documents situate the consumers at the heart of the internal market, and they start out by emphasising the importance of consumer policy for meeting the 2020 objective of smart, inclusive and sustainable growth. In order to make this possible, the potential of the Single Market must be realised, and this again relies on empowered and confident consumers. According to the Consumer Agenda (2012), “empowered and confident consumers can drive forward the European economy”, and the Agenda identifies the key measures needed to empower consumers and boost their trust. These measures are: 1) improving consumer safety, 2) enhancing [consumer and trader] knowledge, 3) improving implementation, stepping up enforcement and securing redress and 4) aligning rights and key policies to economic and societal change. This is followed up in the Consumer Programme (2014), arguing that “improving citizens trust and confidence in the system, in particular when buying cross-border, are essential for completion of the internal market”. This can be done partly by creating “the right conditions to empower consumers by providing them with sufficient tools, knowledge and competence to make considered and informed decisions and by raising consumer awareness”. The emphasis on empowering consumers is also evident in the Commission communication “A Single Market for 21st Century Europe” from 2007 (Commission of the European Communities, 2007b, Howarth, 2008).

According to Weatherill (2016:293), this kind of explicit connection of consumer interest to economic growth is consistent with long-standing understandings of the place of the consumer interest in the EU. Poncibò (2012) argues that this approach, which is based on a belief that an information-seeking, self-reliant consumer³ can be adequately protected by an effectively operating market, is

³ In the European consumer law it is the alert and attentive consumer – the so-called “average consumer” – that is used as the benchmark as well as to justify dismissal of national intervention in the market.

also a sign of a market-orientation of consumer policy. Barral-Viñals (2012) and Poncibò (2012) furthermore criticise this information paradigm on the basis that the new empowered consumers have not (yet) emerged, and argue that information should certainly not be seen as the only mechanism for consumer protection (Kenny and Devenney, 2012).

A key issue in the history and development of EU consumer policy has been the balance to be struck between market integration and national consumer protection. This can also be seen as the tension between the perspectives of consumer choice and (national) consumer rights, as the consumer choice perspective is based on the assumption that market liberalisation which suppresses obstructive national laws is in the consumers' interest because it extends consumer choice. The consumer rights perspective, on the other hand, is based on a preference for the consumer advantages of national regulation which impedes trade (Micklitz and Weatherill, 1993). In practice, it is generally so that national protection measures survive the test exerted by EU free movement law if shown to be genuinely required for particular consumer protection purposes. Otherwise deregulation and the model of consumer choice or reregulation and legislative harmonisation prevail (Weatherill, 2013:316).

2.2.2. Level of harmonisation

Consumer protection is officially a competence that is shared between the European Union and its Member States, and in the process of establishing the single market as well as an EU consumer policy, this shared competence has become a contested matter (Weatherill, 2016). In EU consumer policy, harmonisation of national laws has been and is still seen as essential for achieving the overarching objective of a European single market as variation in national laws has typically been presented as an impediment to market integration (Weatherill, 2013:11). However, by harmonising, the EU assumes the functions of setting its own rules of consumer protection, and the Member States' room of manoeuvre depends on the level of harmonisation. Harmonisation therefore has a dual function: it sets common rules for the European market, but it also involves a choice of the appropriate standard and technique of regulatory protection. In this way, the choice of the level and degree of harmonisation also becomes an exercise in selecting a pattern of consumer protection for the EU (Weatherill, 2013:12). According to Weatherill (2013:11), the harmonisation programme has therefore acted indirectly as consumer policy.

During the 1970s and the early part of the 1980s, the standard for voting in the Council on secondary legislation that harmonised national laws in order to promote the establishment of the common market was unanimity. This was changed to a qualified majority in the Single European Act of 1987, and has since then been used to harmonise laws in the field of consumer protection (Weatherill, 2013). This harmonisation is tied to the establishment of an internal market within the EU. Nevertheless, Article 129 (3) of the Maastricht Treaty, later known as Article 169 TFEU, made clear that this should "not prevent any Member State from maintaining or introducing more stringent protective measures", establishing a political preference favouring minimum harmonisation. This tradition of

favouring minimum harmonisation has been challenged since the early 2000s when the Commission initiated a more aggressive internal market strategy (Reich, 2012:3). The Consumer Policy Programme for 2002 to 2006 announced a policy shift from a minimum harmonisation to a full harmonisation approach advocating a “move away from the present situation of different sets of rules in each Member State towards a more consistent environment for consumer protection across the EU”. This was reiterated in the 2007 Green Paper on the Review of the Consumer Acquis (Commission of the European Communities, 2007a). This full harmonisation approach would prevent Member States from maintaining or adopting more protective consumer protection provisions in the harmonised field (Reich, 2012, Weatherill, 2013).

In the wake of this change in political preference of the Commission, several fully harmonised directives were enacted, demonstrating that a sufficient majority in the Council and Parliament also favoured this change. It started with Directive 2002/65 on distance marketing of financial services and was followed by the Unfair commercial practices directive (2005/29), the revised Consumer credit directive (2008/45), the Timeshare directive (2008/122) and the Consumer rights directive (2011/83).

The majority of the directives in the consumer acquis remains at the level of minimum harmonisation of national rules, but full harmonisation is still the political priority of the European Commission. In October 2017, the Commission proposed full harmonisation in the amended proposal for a directive on certain aspects concerning contracts for the sales of goods. According to the European Commission (2017b), the key substantive provisions of the amended proposal cover the main differences of national consumer mandatory rules stemming from the Member States implementation of the Consumer sales and guarantees directive (1999/44). The key change is that it “provides for a full harmonisation of the conformity criteria for the goods, of the hierarchy of the remedies available to consumers and of the modalities how to exercise these remedies” (European Commission, 2017b:5). However, when the new sales of goods directives was adopted in 2019 it came as a minimum harmonisation directive enabling countries to go beyond the minimum rules to maintain their current level of consumer protection (Council Directive, 2019b). Furthermore, although the scopes of the Directives generally have been enhanced, the harmonisation level for certain issues in two originally fully harmonised directives, the Unfair Commercial Practices Directive (2005/29/EC) and the Consumer Rights Directive (2011/83/EC), were reduced in the recently adopted Modernisation Directive (Council Directive, 2019a). In the UCTD the Member States are given more leeway in addressing aggressive and misleading off-premises selling in order to protect consumer interests and in the Consumer Rights Directive Member States are allowed to adapt national measures to provide a longer period for the right of withdrawal and to derogate from specific exceptions from the right of withdrawal. These amendments came as a result of the European Commission’s proposed “New Deal for Consumers”, which launched four main aims: 1) to empower qualified entities to launch representative actions on behalf of consumers. 2) To introduce stronger sanctioning powers for Member States’ consumer authorities.

3) To extend consumer protection to cover the online environment and 4) To clarify within EU law that dual practices misleading consumer are prohibited (European Commission, 2018).

The issue of the harmonisation level is important in the development of EU consumer law and policy, but it is also a manifestation of a much deeper debate on the relationship between the EU and the Member States regarding how much should be done in common, and how much diversity should be tolerated (Weatherill, 2013:90). Full harmonisation is increasingly visible as the Commission's preference, but the position is contested as it restricts the sovereignty of the Member States. The model of full harmonisation effects a complete transfer of regulatory responsibility from Member States to the EU which is unalterable and irreversible (Weatherill, 2013), which makes it particularly important for governments, business associations, consumer organisations and other relevant stakeholders to work to influence the drafting of the consumer law and policy.

2.3 Summary

Consumer policy can be defined as “regulatory measures that aim at protecting the end user of products or services against risks and disadvantages in economic life” (Weatherill, 2005 in Rauh, 2018). The concept of “EU consumer policy” is understood as EU initiatives, both legislative and soft law. The purpose of this chapter has been to place the evolution of EU consumer policy in context and to identify key issues that has shaped the development of the policy area. This is done to better understand the preferences of the European Commission. In this chapter we have seen that two related issues have been particularly important in defining EU consumer policy. The first is the constant and explicitly expressed aim of the policy area to contribute to the functioning of the single market, which has contributed to making consumer policy an important policy area at EU-level. The second is the aims and negotiations regarding the level of harmonisation at EU-level. Especially the model of maximum harmonisation makes it important for public and private actors, such as governments and interest organisations, to ensure that their concerns are met. This brief introduction to the history of EU consumer policy demonstrates that the level of harmonisation is often the most contested issues in the negotiations between policy-makers.

3. Data and methodology: Measuring preferences in consumer policy

In 2016, the European Commission conducted a fitness check of EU consumer and marketing law and an evaluation of the Consumer Rights Directive (CRD). The objective of the fitness check was to assess the effectiveness, efficiency, coherence, relevance and EU added value of six directives:

- Unfair Contract Terms Directive (UCTD) 93/13/EEC;
- Consumer Sales and Guarantees Directive (CSGD) 1999/44/EC;
- Unfair Commercial Practices Directive (UCPD) 2005/29/EC;
- Price Indication Directive (PID) 98/6/EC;
- Misleading and Comparative Advertising Directive (MCAD) 2006/114/EC;
- Injunctions Directive (ID) 2009/22/EC

At the time, these directives, together with the Consumer Rights Directive (CRD) 2011/83/EU, built up the core horizontal EU consumer and marketing law, covering the process from advertising and contract conclusion to contract performance (European Commission, 2017a).

Three dedicated studies were performed to support the fitness check. The first main study (Lot 1) evaluated five of the above mentioned directives. The second (Lot 2) study evaluated the CSGD, and the third study (Lot 3), a consumer market study, explored consumers' awareness of their consumer rights, their experience of problems and redress actions etc. Furthermore, a separate evaluation study of the CRD was undertaken (Civic Consulting, 2017a, European Commission, 2017a).

The main study was undertaken by Civic Consulting, and one of many sources of information used to evaluate the fitness of the directives was data collected through an open public consultation, carried out by the European Commission. The consultation was designed to obtain views from various actors on whether EU consumer and marketing rules was still up to date and fit for purpose, and covered all seven horizontal directives (Civic Consulting, 2017b). The consultation was carried out from 12 May to 12 September 2016, and received 436 responses from stakeholders across the EU, as well as from non-EU countries. Based on this broad coverage, and because it measures actors' perceptions of whether the consumer acquis is fit for purpose, the consultation represents a good starting point for measuring actor preferences in EU consumer policy. Therefore, data from the open public consultation is therefore used in this report as operationalisations of actor preferences in EU consumer policy.

3.1 Sample

The open public consultation was structured in three questionnaires. The consumer questionnaire was available only to respondents indicating that they were “a citizen/consumer”. The business questionnaire was available only to respondents indicating that they were “a company (or group of companies)”. The “full” questionnaire was targeted at the other types of respondents and was optional for the consumers and businesses. All questionnaires used closed questions and gave respondents the possibility to comment in each section (Civic Consulting, 2017b). Since we are interested in the views of government actors, business associations and consumer organisations, the relevant data for this report is the replies to the “full questionnaire”.

The dataset made available by the European Commission contained 354 respondents, including 82 respondents that do not accept that their replies are published. By comparing the dataset made available by the European Commission with the dataset originally collected and used in the Civic Consulting’s analyses, we get an overview of which types of actors that are exempted from the publicly available sample. Since we are only interested in the replies to the “full” questionnaire, both because of the relevance of the actors replying and because of the questions asked, Table 1 compares the publicly available version of the “full questionnaire” constituting our sample with the original sample which the presentation of results in Civic Consulting’s report (2017b) is based on. Table 1 shows that it was mostly consumers and companies who chose to not make their replies available to the public, but also six business associations, one consumer organisation and two public authority actors chose this option. Table 2 compares the publicly available results from the “full questionnaire” of the open public consultation with our sample. In our sample one actor has been recoded from “other” to “public enforcement authority” (Instituto de Consumo de Extremadura in Spain), and two global business associations has been recoded from “other” to “European business association” (The GSMA and the World federation of advertisers). Table 3 gives an overview of the actors in our sample by country.

Table 1: Differences between the original and the publicly available versions of the open public consultation for the Fitness Check of EU consumer and marketing law.

	Full sample (any part of questionnaire)	Our total sample	Differences between original and publicly available version
Consumers	97	78	19
Company/ies	176	124	52
Business associations	86	80	6
Consumer organisations	20	19	1
Public authorities	28	26	2
Other	29	27	2
Total	436	354	82

Table 2: Differences between the publicly available version of the "full questionnaire" in the open public consultation for the Fitness Check of EU consumer and marketing law and our sample.

	"Full" questionnaire	Our sample (based on the "full" questionnaire)	Differences between "full" questionnaire versions
Consumers	36	-	36
Company/ies	38	-	13
Business associations	86	82	4
Consumer organisations	20	19	1
Public authorities	28	26	2
Other	29	-	29
Total	237	127	85

Table 3: Actors in our sample by country and actor type.

	Business association	Consumer organisation	Consumer enforcement authority	Public enforcement authority in a specific area	Government authority in charge of consumer policy	Government actor (sum)	Total
Austria	5	1	0	0	1	1	7
Belgium	2	0	0	1	1	2	4
Bulgaria	0	0	0	0	0	0	0
Croatia	0	0	1	0	0	1	1
Cyprus	0	0	1	0	0	1	1
Czech Republic	0	2	0	0	2	2	4
Denmark	4	0	1	0	1	2	6
Estonia	1	0	0	1	1	2	3
Finland	4	1	1	0	1	2	7
France	2	1	0	1	0	1	4
Germany	18	4	0	0	0	0	22
Ireland	1	0	0	0	0	0	1
Italy	1	1	0	0	0	0	2
Latvia	0	0	1	0	1	2	2
Lithuania	0	0	1	0	0	1	1
Malta	0	0	0	0	1	1	1
Netherlands	1	0	1	0	0	1	2
Poland	1	0	0	0	0	0	1
Portugal	0	1	0	1	0	1	2
Romania	0	1	1	0	0	1	2
Slovak Republic	1	1	0	0	1	1	3
Spain	2	0	1	0	0	1	3
Sweden	1	0	0	0	0	0	1
United Kingdom	5	3	0	1	1	2	10
Norway	0	0	0	0	1	1	1
European level	33	3	0	0	0	0	36
	82	19	9	5	12	26	127

3.2 Data treatment

The “full” questionnaire of the open public consultation consists of 16 batteries of questions and one single question. The answer options to all questions /statements are either five-point scales or four-point scales with an additional “No opinion / don’t know” category. We have recoded all the original four-point scales into five point scales by making the “No opinion / don’t know” category into a neutral category. The “no opinion / don’t know” category were also recoded into a neutral category for the questions/statements already using a five-point scale. Questions and statements are recoded so that they all go in the same direction, from negative (1) to positive (5). Based on the results of factor- and reliability analyses, we have constructed several indexes measuring broader phenomenon. These have been categorised into four categories: 1) Understanding of problems, 2) Satisfaction with EU consumer policy, 3) Perceived effectiveness of regulatory tools / policy instruments, and 4) Solutions. The detailed operationalisations of variables are presented in Table A-10 in Annex A.

3.3 Data limitations

It was voluntary to participate in the open public consultation, and although the European Commission urged government representatives and other actors in all countries to participate, key actors in some countries chose to not reply to the consultation. The dataset used in this report therefore lacks replies from these various actors in several countries. Only in five countries have representatives from all relevant actor types replied to the open public consultation. These countries are Austria, Finland, France, Slovak Republic and the United Kingdom. When it comes to differences between actors within countries, it is therefore only possible to compare the results from these countries.

For the purposes of this report, the replies from different types of national actors, “consumer enforcement authority”, “public enforcement authority in a specific area” and “government authority in charge of consumer policy”, have been merged into the main category “government actor”. When several actors in one country have replied, the average scores of these actors are used in the analysis. This can represent a bias in the sample as different types of government actors within a country may have different views and opinions. A comparison of the within-country replies shows that there are differences between the national actors, but these are small and mostly limited to one score differences on a scale from one to five. In 3 % of the replies the answers differ with three scores, while they differ with two scores in 13% of the replies.

4. Results: Overall differences between actors

In this chapter we present the results from all actors at the EU-level. This means that all actors within the selected categories that have replied to the “full survey” in the open public consultation is included. As presented in chapter 3, the results are based on data on 16 national consumer organisations in 10 countries, 49 national business associations in 15 countries, 26 government actors in 19 countries in addition to 3 European-level consumer organisations and 33 European-level business associations. These data are not complete as they do not include representatives from the various actor types in all countries, and because actors from some countries are overrepresented. Consequently, the results might not be representative. However, the data are unique as they enable comparisons of the positions of various actor types and partly across countries, and might indicate trends in preferences in EU consumer policy.

4.1 All topics

The overall results, as presented in Table 4 and Figure 1, show that there are substantial differences between the different types of actors on many, but not all, variables. The differences are statistically significant ($p < .05$), measured through the Kruskal-Wallis test for equality of means, for nine out of 17 variables. The differences between the actor types for the specific variables are presented in the following structured by the topics investigated. The overall results indicate, not surprisingly, that the main differences can be found between consumer organisations and business associations. The preferences of the national and the European consumer organisations closely follow each other for most variables, and this is also the case for the preferences of the national and the European business associations. On average, the government actors often score somewhere between the other two actor types, but their aggregated preferences tend to be closer to the preferences of the consumer organisations.

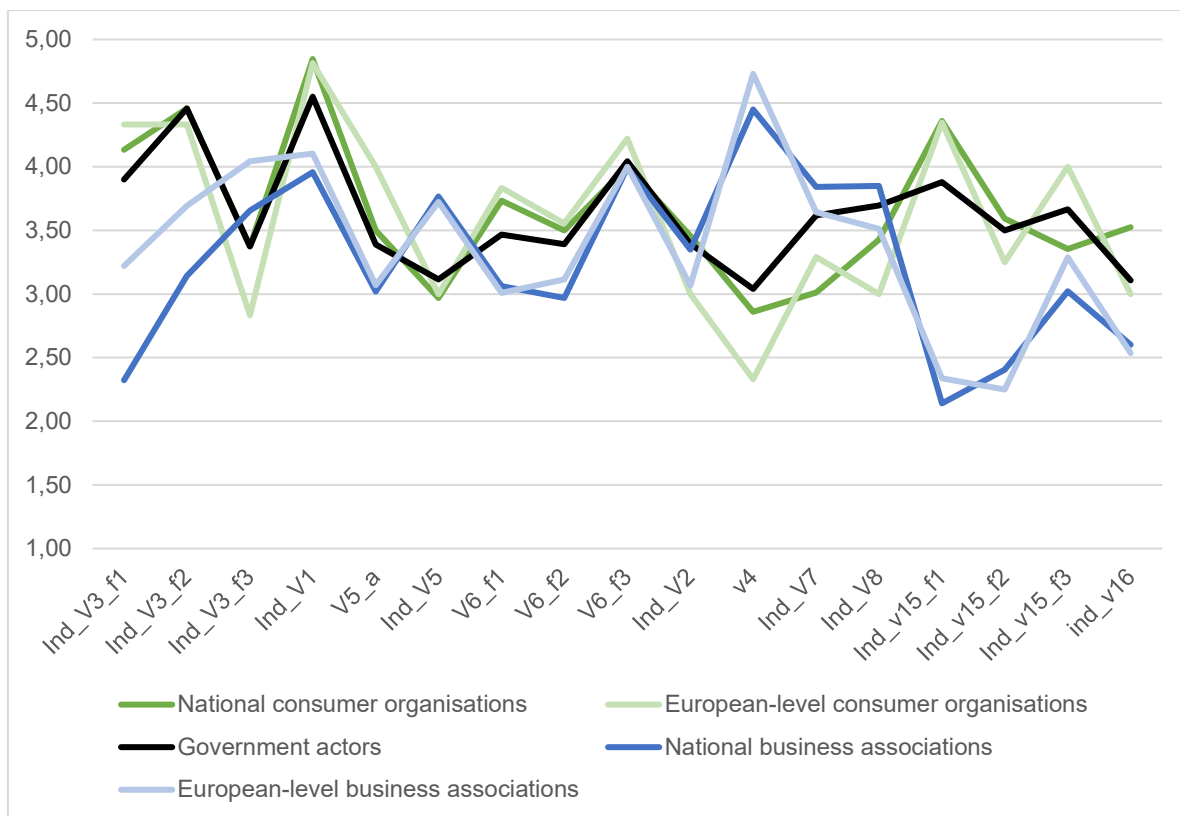


Figure 1: Mean scores on a scale from 1 to 5 for all five actor types across 17 variables

Table 4: Mean scores on a scale from 1 to 5 for all five actors types across 17 variables

		National consumer organisations			European level consumer organisations			Government actors			National business associations			European level business associations			Kruskal-Wallis test	
		Mean score	N	SD	Mean score	N	SD	Mean score	N	SD	Mean score	N	SD	Mean score	N	SD	Sig.	H
Problem importance (low to high importance)	Inefficient enforcement of consumer law (Ind_V3_f1)	4.13	16	0.75	4.33	3	0.58	3.90	24	0.63	2.32	42	1.06	3.22	24	0.88	0.000	45.970
	Limited understanding of consumer law (Ind_V3_f2)	4.46	16	0.59	4.33	3	0.58	4.46	24	0.55	3.14	42	0.90	3.69	24	0.67	0.000	45.869
	Complex consumer law (Ind_V3_f3)	3.38	16	1.23	2.83	3	1.44	3.38	24	0.91	3.65	42	0.79	4.04	24	0.83	0.075	8.483
Satisfaction with EU consumer policy	Consumer benefits (Ind_V1)	4.85	16	0.22	4.81	3	0.32	4.55	23	0.52	3.96	43	0.67	4.10	26	0.65	0.000	36.417
	Cross-border trade (V5_a)	3.50	16	0.73	4.00	2	0.00	3.39	23	1.03	3.02	43	1.26	3.07	28	1.25	0.553	3.028
	Protection of businesses (Ind_V5)	2.97	16	0.39	3.00	2	0.00	3.11	22	0.65	3.77	45	1.07	3.72	27	1.12	0.003	15.825
	Creating a fairer market / protection of business actors (V6_f1)	3.73	16	0.57	3.83	3	0.14	3.47	23	0.49	3.06	45	0.57	3.01	26	0.35	0.000	29.897
	Product quality and availability (V6_f2)	3.50	16	0.63	3.56	3	0.38	3.39	23	0.63	2.97	44	0.65	3.12	26	0.38	0.004	15.334
	Benefits for businesses (V6_f3)	4.00	16	0.50	4.22	3	0.84	4.04	23	0.49	3.99	45	0.65	4.00	27	0.70	0.973	0.502
Perception of effectiveness of regulatory tools / policy instruments	Sector-specific injunctions (Ind_V2)	3.46	15	1.13	3.00	1		3.39	19	0.87	3.35	41	0.64	3.07	20	0.20	0.106	7.622
	Self- and co-regulation by businesses (v4)	2.86	14	1.29	2.33	3	0.58	3.04	24	0.96	4.45	44	0.95	4.73	30	0.52	0.000	56.329
	Third-party assisted enforcement (Ind_V7)	3.01	14	1.03	3.29	2	1.36	3.62	21	0.84	3.84	38	1.04	3.64	21	0.93	0.142	6.880
	Injunctions against illegal practices (Ind_V8)	3.43	15	1.05	3.00	1		3.70	23	0.76	3.85	44	0.86	3.51	23	0.93	0.460	3.618
Perception of solutions	Strengthening of consumer protection (Ind_v15_f1)	4.36	16	0.34	4.35	2	0.60	3.88	23	0.56	2.14	45	0.69	2.34	26	0.52	0.000	73.859
	Simplification of presentation of information to consumers (Ind_v15_f2)	3.59	16	1.05	3.25	2	0.35	3.50	23	1.13	2.40	47	1.23	2.25	28	1.06	0.000	23.386
	Standardisation of consumer law (Ind_v15_f3)	3.35	16	1.14	4.00	2	1.41	3.67	23	1.14	3.02	46	1.07	3.29	29	1.09	0.144	6.854
	Strengthening of business protection (ind_v16)	3.53	13	0.63	3.00	1		3.11	22	0.97	2.60	42	1.29	2.54	22	1.08	0.072	8.582
	Average			0.78			0.61			0.77			0.91			0.77		

4.2 Problem importance

Figure 2 presents the results on the views of the different actor types on the indexes that measure the perceived importance of various problems for protecting the rights of consumers. The results, also presented in Table 4, show that there are statistically significant differences ($p < .001$) between the types of actors on two of three of the indexes. Consumer organisations perceive inefficient enforcement of consumer law and limited understanding among consumer and traders of consumer law as a far greater problem than business associations. On average, national business associations are least convinced that inefficient enforcement and limited understanding of consumer law represent a problem for protecting the rights of consumers. The differences between the actor types are not statistically significant ($p = .075$), when it comes to the views on whether complex consumer law represents a problem for protecting the rights of consumers. However, it is worth noting that the actors now switch place, and that the consumer organisations see this as a less important problem than the business associations. The views of the government actors closely follow the perceptions of the consumer organisations, and they even score identical with the average national consumer organisations on two of the three variables.

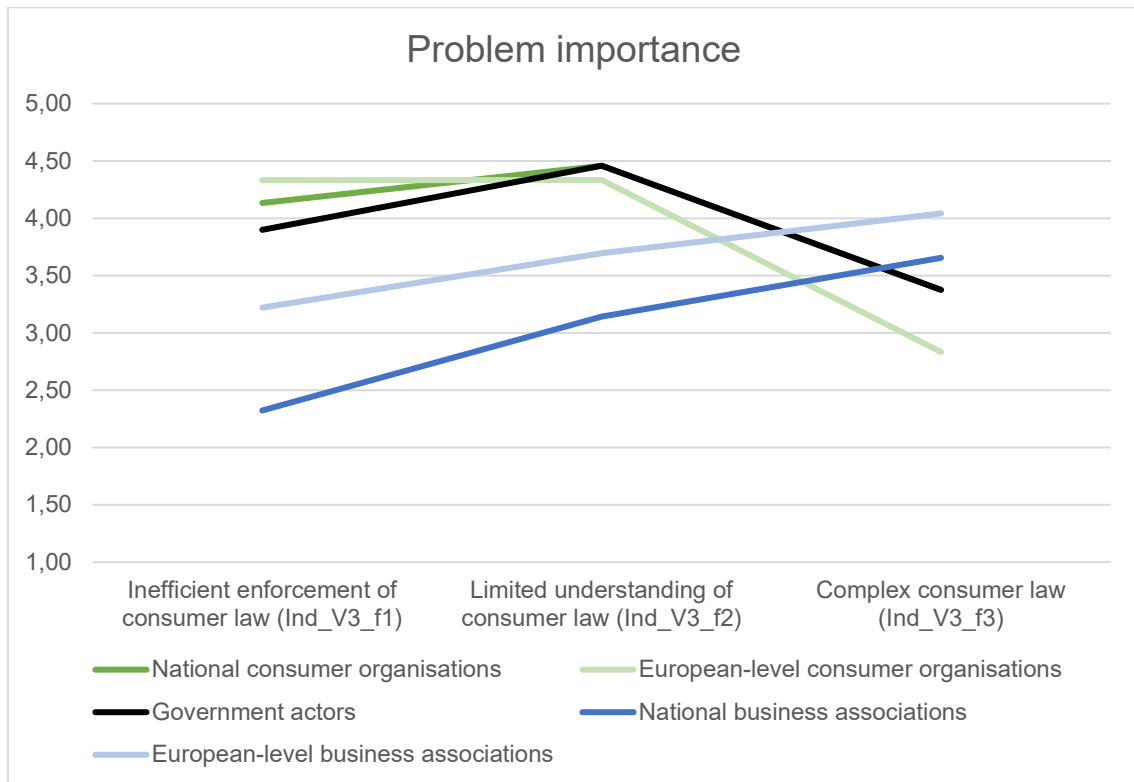


Figure 2: Mean scores on a scale from 1 to 5 for five key actor types on variables categorised within the topic "problem importance"

4.3 Satisfaction with EU consumer policy

The results, presented in Table 4 and Figure 3, show that there are statistically significant differences between the types of actors for four of six variables/indexes measuring aspects of satisfaction with EU consumer policy. First, all actor types agree that a substantial list of EU consumer and marketing rules, mainly focussed on consumer rights, are beneficial for consumers. However, there are significant differences between the actor types ($p < .001$), and consumer organisations are more positive than business associations while the average government actor is in the middle. Second, there are significant differences between the actor types ($p < .01$) on the variable measuring perceived protection of businesses. Business associations consider businesses to be better protected against misleading marketing practices of other businesses and against unfair comparative advertising of other businesses than consumer organisations and government actors. Third, there are statistically significant differences between the actor types for the variables measuring the perceived impact of EU consumer and marketing law on creating a fairer market and protection of market actors ($p < .001$) and on the quality and availability of products ($p < .01$). Again, both the consumer organisations and the business associations closely follow each other, and the consumer organisations are most positive, followed by the government actors and the business associations. The latter category of actors is neutral and do not consider the impact as neither positive nor negative. There are no statistically significant differences between the actor types on the variables measuring the perception of the impact of EU consumer and marketing rules on the ease of cross-border trade ($p = .553$). From Figure 4 we see that there are some differences, and that at an aggregated level consumer organisations are most positive, followed by government actors and business associations. The lack of statistical significance may be driven by the high internal disagreement within the actor groups. There are also no statistically significant differences between the actor types on the variable measuring the perceived impact on EU consumer and marketing law on the benefits for businesses ($p = .973$), as all actor types agree that EU consumer and marketing law have had a positive impact.

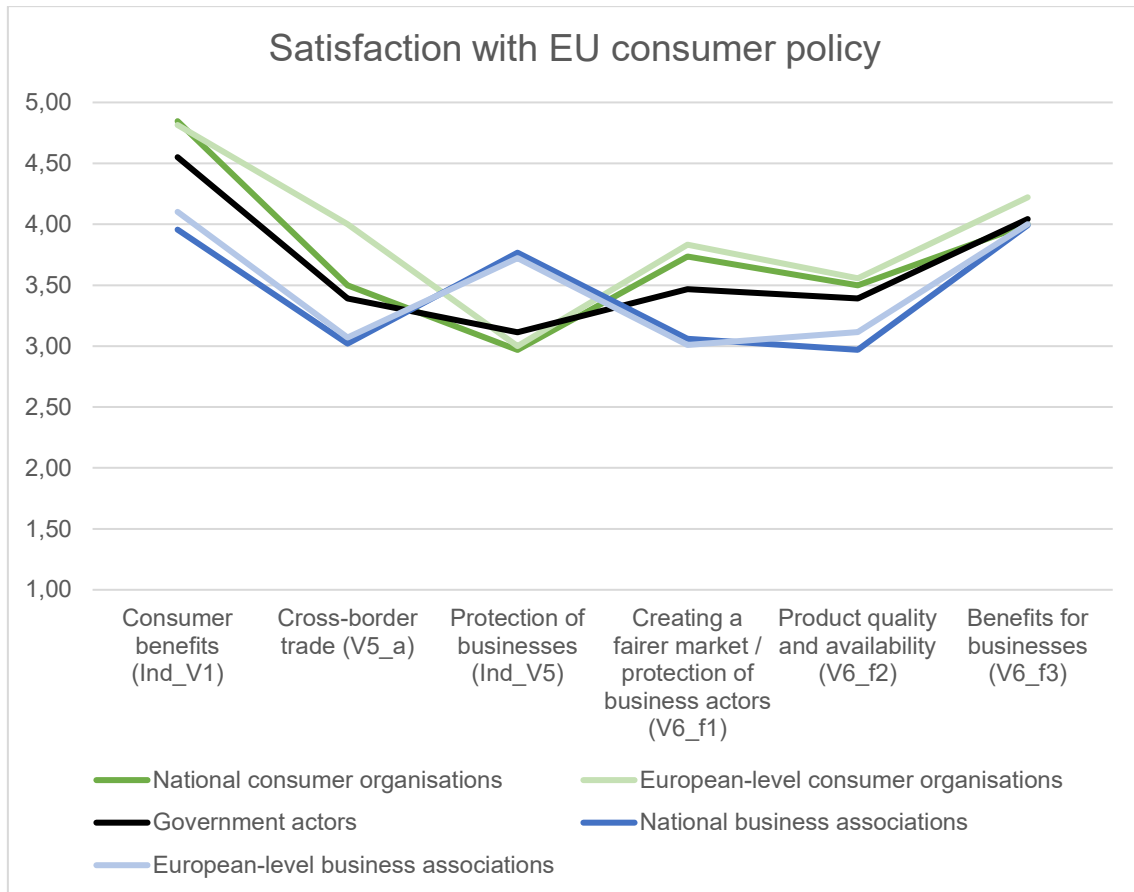


Figure 3: Mean scores on a scale from 1 to 5 for five key actor types on variables categorised within the topic "Satisfaction with EU consumer policy"

4.4 Perception of effectiveness of regulatory tools

The results, presented in Table 4 and Figure 4, illustrate the actor types' perceptions of the effectiveness of various regulatory tools in EU consumer policies. The results show that there are statistically significant differences between the actor types for only one variable within this topic: the variable measuring perceived effectiveness of self- and co-regulation initiatives by businesses, under which businesses establish standards as to how they deal with consumers, for protecting the rights of consumers ($p < .001$). The business associations, both national and European-level as such, are far more positive to the effectiveness of self- and co-regulation than consumer organisations. The European-level consumer organisations are most sceptical, and the government actors neither agree nor disagree that such tools are effective. The differences between the actor types are not statistically significant for the variables measuring the perceived effectiveness of sector-specific injunctions ($p = .106$), selected third party enforcement mechanisms ($p = .142$) and injunctions against illegal practices ($p = .460$).

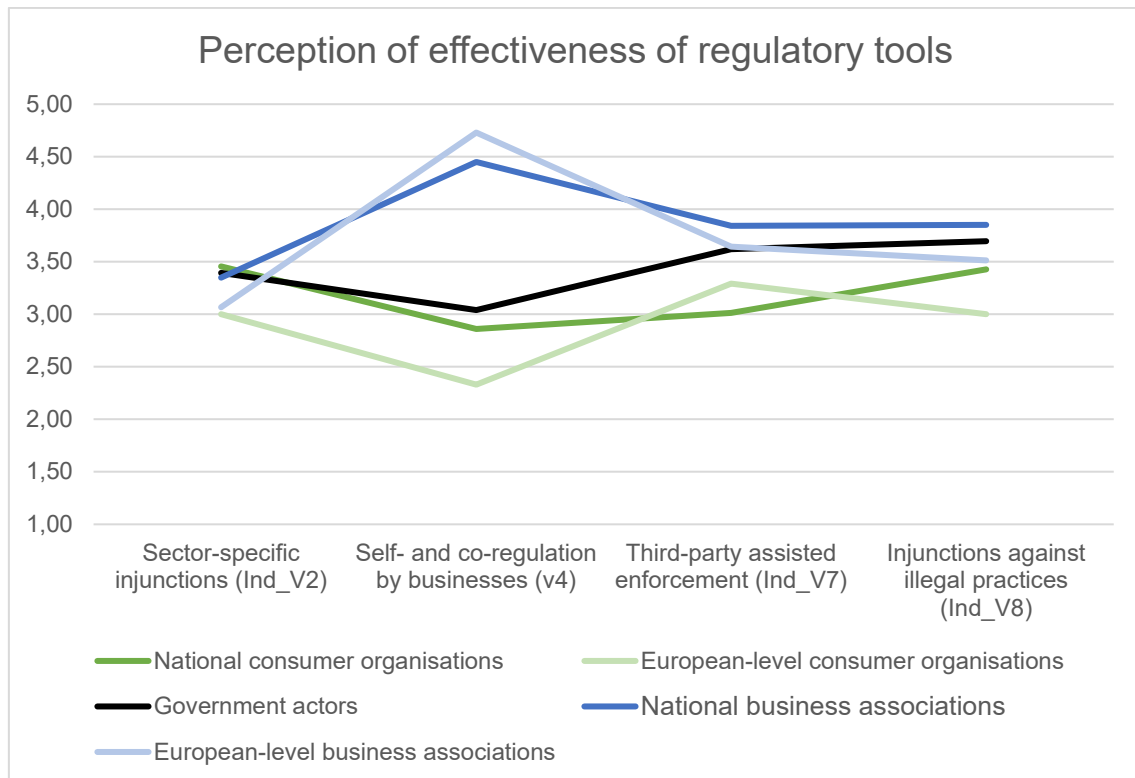


Figure 4: Mean scores on a scale from 1 to 5 for five key actor types on variables categorised within the topic "Perception of effectiveness of regulatory tools"

4.5 Solutions

The results, presented in Table 4 and Figure 5, show the actor types' attitudes to different proposed solutions to challenges in EU consumer policies. The results show that there are statistically significant differences between the types of actors on two out of four variables. First, the differences between the types of actors are substantial when it comes to perceptions of suggested ways to strengthen consumer protection ($p < .001$). Consumer organisations, followed by government actors, clearly agree that consumer protection should be strengthened while business associations clearly disagree. The differences between the types of actors are smaller, but still statistically significant ($p < .001$), when it comes to suggested ways of simplifying the presentation of information to consumers. Consumer organisations and government actors are positive, while business associations are negative to the idea. The differences between the types of actors are not statistically significant for the variables measuring agreement with the need to further standardise consumer law ($p = .144$) and the need to strengthen the protection of businesses ($p = .072$).

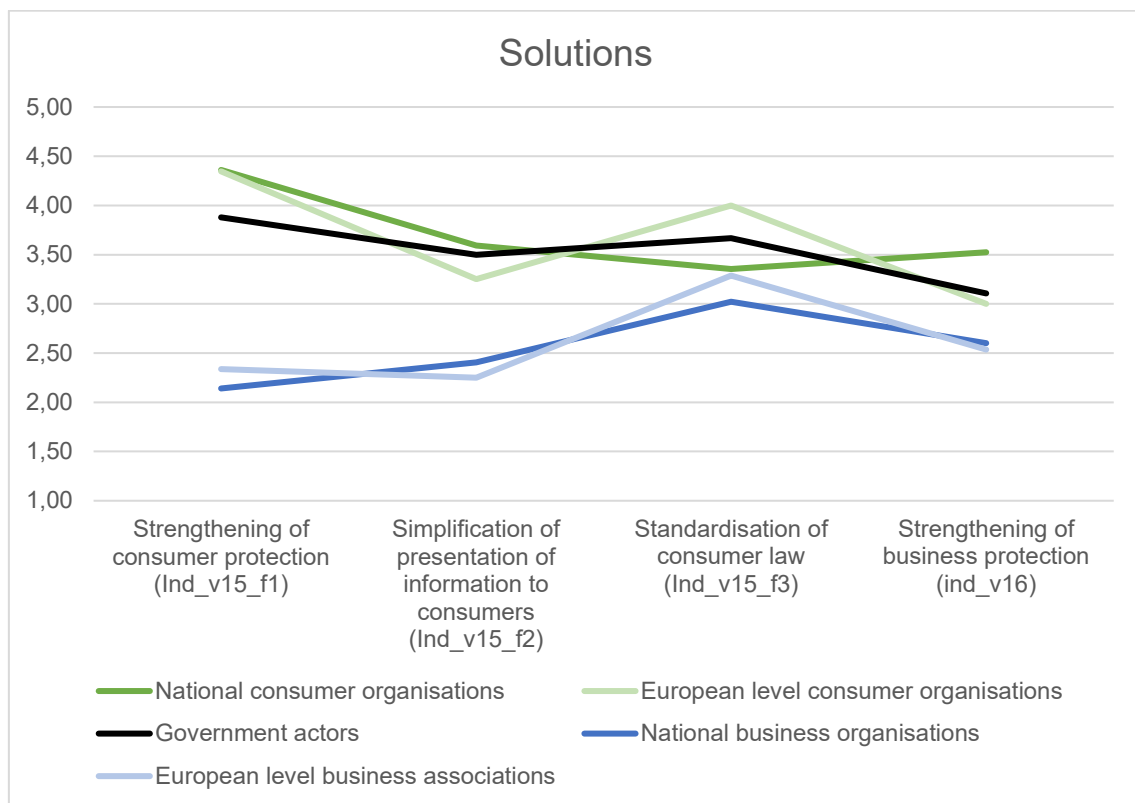


Figure 5: Mean scores on a scale from 1 to 5 for five key actor types on variables categorised within the topic "Solutions"

4.6 Summary

There are statistically significant differences between the actor types along nine variables measuring the following:

- The understanding of which issues related to EU consumer and marketing law that are most problematic for the protection of the rights of consumers;
- Satisfaction with the impact of EU consumer and marketing law on consumer benefits, on protection of businesses and business actors and on product quality and availability;
- The perceived effectiveness of self- and co-regulation by businesses; and
- The perception of suggested solutions aimed at strengthening consumer protection and at simplifying the presentation of information to consumers

The main differences were found between the two types of interest organisations. On average the government actors often score between the two actors, but their aggregated preferences tend to be closer to the preferences of the consumer organisations.

On the first topic, consumer organisations were to a higher degree convinced that inefficient enforcement of consumer law and limited understanding of consumer law represented a problem for the protection of the rights of consumers than business associations. The business associations were more inclined than the consumer organisations to think that complex consumer law represented a problem, but despite large differences in mean scores this difference was not statistically significant, perhaps due to large internal disagreement within the groups.

On the second topic, consumer organisations were more convinced than the businesses associations that EU consumer and marketing law have been beneficial for consumers, having created a fairer market and protection of business actors and have been positive for product quality and availability. Business associations were more satisfied than the consumer organisations with the impact consumer and marketing law have had for the protection of businesses.

On the third topic, we found a clear difference in the perceptions of the two interest organisations on one variable. The business associations were far more positive than the consumer organisations to the effectiveness of self- and co-regulation.

On the fourth topic, consumer organisations were far more positive than the business associations to suggested ways of strengthening consumer protection and to suggested ways of simplifying the presentation of information to consumers.

5. Results: Differences within selected countries

In chapter 4 we presented the aggregated results for Europe as a whole, and the results were based on an uneven selection of actors in various countries. Only in five countries did all actor types reply to the open public consultation. It is therefore not possible to systematically investigate potential structural differences between the types of actors in all EU countries or to make a classification of the EU countries based on the actor replies. This would have been interesting as the preferences of different types of actors relative to each other within a country could give an indication of which interest groups that exerts most influence on government actors and whether this varies between countries and groups of countries. This type of research on the relative preferences of key actor types within and across countries would represent a valuable addition to the research on consumer policy regimes (Austgulen, forthcoming, Nessel, 2019, Repo and Timonen, 2017, Trumbull, 2012, Micklitz, 2003, Cseres, 2005).

In this chapter we present the results for the five countries where all three key actor types replied to the open public consultation. These countries are Austria, Finland, France, the Slovak Republic and the United Kingdom. Since there are few actors and thus few observations in each country it does not make sense to use statistical significance as a measure of differences between the actor types. We therefore use the actual scores as indicators of differences.

5.1 Austria

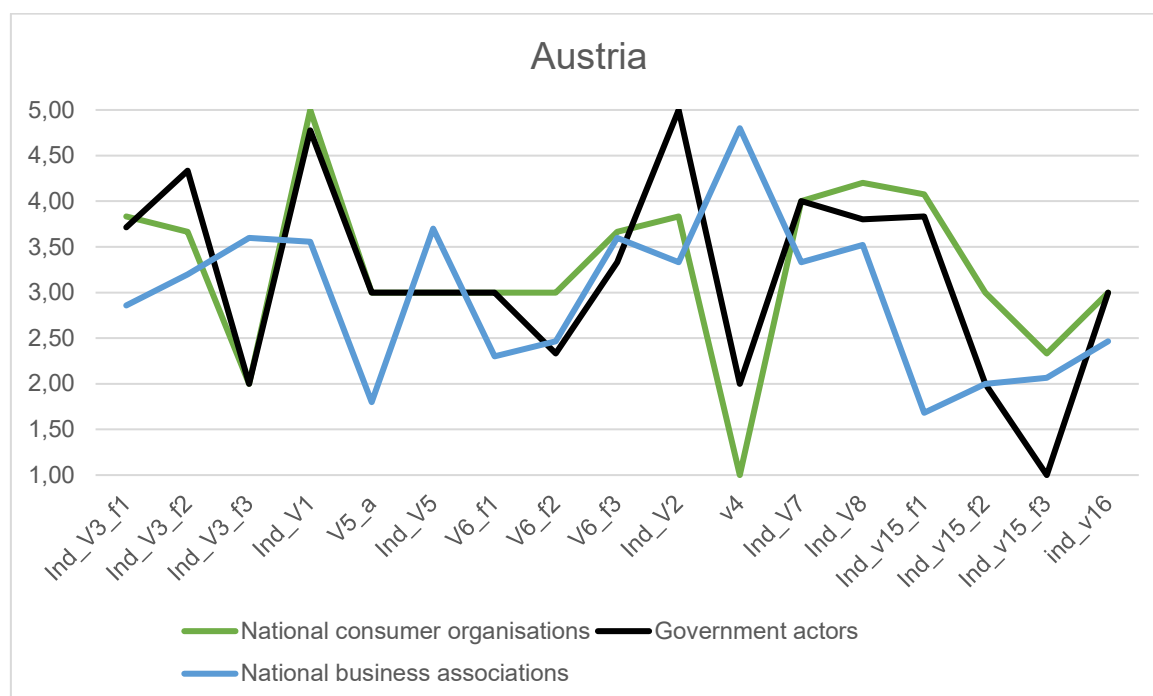


Figure 6: (Mean) scores on a scale from 1 to 5 for three key actor types on all variables, Austria.

Figure 6 and Table 5 show the overall results for Austria. The results indicate that there exists a clear distinction between the consumer organisations and the business associations on several of the variables. Furthermore, the results show that the preferences of the government actor closely follow the preferences of the consumer organisation. However, the government actor is more sceptical to EU consumer and marketing law having had a positive impact on product quality and availability. On this issue, the government actor is more in line with the business associations. The government actor also has a much more positive impression of the effectiveness of sector-specific injunctions than both the consumer organisations and the business associations. Moreover, there is a substantial gap in the preferences of the government actor and the consumer organisation for the variables measuring perceptions of suggested ways of simplifying the presentation of information to consumers and suggested ways to further standardise consumer law. The government actor is more sceptical to these suggested solutions. The business associations are more sceptical than the other actor types to inefficient enforcement of consumer law representing a problem for protecting the rights of consumers, to the consumer benefits of existing EU consumer and marketing law, to the positive impact of EU consumer and marketing law on cross-border trade and to the suggestions on strengthening consumer protection.

Table 5: (Mean) scores on a scale from 1 to 5 for three key actor types on all variables, Austria

		National consumer organisation		Government actor		National business associations		
		Score	N	Score	N	Mean score	N	SD
Problem importance (low to high importance)	Inefficient enforcement of consumer law (Ind_V3_f1)	3.83	1	3.71	1	2.86	5	1.38
	Limited understanding of consumer law (Ind_V3_f2)	3.67	1	4.33	1	3.20	5	0.65
	Complex consumer law (Ind_V3_f3)	2.00	1	2.00	1	3.60	5	0.82
Satisfaction with EU consumer policy	Consumer benefits (Ind_V1)	5.00	1	4.78	1	3.56	5	0.82
	Cross-border trade (V5_a)	3.00	1	3.00	1	1.80	5	0.84
	Protection of businesses (Ind_V5)	3.00	1	3.00	1	3.70	5	0.67
	Creating a fairer market / protection of business actors (V6_f1)	3.00	1	3.00	1	2.30	5	1.04
	Product quality and availability (V6_f2)	3.00	1	2.33	1	2.47	5	0.87
	Benefits for businesses (V6_f3)	3.67	1	3.33	1	3.60	5	0.37
Perception of effectiveness of regulatory tools / policy instruments	Sector-specific injunctions (Ind_V2)	3.83	1	5.00	1	3.33	5	0.94
	Self- and co-regulation by businesses (v4)	1.00	1	2.00	1	4.80	5	0.45
	Third-party assisted enforcement (Ind_V7)	4.00	1	4.00	1	3.33	3	1.26
	Injunctions against illegal practices (Ind_V8)	4.20	1	3.80	1	3.52	5	1.15
Perception of solutions	Strengthening of consumer protection (Ind_v15_f1)	4.08	1	3.83	1	1.68	5	1.09
	Simplification of presentation of information to consumers (Ind_v15_f2)	3.00	1	2.00	1	2.00	5	1.06
	Standardisation of consumer law (Ind_v15_f3)	2.33	1	1.00	1	2.07	5	1.28
	Strengthening of business protection (ind_v16)	3.00	1	3.00	1	2.47	5	1.60

5.2 Finland

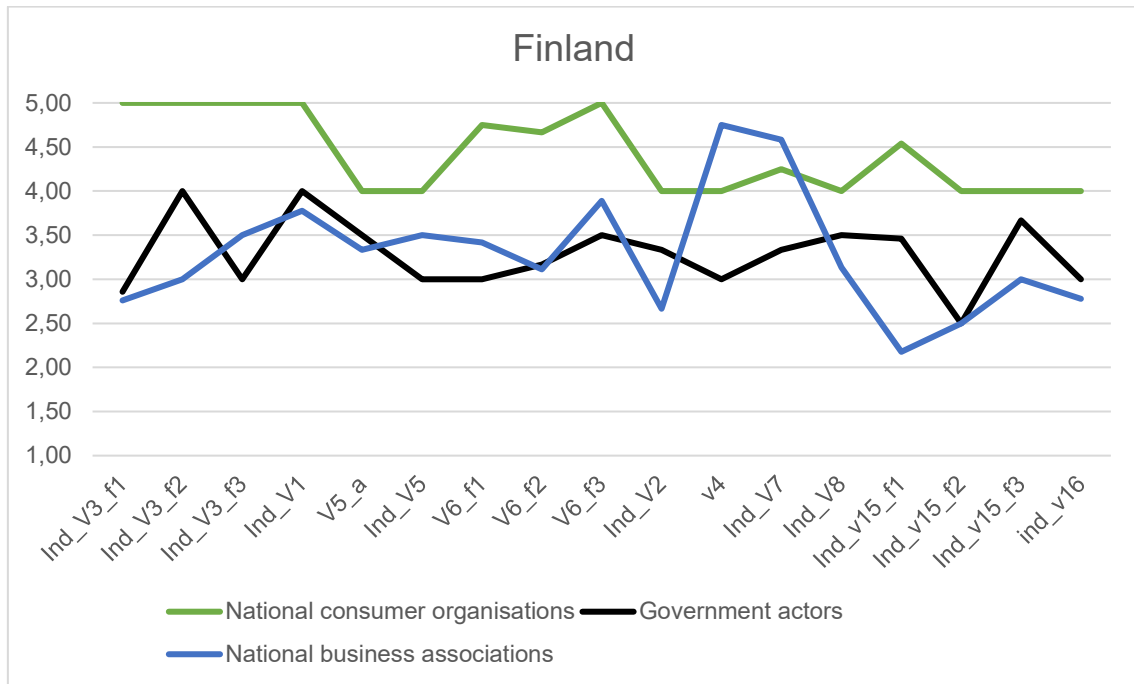


Figure 7: (Mean) scores on a scale from 1 to 5 for three key actor types on all variables, Finland

In Finland the results presented in Figure 7 and Table 6, also show that there are a clear distinction between the consumer organisations and the business associations on most of the variables. However, as opposed to the situation in Austria, the preferences of the government actors in Finland rather closely follow the preferences of the business associations. The consumer organisation scores highest on all variables, except for the one measuring perceived effectiveness of self- and co-regulation by businesses and the perceived effectiveness of third-party assisted enforcement of consumer and marketing law, where the business associations score highest. Common for all types of actors in Finland is that they seldom score lower than 3, which represents the neutral stance. The most eye-catching exception is the opposition of the national business associations to the suggested ways of strengthening consumer protection, and the opposition of the business associations and the government actors to simplifying the presentation of information to consumers.

Table 6: (Mean) scores on a scale from 1 to 5 for three key actor types on all variables, Finland

		National consumer organisation		Government actors			National business associations		
		Score	N	Mean score	N	SD	Mean score	N	SD
Problem importance (low to high importance)	Inefficient enforcement of consumer law (Ind_V3_f1)	5.00	1	2.86	2	0.20	2.76	3	0.41
	Limited understanding of consumer law (Ind_V3_f2)	5.00	1	4.00	2	0.47	3.00	3	1.20
	Complex consumer law (Ind_V3_f3)	5.00	1	3.00	2	0.71	3.50	3	1.50
Satisfaction with EU consumer policy	Consumer benefits (Ind_V1)	5.00	1	4.00	2	1.41	3.78	3	0.68
	Cross-border trade (V5_a)	4.00	1	3.50	2	0.71	3.33	3	1.15
	Protection of businesses (Ind_V5)	4.00	1	3.00	2	0.00	3.50	3	0.87
	Creating a fairer market / protection of business actors (V6_f1)	4.75	1	3.00	2	0.00	3.42	3	0.38
	Product quality and availability (V6_f2)	4.67	1	3.17	2	0.24	3.11	3	0.19
	Benefits for businesses (V6_f3)	5.00	1	3.50	2	0.24	3.89	3	0.19
Perception of effectiveness of regulatory tools / policy instruments	Sector-specific injunctions (Ind_V2)	4.00	1	3.33	2	0.47	2.67	3	0.58
	Self- and co-regulation by businesses (v4)	4.00	1	3.00	2	0.00	4.75	4	0.50
	Third-party assisted enforcement (Ind_V7)	4.25	1	3.33	2	0.00	4.58	2	0.12
	Injunctions against illegal practices (Ind_V8)	4.00	1	3.50	2	0.71	3.13	3	0.23
Perception of solutions	Strengthening of consumer protection (Ind_v15_f1)	4.54	1	3.46	2	0.76	2.18	3	0.80
	Simplification of presentation of information to consumers (Ind_v15_f2)	4.00	1	2.50	2	2.12	2.50	4	1.08
	Standardisation of consumer law (Ind_v15_f3)	4.00	1	3.67	2	0.47	3.00	3	1.00
	Strengthening of business protection (ind_v16)	4.00	1	3.00	2	0.00	2.78	3	1.62

5.3 France

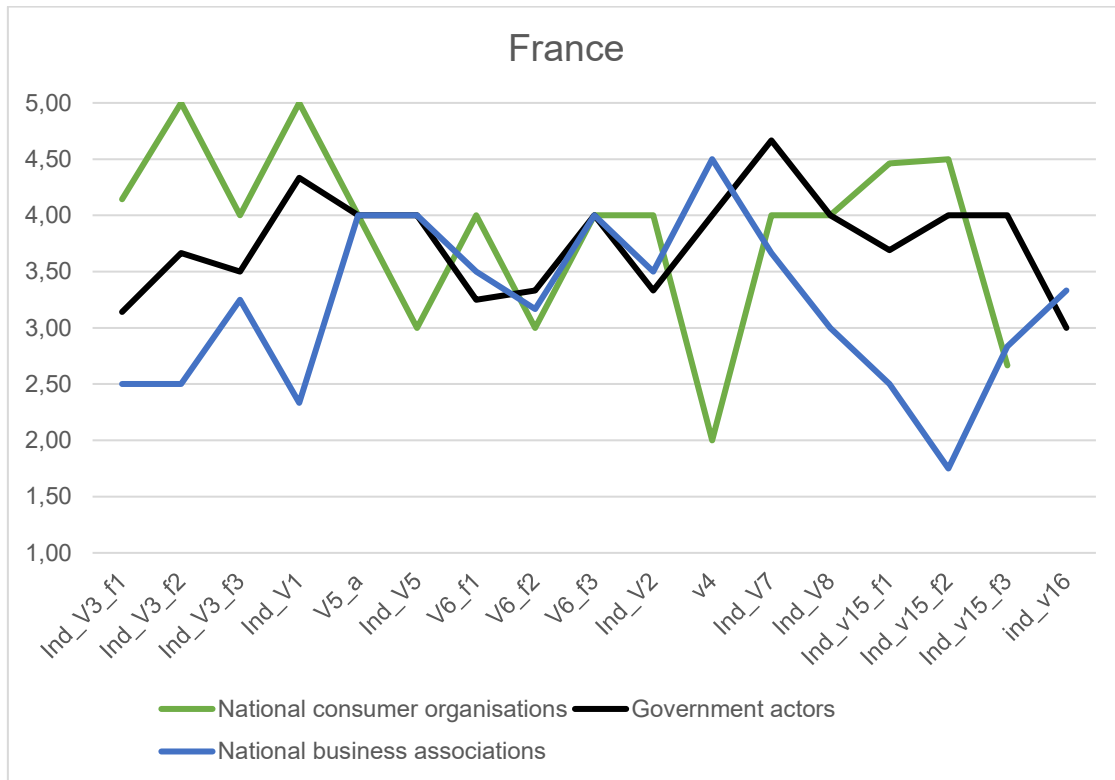


Figure 8: (Mean) scores on a scale from 1 to 5 for three key actor types on all variables, France

The results for France, presented in Figure 8 and Table 7, show that the distinction between the actor types is not as clear as they were for Austria and Finland. There is a clear distinction between the consumer organisation and the business associations on the variables measuring problem importance, where the consumer organisation is more convinced about the importance of inefficient enforcement of consumer law, limited understanding of consumer law and complex consumer law for protecting the rights of consumers. There is also a clear gap between these actor types when it comes to the perceived consumer benefits of EU consumer and marketing law, where the consumer organisation is far more positive than the business associations. For these variables the government actor scores between the interest groups. There are few differences between the actor types on the rest of the variables measuring satisfaction with EU consumer policy. For the variables measuring perceptions of effectiveness of regulatory tools, a clear difference between the interest groups is observed on the variable measuring perceived effectiveness of self- and co-regulation, where the consumer organisation is negative while the business associations are positive. The business associations are furthermore less convinced than the consumer organisation and the government actor about the effectiveness of third-party assisted enforcement and injunctions against illegal practices. Finally, there are sharp differences between the consumer organisation and the business associations for two of the variables measuring perceptions of solutions. The consumer organisation is positive, and the business associations are negative, to measures aimed at strengthening consumer

protection and simplifying the presentation of information to consumers. On the other hand, both interest organisations are negative to the suggested ways of further standardise consumer law, while the government actor is positive.

Table 7: Mean scores on a scale from 1 to 5 for three key actor types on all variables, France

		National consumer organisation		Government actor		National business associations		
		Score	N	Score	N	Mean score	N	SD
Problem importance (low to high importance)	Inefficient enforcement of consumer law (Ind_V3_f1)	4.14	1	3.14	1	2.5	2	0.71
	Limited understanding of consumer law (Ind_V3_f2)	5.00	1	3.67	1	2.5	2	0.71
	Complex consumer law (Ind_V3_f3)	4.00	1	3.50	1	3.3	2	0.35
Satisfaction with EU consumer policy	Consumer benefits (Ind_V1)	5.00	1	4.33	1	2.3	2	0.94
	Cross-border trade (V5_a)	4.00	1	4.00	1	4.0	2	0.00
	Protection of businesses (Ind_V5)	3.00	1	4.00	1	4.0	2	0.00
	Creating a fairer market / protection of business actors (V6_f1)	4.00	1	3.25	1	3.5	2	0.71
	Product quality and availability (V6_f2)	3.00	1	3.33	1	3.2	2	0.24
	Benefits for businesses (V6_f3)	4.00	1	4.00	1	4.0	2	0.00
Perception of effectiveness of regulatory tools / policy instruments	Sector-specific injunctions (Ind_V2)	4.00	1	3.33	1	3.5	2	0.71
	Self- and co-regulation by businesses (v4)	2.00	1	4.00	1	4.5	2	0.71
	Third-party assisted enforcement (Ind_V7)	4.00	1	4.67	1	3.7	2	0.94
	Injunctions against illegal practices (Ind_V8)	4.00	1	4.00	1	3.0	2	0.00
Perception of solutions	Strengthening of consumer protection (Ind_v15_f1)	4.46	1	3.69	1	2.5	2	0.27
	Simplification of presentation of information to consumers (Ind_v15_f2)	4.50	1	4.00	1	1.8	2	1.06
	Standardisation of consumer law (Ind_v15_f3)	2.67	1	4.00	1	2.8	2	0.24
	Strengthening of business protection (ind_v16)	4.14	1	3.00	1	3.3	2	0.47

5.4 Slovak Republic

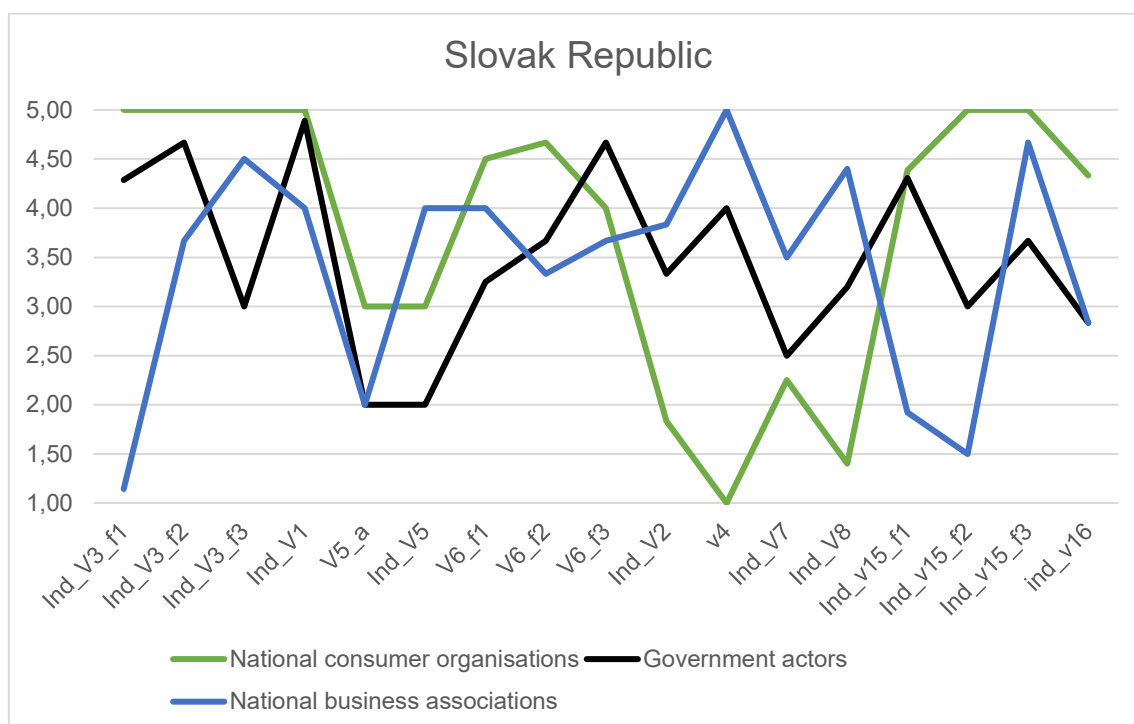


Figure 9: Scores on a scale from 1 to 5 for three key actor types on all variables, Slovak Republic

The results for the Slovak Republic, presented in Figure 9 and Table 8, show that the Slovak respondents have used the whole scale actively when replying to the survey. They are both more positive to certain topics and more negative to certain topics than many of the respondents in the other countries. Also, in the Slovak Republic we see a distinction between the consumer organisation on the one side and the business association on the other. It is difficult to make out a clear pattern on how the preferences of the government actor can be related to the preferences of the other actors. The most extreme differences between the two interest organisations are on the perception of whether inefficient enforcement of consumer law represents a problem for the protection of the rights of consumers and on the perceived effectiveness of self- and co-regulation by businesses. The consumer organisation strongly agrees with the first group of statements and strongly disagrees with the latter. The opposite is the case for the business association. The government actor scores are mostly situated between the two other actors' scores. However, compared to the other two actor types the government actor assigns less importance to complex consumer law as a problem for the protection of consumer rights, are more satisfied with the benefits EU consumer policy has had for businesses and is less (although still) positive to standardisation of consumer law.

Table 8: Scores on a scale from 1 to 5 for three key actor types on all variables, Slovak Republic

		National consumer organisation		Government actor		National business association	
		Score	N	Score	N	Score	N
Problem importance (low to high importance)	Inefficient enforcement of consumer law (Ind_V3_f1)	5.00	1	4.29	1	1.14	1
	Limited understanding of consumer law (Ind_V3_f2)	5.00	1	4.67	1	3.67	1
	Complex consumer law (Ind_V3_f3)	5.00	1	3.00	1	4.50	1
Satisfaction with EU consumer policy	Consumer benefits (Ind_V1)	5.00	1	4.89	1	4.00	1
	Cross-border trade (V5_a)	3.00	1	2.00	1	2.00	1
	Protection of businesses (Ind_V5)	3.00	1	2.00	1	4.00	1
	Creating a fairer market / protection of business actors (V6_f1)	4.50	1	3.25	1	4.00	1
	Product quality and availability (V6_f2)	4.67	1	3.67	1	3.33	1
	Benefits for businesses (V6_f3)	4.00	1	4.67	1	3.67	1
Perception of effectiveness of regulatory tools / policy instruments	Sector-specific injunctions (Ind_V2)	1.83	1	3.33	1	3.83	1
	Self- and co-regulation by businesses (v4)	1.00	1	4.00	1	5.00	1
	Third-party assisted enforcement (Ind_V7)	2.25	1	2.50	1	3.50	1
	Injunctions against illegal practices (Ind_V8)	1.40	1	3.20	1	4.40	1
Perception of solutions	Strengthening of consumer protection (Ind_v15_f1)	4.38	1	4.31	1	1.92	1
	Simplification of presentation of information to consumers (Ind_v15_f2)	5.00	1	3.00	1	1.50	1
	Standardisation of consumer law (Ind_v15_f3)	5.00	1	3.67	1	4.67	1
	Strengthening of business protection (ind_v16)	4.33	1	2.83	1	2.83	1

5.5 United Kingdom

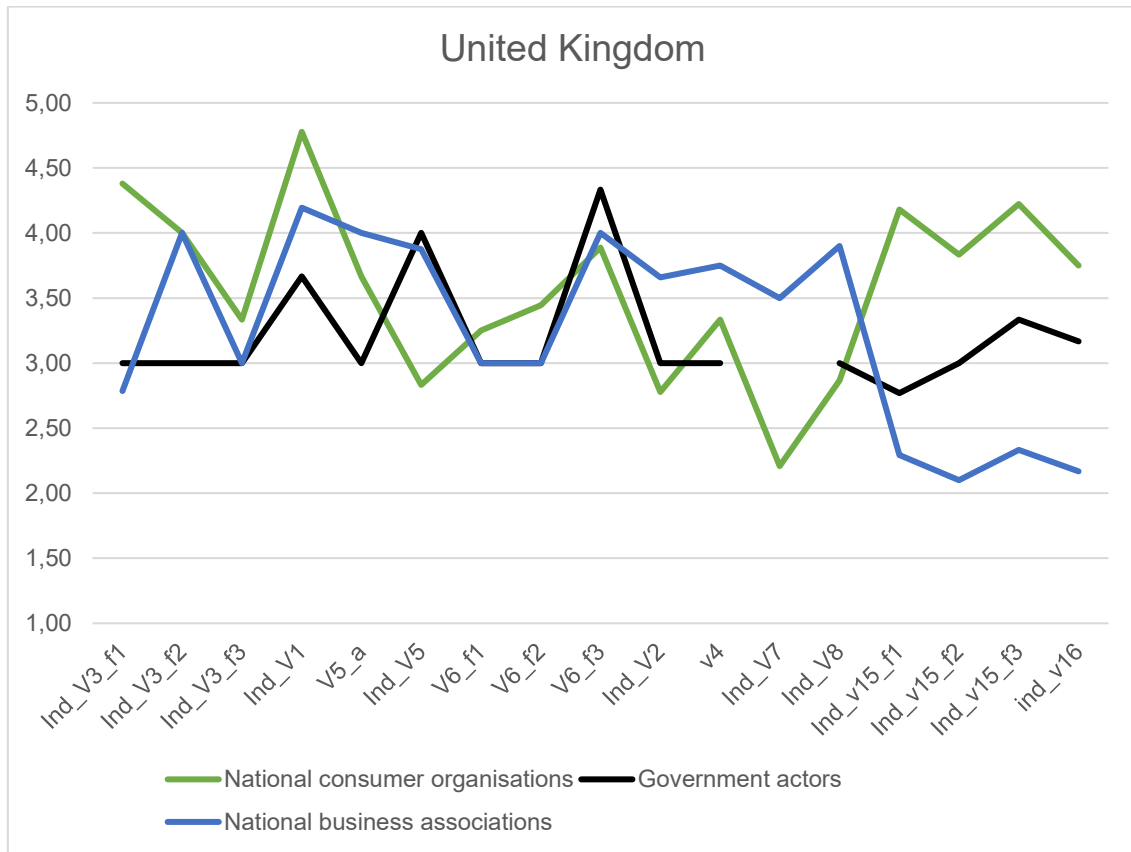


Figure 10: Mean scores on a scale from 1 to 5 for three key actor types on all variables, United Kingdom

The results for the United Kingdom, presented in Figure 10 and Figure 9, indicate that there are small differences in the preferences of the various actor types. All actor types scores around three or higher on the scale from one to five for the variables measuring problem importance, satisfaction with EU consumer policy and perception of effectiveness of regulatory tools. However, there are clear differences between the three types of actors when it comes to the perceptions of the suggested solutions. The consumer organizations are positive to all three suggestions, the government actor tend to be neutral and the business associations are negative.

Table 9: Mean scores on a scale from 1 to 5 for three key actor types on all variables, United Kingdom

		National consumer organisations			Government actors		National business associations		
		Mean score	N	SD	Score	N	Mean score	N	SD
Problem importance (low to high importance)	Inefficient enforcement of consumer law (Ind_V3_f1)	4.38	3	0.64	3.0	1	2.79	4	1.22
	Limited understanding of consumer law (Ind_V3_f2)	4.00	3	0.88	3.0	1	4.00	4	0.54
	Complex consumer law (Ind_V3_f3)	3.33	3	1.53	3.0	1	3.00	4	0.71
Satisfaction with EU consumer policy	Consumer benefits (Ind_V1)	4.78	3	0.38	3.7	1	4.19	4	0.76
	Cross-border trade (V5_a)	3.67	3	0.58	3.0	1	4.00	4	1.41
	Protection of businesses (Ind_V5)	2.83	3	0.29	4.0	1	3.88	4	1.65
	Creating a fairer market / protection of business actors (V6_f1)	3.25	3	0.00	3.0	1	3.00	4	0.00
	Product quality and availability (V6_f2)	3.44	3	0.51	3.0	1	3.00	4	0.00
	Benefits for businesses (V6_f3)	3.89	3	0.19	4.3	1	4.00	4	1.41
Perception of effectiveness of regulatory tools / policy instruments	Sector-specific injunctions (Ind_V2)	2.78	3	0.69	3.0	1	3.66	4	0.99
	Self- and co-regulation by businesses (v4)	3.33	3	1.15	3.0	1	3.75	4	1.89
	Third-party assisted enforcement (Ind_V7)	2.21	2	0.65			3.50	4	1.91
	Injunctions against illegal practices (Ind_V8)	2.87	3	1.21	3.0	1	3.90	4	1.28
Perception of solutions	Strengthening of consumer protection (Ind_v15_f1)	4.18	3	0.22	2.8	1	2.29	5	0.41
	Simplification of presentation of information to consumers (Ind_v15_f2)	3.83	3	1.61	3.0	1	2.10	5	1.34
	Standardisation of consumer law (Ind_v15_f3)	4.22	3	0.84	3.3	1	2.33	5	0.62
	Strengthening of business protection (ind_v16)	3.75	2	1.06	3.2	1	2.17	4	1.17

5.6 Differences between countries

Although the sample is small, and the number of actors within each country are small, it is clear from the results presented in this chapter that the structure in the actor preferences varies between the countries. In some countries the preferences of the government actor(s) closely follow the consumer organisations, in some they follow the preferences of the business associations and in some countries any such pattern cannot be identified. Furthermore, although it is natural, it is worth noting that the differences between the actors are often larger within countries than they are when the data is aggregated. The aggregated results are useful for identifying general patterns in the preferences of the actors, while the results at country level are useful for understanding the effect sizes of the differences, and they are invaluable for understanding the national contexts.

6. Conclusions

6.1 Differences between actors

Overall, we see a clear trend in the results as the consumer organisations plays up the importance of measures aimed at protecting consumers while the business associations seek to tone down these issues and rather focus on reducing (third-party initiated) regulation. Although not statistically significant, likely due to large internal disagreement within the groups, the business associations seem to perceive complex consumer law as a greater problem than the consumer organisations. This indicates that they are more in favour of harmonised rules that would simplify cross-border trade. However, they are not more positive than the consumer organisations to the suggested ways of further standardising consumer law, but this could be because this might involve raising the level of consumer protection in many countries.

An interesting finding from the investigation of similarities and differences between the actor types at the aggregated level is that the preferences of the government actors for the most part are closer to the preferences of the consumer organisations than the business associations. This indicates that the positions and preferences of the consumer organisations are important for the shaping of the positions of the government actors, and that the consumer organisations may function as important experts guiding the policy process. This finding goes against Olson's (1971) theory on the logic of collective action arguing that it is difficult for diffuse interests to be heard, while it is supported by Pollak's (1997) finding that by making use of a multitude of access points diffuse interests (groups) have contributed to surprisingly robust Community policies to protect consumers.

However, the findings presented in this report only give an indication regarding which (national) interest groups that exerts the strongest influence on the government actor(s) at the aggregated level and at country level for the selected countries. These findings do not provide the full picture regarding which actors that exerts the strongest influence on EU consumer policy, among other things because the various actors also seek influence through other channels and lobbying routes than the one through the national governments. Future research should focus on the actual impact of interest groups in the area of consumer policy, both through traditional channels such as national governments and through alternative lobbying routes such as direct impact on the positions and decisions of EU institutions and indirect impact through umbrella organisations.

6.2 Differences between countries

Although the sample is small, and the number of observations within each country are small, it is clear from the country-specific results presented in chapter 5 that the structure in the actor preferences varies substantially between the countries. In some countries the preferences of the government actor(s) closely follow the consumer

organisations, in some they follow the preferences of the business associations and in some countries any such pattern cannot be identified. We cannot say why this is the case based on the data presented in this report, but these results indicate that the influence of the two interest groups varies between countries. The impact of interest groups might be influenced by factors such as the political system (Hague and Harrop, 2004), the arguments they use (Dür, 2019) or the power distribution between the interest groups (Trumbull, 2006, 2012). Future research should further investigate the country differences in the relative positions of the various actors.

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Appendix: Operationalisation of variables

Table A-10: Operationalisations of variables based on the "full questionnaire" in the open public consultation (N=152)

Categorisation	Variable	Question / Statement	Variable /Index code	Variable / Index name	KMO	Cronbach's Alpha
Understanding of problems	3	How important are the following problems for protecting the rights of consumers?			.878	
	3a	Consumers don't know/ don't understand their rights	V3_f2	Understanding of consumer law		.664
	3b	Traders don't know/ don't understand consumer protection rules				
	3c	Traders don't comply with consumer protection rules	v3_a	Uncategorised		
	3d	Consumer law is too complex	V3_f3	Complex consumer law		.420
	3e	There are significant differences between national consumer protection rules across EU countries				
	3f	National administrative authorities lack legal powers to enforce consumer rights	V3_f1	Inefficient enforcement of consumer law		.923
	3g	National authorities responsible for enforcing consumer rights are not active enough				
	3h	Court proceedings are complex / long / costly				
	3i	Administrative enforcement proceedings are complex / long / costly				
	3j	Injunctions proceedings are complex / long				
	3k	Injunctions proceedings are costly				
	3l	There are significant differences between national rules on injunctions proceedings across EU countries				
Satisfaction with EU consumer policy	1	In your view, to what extent are the following EU consumer and marketing rules beneficial to consumers?			.872	
	1a	Right to be protected against misleading or aggressive commercial practices	Ind_v1	Consumer benefits		.881
	1b	Right to get adequate information about the				

		goods and services offered, i.e. the main characteristics, the total price, the delivery time, etc.				
	1c	Right to get information also about the unit price of goods (i.e. for one kilogramme, one litre etc.)				
	1d	Right to cancel a contract concluded at a distance within 14 days from the delivery goods or conclusion of a service contract (the 'right of withdrawal')				
	1e	Right to get information about the functionality and interoperability of digital content				
	1f	Right to cancel the contract concluded at a distance for the downloading (or streaming) of digital content before its performance begins (the 'right of withdrawal')				
	1g	Right to be protected against unfair clauses in the "small print" (the 'right to fair standard contract terms')				
	1h	Right to have a defective good repaired or replaced for free or to obtain a price reduction or refund during the legal guarantee period (in most EU countries 2 years from delivery; longer in some EU countries)				
	1i	Right of consumer organisations and public bodies to take legal actions which can stop infringements of consumers' rights (the right to seek injunctions)				
	5	What is your opinion regarding the following statements?			.497	
	5a	Businesses can trade across the EU easily thanks to the harmonised EU consumer and marketing rules	v5_a	Cross-border trade		
	5b	Businesses are well protected against	Ind_v5	Protection of businesses		.834

		misleading marketing practices of other businesses				
	5c	Businesses are well protected against unfair comparative advertising of other businesses				
	6	How positive / negative is the impact of EU consumer and marketing law on the following aspects?			.742	
	6a	Amount & relevance of information available to consumers to compare and make informed purchasing choices	v6_a	Uncategorised		
	6b	A level playing field amongst EU-based businesses	Ind_v6_f3	Fairer market / protection of market actors		.658
	6c	Protection of consumers against unfair commercial practices				
	6d	Protection of businesses against misleading marketing and unfair comparative advertising				
	6e	Availability and choice of products	Ind_v6_f2	Quality and availability of products		.684
	6f	Lower prices of products				
	6g	Higher quality and longer durability of products				
	6h	More customers and revenues for EU-based businesses	Ind_v6_f1	Benefits for businesses		.815
	6i	Increase of national e-commerce (i.e. within the trader's EU country)				
	6j	Increase of e-commerce across EU Member States				
	6k	Competitiveness of EU businesses vis-à-vis non-EU businesses				
Regulatory tools / Policy instruments	2	How effective are the legal actions (“injunctions”) taken by consumer organisations and public bodies to stop infringements of consumers’ rights in the following economic sectors?			.838	.876
	2a	Online provision of goods, services and digital content	Ind_2	Effectiveness of injunction actions in specific sectors		
	2b	Communications and internet access services				
	2c	Financial services				
	2d	Passenger transport				
	2e	Tourism and package travel				
	2f	Energy				
	8	How effective are the injunction actions sought against the following illegal practices?			.864	

	8a	Use by traders of unfair standard contract terms	Ind_v8	Effectiveness of injunction actions against various illegal practices		.911
	8b	Use by traders of misleading or aggressive commercial practices				
	8c	Breach of the traders' obligations related to the legal guarantee				
	8d	Breach of the traders' obligations related to the information they are legally required to provide to consumers				
	8e	Breach of the traders' obligation related to the consumers' right of withdrawal (cancellation) for distance and off-premises contracts				
	7	How effective are the following consumer redress/enforcement mechanisms in protecting consumer rights in case of breach of EU consumer and marketing rules?			.764	
	7a	An individual consumer gets redress through direct negotiations with the trader	Uncategorised	Uncategorised		.817
	7b	An individual consumer gets redress through an alternative dispute resolution mechanism				
	7c	An individual consumer gets redress through a court action	Ind_v7	Third-party assisted enforcement		
	7d	An individual consumer gets redress through an administrative enforcement decision				
	7e	An administrative authority issues an injunction which stops an infringement of consumer rights				
	7f	A court issues an injunction which stops an infringement of consumer rights				
	4	How effective for protecting the rights of consumers are self-and co-regulation initiatives by businesses at national or EU level, under which businesses establish standards as to how they deal with consumers (eg. Industry trade marks)?	v_4	Effectiveness of self- and co-regulation initiatives by businesses		

Solutions	15	How strongly do you agree or disagree with each of the following statements about the potential areas to improve EU consumer and marketing rules for the benefit of consumers?			.865	
	15b	The information given to consumers at the advertising stage should focus on the essentials whilst more detailed information should be required only at the moment before the contract is concluded	Uncategorised	Uncategorised		
	15c	Online platform providers should inform consumers about the criteria used for ranking the information presented to consumers	Ind_v15_f1	Strengthening of consumer rights		.926
	15e	How strongly do you agree or disagree with each of the following statements about the potential areas to improve EU consumer and marketing rules for the benefit of consumers?: The obligation to display also the price per unit (eg, 1 Kg, 1 l) of the goods should apply to all businesses irrespective of their size				
	15f	Consumer protection against unfair commercial practices should be strengthened by introducing a right to individual remedies, e.g. compensation and/or invalidity of the contract when the consumer has been misled into signing a disadvantageous contract				
	15g	Consumer protection against unfair contract terms should be strengthened by introducing a "black list" of terms that are always prohibited				
	15i	Consumer protection against unfair contract terms should be strengthened by incorporating key Court of Justice case law on the ex officio duties of				

		judges to assess the presence of unfair terms				
	15j	The legal guarantee period for goods should depend on their characteristics (If you agree with this statement please indicate the relevant characteristics in the box below, e.g. the category of the good (such as small/large household appliances, ICT products, cars etc.), price, expected/ advertised lifespan)				
	15k	The period during which the defect is presumed to have existed already at the time of delivery of the good (reversal of the burden of proof) should be extended. It is 6 months under current EU law but longer in a few EU countries				
	15l	The notion of "vulnerable consumers" should be reviewed/ updated. Under current EU law vulnerable consumers are those that are particularly vulnerable to unfair commercial practices because of their mental or physical infirmity, age or credulity				
	15m	There should be additional requirements for the protection of "vulnerable consumers" as regards standard contract terms				
	15n	The notion of "average consumer" should be reviewed/ updated. According to the case law of the EU Court of Justice, the average consumer is defined as reasonably well-informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors				
	15o	Further criteria should be defined to allow for a clearer distinction between consumers and				

		traders in the collaborative economy				
	15p	EU injunction proceedings should be made more effective, e.g. by allowing their use for more types of infringements and by reducing their costs and length				
	15s	Consumer protection should be strengthened by making sure that non-compliant businesses face truly dissuasive sanctions amounting to a significant % of their yearly turnover				
	15d	The presentation of pre-contractual information to consumers should be simplified by applying a uniform model, e.g. using icons	Ind_v15_f2	Simplification of presentation of information to consumers		.862
	15h	The presentation of key standard Terms and Conditions to consumers should be improved by applying a uniform model, e.g. using icons				
	15a	The marketing/pre-contractual information requirements currently included in the Unfair Commercial Practices Directive, Price Indication Directive and Consumer Rights Directive should be regrouped and streamlined	Ind_v15_f3	Standardisation of consumer law		.744
	15q	EU consumer and marketing rules should be further harmonised to make it easier for traders to offer their products/services cross-border and for consumers to rely on the same level of protection across the EU				
	15r	EU consumer and marketing rules should be simplified by bringing them into a single horizontal EU instrument				
	16	To what extent do you agree or disagree with each of the following statements about potential areas to improve the protection of businesses, especially SMEs and in particular micro enterprises?			.869	

	16a	Businesses protection against unfair commercial practices should be strengthened by introducing a "black list" of B2B practices that are always prohibited	Ind_v16	Strengthening of business protection		.934
	16b	Business protection against unfair commercial practices should be extended to practices happening not just at the marketing stage but also after the signature of the contract				
	16c	Business protection against unfair commercial practices should be strengthened by introducing a right to individual remedies, e.g. compensation and/or invalidity of the contract when the business has been misled into signing a disadvantageous contract				
	16d	Business protection against unfair contract terms should be strengthened by extending totally or partially the scope of application of the Unfair Contract Terms Directive to B2B contracts				
	16e	Business protection against unfair commercial practices should be strengthened by introducing an enforcement co-operation mechanism for cross-border B2B infringements				
	16f	The scope of application of the Injunctions Directive should be enlarged to cover the protection of collective interests of businesses				

Consumption Research Norway (SIFO) is a non-profit, transdisciplinary research institute at OsloMet – Oslo Metropolitan University. SIFOs research aims to understand the role of consumption and consumers in society and to provide the knowledge basis for public consumer policy in Norway.

SIFOs core research areas are:

- Sustainable consumption
- Digitalization of everyday life
- Market based welfare
- Clothing and food