Consumer Protection in the Digital Market & Trader Compliance: information provision and redress

Mary Donnelly
Fidelma White

School of Law, University College Cork
May 2018
Contents

Acknowledgment

1. Introduction

2. Legislative framework

3. Earlier Studies

4. Research Methodology

5. Research Findings

6. Analysis of Research Findings

Annexes

A. The website survey form

B. List of websites surveyed
Acknowledgment

The empirical research which forms the basis of this report was funded by the School of Law Strategic Fund at University College Cork and the authors would like to acknowledge the School of Law’s role in enabling this research to be completed.

We would also like to acknowledge the work of our Research Assistant, Dr. Jonathan McCarthy, for his dedication and attention to detail in collecting the data.
1. Introduction

The Digital Agenda is one of seven initiatives of the Europe 2020 strategy, which sets objectives for smart, sustained and inclusive economic growth of the European Union by 2020.\(^1\) One of its main objectives is the completion of the Digital Single Market, including promoting better online access to goods and services across Europe; and ensuring that the European economy and industry takes full advantage of the digital economy as a potential driver for growth.\(^2\)

Despite the recent financial and economic crisis, consumer engagement with the online market has grown steadily, year on year. For example, in 2003, in the first major survey of its kind on B2C e-commerce, only 16% of EU15 citizens had ever bought anything on the Internet.\(^3\) Within just over a decade, by 2014, purchases via the Internet had increased to 65% of EU28 citizens.\(^4\) However, within this figure is a rather modest 19% cross-border sales; with the vast majority of online sales being home-based. The latest figures for 2017, show that 68% of internet users in the EU shopped online in the last 12 months but cross-border e-commerce remains stubbornly low at 22% (a 1% increased on the year before).\(^5\)

To foster the growth of cross-border sales, over a period of 20 years, the EU has adopted a series of legislative measures, starting with Directive 97/7 on distance sales,\(^6\) which places the provision of information at the core of the consumer protection agenda. Directive 97/7 sought to address the perceived ‘information deficit’ for consumers which characterises distance sales, including sales via

---

\(^1\) This Strategy was designed to kick-start the European economy following the recent financial and economic crisis: see Communication from the Commission, *EUROPE 2020 A strategy for smart, sustainable and inclusive growth*, COM(2010) 2020. See also Commission Communication entitled *A Digital Agenda for Europe*, COM(2010) 245 final.


\(^3\) Special Eurobarometer Report in issues relating to business to consumer e-commerce (2004) (EBS201) available at [http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_201_executive_summary.pdf](http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_201_executive_summary.pdf) (last accessed 25 May 2018). In 2003, Internet sales in the UK were at 25%; while Irish Internet sales were at 17%.

\(^4\) Eurobarometer Report on cross-border trade and consumer protection (2015) (FL397) available at [http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKey/2031](http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/FLASH/surveyKey/2031) (last accessed 25 May 2018). In 2014, UK Internet sales were at 84%; while Internet sales in Ireland were at 75%.


websites, by requiring the supplier of goods/services to provide specific information, about the contract (including the identify and address of the supplier; main characteristics of the goods/services; price and delivery costs, right of withdrawal; etc.) at specific times (pre-contract and post-contract) and in a specific manner (e.g. in a clear and comprehensible manner). This provision of information was supplemented by other rights, including the right to withdraw from the contract within a 7-day period without penalty and without giving a reason. As a minimum harmonisation directive, Directive 97/7 offered consumers minimum levels of protection but member states were free to maintain or introduce higher levels of consumer protection. The minimum harmonisation nature of Directive 97/7 which allowed divergences in laws in member states came to be viewed as a barrier to trade, for both suppliers and consumers, in particular in a cross-border context.

Directive 97/7 has now been repealed and replaced by Directive 2011/83 on consumer rights, a maximum harmonising directive which applies to the supply of goods, services, digital content and utility contracts, between traders and consumers, on-premises, off-premises and at a distance, including contracts formed via websites, the most common form of distance contract today. As a maximum harmonising directive, divergences in national laws which were seen to act as a barrier to cross-border trade are prohibited, thus releasing greater potential for growth. From a business perspective, a single regulatory framework now applies throughout the EU; aimed at reducing compliance costs and encouraging traders, in particular SMEs, to engage more in cross-border trade. From a consumer perspective, it is intended that fully harmonised rules with added protections (such as the inclusion of digital content contracts; more information; a longer 14-day withdrawal period; etc) should bolster consumer confidence in the cross-border digital market.

In addition, in the last decade, there is a new emphasis on consumer redress in the digital market and here too information provision plays a role. The legislative framework for consumer redress comprises two integrated measures: Directive 2013/11 on alternative dispute resolution (ADR Directive) and Regulation (EU) No 524/2013 on online dispute resolution (ODR Regulation). The ADR Directive sets out the required infrastructure for ADR schemes, as well as provisions on accessibility and availability, while the ODR Regulation establishes an EU ODR platform which allows consumers to access ADR schemes which comply with the ADR Directive. In term of information provision, both measures

---

7 Directive 97/7, Art 14.
require traders to provide certain information about ADR entities and a link to the EU ODR platform on their websites.

Given the centrality of information provision to the development of the online market, in this Report we examine information based consumer protection in the context of the Digital Market. In particular, we seek to assess levels of compliance by traders in relation to pre-contract information requirements as they apply to websites that sell goods. This Report is the first of two Reports by the authors on information provision in the online market. The second Report will focus on the sale of digital content.

In term of the Report’s structure, Part 2 of the Report maps and explores the legislative framework concerning information provision relevant to this Study. In Part 3, earlier empirical studies and findings are outlined for comparative purposes; while in Part 4 the research methodology of the Study is described. The Research Findings are set-out in Part 5 and an Analysis of these Research Findings is provided in the final Part, Part 6.
2. Current Legislative Framework

**Directive 2011/83 on consumer rights**

Building on the template of Directive 97/7, Directive 2011/83 on consumer rights requires that specified information is provided, by traders to consumers, at specific times, and in a specific manner, in relation to contracts which come within the scope of the directive (i.e. contracts for the sale of goods, services, digital content and utility services). The main provisions in this regard are Article 6 on information requirement for distance contracts; and Article 8 on formal requirements for distance contracts. The details of these provisions, relevant to this Study, are set-out below but a number of preliminary points are worth noting first.

The volume of information requirements has increased significantly with Directive 2011/83 when compared to Directive 97/7. Under Directive 97/7 the pre-contract information requirement were set-out in nine relatively concise paragraphs.\textsuperscript{12} In contrast, the information requirements pursuant to Directive 2011/83 are set-out in twenty paragraphs, some lengthy, largely incorporating the Directive 97/7 information requirements and adding more.\textsuperscript{13} That said, all 20 paragraphs of information requirements do not apply, all the time. For example, paras (r) and (s) only apply to the sale of digital content. Other information requirements are stated to apply only “where applicable”, such as para (t) which requires the trader to provide information concerning:

- where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

Thus, it is not mandatory for a trader to subject themselves to an out-of-court complaint and redress mechanism, under Directive 2011/83. Only where a trader has voluntary subjected himself to such a mechanism, or where under national law the trader is obliged to commit to such a mechanism, does this information obligation impact. Of the twenty paragraphs in Article 6, only four paragraphs have general application; twelve paragraphs have limited application (i.e. where applicable); and the remaining 4 paragraphs contain a mixture of both. To further emphasise the importance of this information provision, the Directive makes clear that this information forms an integral part of the contract and it cannot be unilaterally altered by the trader.\textsuperscript{14}

Moreover, as noted by the Directive, these information requirements are additional to other information requirements such as those listed in the Directive 2006/123/EC on services; Directive

\textsuperscript{12} Directive 97/7, Art 4, para (a) – (i).
\textsuperscript{13} Directive 2011/83, Art 6 para (a) – (t).
\textsuperscript{14} Art 6(5).
2000/31/EC on e-commerce,\textsuperscript{15} as well as the ODR/ADR legislative framework. There is a degree of overlap between some of these different information obligations, considered further below. It is questionable whether this overlap has a positive impact on trader compliance because some information obligations are mutually reinforcing or a negative impact because subtle differences between these information obligations result in incoherence and confusion.

As regards the timing and manner of information provision, Article 6 provides that the relevant information must be provided to the consumer, before the consumer is bound by any distance contract and the information must be provided in a clear and comprehensible manner. Further Article 8(1) provides that the trader must give the information provided for in Article 6(1) or make that information available to the consumer in a way appropriate to the means of distance communication used in plain and intelligible language. In relation to distance sales via a website, therefore, the relevant information must be accessible on the website before any contract is formed (whether on placing the order; on acknowledgment of the order by the trader, or typically at the latest, on despatch of the goods).

Sanctions and penalties for non-compliance are largely left to the discretion of member states,\textsuperscript{16} although the Directive does include a number of relevant provisions. In particular, the burden of proof to show compliance with the information requirements rests with the trader.\textsuperscript{17} Further, where the trader has not complied with the relevant information obligations around delivery costs and the cost of return (paras (e) and (i)), the trader must bear those costs.\textsuperscript{18} And, where the trader has not complied with the relevant information obligation around withdrawal as per para (h), the withdrawal period can be extended up to 12 months after the end of the initial 14 days withdrawal period.\textsuperscript{19}

\textbf{Article 6(1) information requirements}

The information required to be provided by traders to consumers is set-out in text boxes below, followed by commentary on the interpretation of each relevant provision, in light of EU law and the Commission Guidance Document on Directive 2011/83.\textsuperscript{20}

\textsuperscript{15} Art 6(8).
\textsuperscript{16} Arts 23 and 24.
\textsuperscript{17} Art 6(9).
\textsuperscript{18} Art 6(6).
\textsuperscript{19} Art 10.
Para (a) - It is recognised that the level of detail of information about the goods to be provided depends on the complexity of the goods being offered for sale.\textsuperscript{21} Also the presentation of this information should be appropriate to the medium of communication and the goods. In the context of goods being offered for sale via a website, information about the goods is commonly presented using images, video as well as text describing the goods and their features.

Para (b) - The trading name is the more common means of identifying a trader, although additional forms of identification may be provided, including company registration numbers and VAT numbers.

Para (c) - The concept of ‘establishment’ in this information requirement is also used in the Services Directive 2006/123/EC where, in accordance with the case law of the Court of Justice, ‘establishment’ is defined ‘the actual pursuit of an economic activity, as referred to in Article 43 of the Treaty, by the provider for an indefinite period and through a stable infrastructure from where the business of providing services is actually carried out’\textsuperscript{22}. Moreover, this information requirement requires the


\textsuperscript{22} Directive 2006/123/EC, Art 4; see further Recital 27.
provision of the geographical address of the trader’s place of establishment and so a physical location (and not a P.O. box number, for example) is required.23

The trader is also required to provide contact details to enable the consumer to contact him quickly and communicate with him efficiently. According the Commission Guidance, the term 'where available' in Article 6(1)(c) should be interpreted as applicable to all three means of distance communication mentioned in this provision.24 Therefore, the contact details can be a telephone number, and/or a fax number; and /or an e-mail address, or indeed any other means of communication where available (e.g. online chat). That said, Article 5(1)(c) of Directive 2000/31/EC on e-commerce requires 'the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;'25 while Article 27 of Directive 2006/123/EC on services requires information about the service provider’s telephone number for the purpose of sending complaints or requests for information about the service provided.

Where the trader is acting as agent for a principal trader, the geographical address and identity of the principal trader must also be provided.

Para (d) – this information requirement only applies where the trader’s (or his principal’s) place of business is different from the place of establishment in para (c). ‘Place of business’ means the place where the essential decisions concerning the trader’s general management are taken and where the functions of its central administration are carried out.26

---

25 See further C-298/07, Bundesverband der Verbraucherzentralen und Verbraucherverbände – Verbraucherzentrale Bundesverband eV.
26 See e.g. Case C-73/06 Planzer, para 61.
Para (e) – where goods are being purchased via a website on a once-off basis, this information obligation requires the provision of the total price of the goods, inclusive of taxes, as well as, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;

(f) the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;

Para (g) – information in relation to payment includes the different means of payment and ideally, when the payment will be processed. Other related matters may include information about security of payment and protection against fraud and trader insolvency. In relation to the arrangement for delivery of the goods/performance, relevant features would include the different delivery options;

27 Art 6(6).
and any tracking possibilities.\textsuperscript{28} The trader must also provide information about the time of delivery. According to Commission Guidance, the trader does not necessarily have to indicate a specific calendar date, as this may not always be practically feasible. This information requirement would be satisfied if the trader indicates a time period, such as ‘3-5 days from placing the order’.\textsuperscript{29} All the above information obligations are mandatory, unlike the trader’s obligation in relation to complaints handling. Only where the trader operates such a policy is he required to provide information about this policy. Ideally, the details of any such policy should be provided, including procedures (how to make a complaint; acknowledgement; time-limits) and complainant’s rights during and after the process.\textsuperscript{30}

\begin{tabular}{|p{0.9\textwidth}|}
\hline
(h) where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B);  

(i) where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;  

(j) that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3);  

(k) where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;  

\hline
\end{tabular}

\textbf{Para (h)} - seeks information about the conditions, time-limits and procedures for exercising the right of withdrawal in accordance with Art 11(1). Accordingly, before expiry of the withdrawal period, the consumer must inform the trader of his decision to withdraw from the contract by an unequivocal

\footnotesize{\textsuperscript{28} See Communication from the Commission "A roadmap for completing the single market for parcel delivery - Build trust in delivery services and encourage online sales", COM(2013) 886 final.  
\textsuperscript{30} For detailed policy, see e.g. see very detailed example at https://www2.deloitte.com/content/dam/Deloitte/au/Documents/about-deloitte/deloitte-au-about-complaints-management-policy-140518.pdf (last accessed 25 June 2018).}
statement or the use of the Model Withdrawal Form in Annex 1B. Once this communication is sent within the withdrawal period, the withdrawal is effective. Unless the trader has offered to collect the goods himself, it is the consumer’s duty to return the goods to the trader, without undue delay and in any event not later than 14 days from the day on which he has communicated his decision to withdraw from the contract to the trader.\(^{31}\) The consumer bears the direct cost of returning the goods unless the trader has agreed to bear them or the trader failed to inform the consumer that the consumer has to bear them.\(^ {32}\) Moreover, the consumer may be liable for any diminished value of the goods resulting from the handling of the goods beyond that which is necessary to establish the nature, characteristics and function of the goods.\(^ {33}\)

**Para (i)** – this information obligation only applies where the cost of returning the goods is placed on the consumer.

**Para (j)** - not applicable to the sale of goods

One of the innovative features of Directive 2011/83 is the use of a Model Withdrawal Form and Model Instructions on Withdrawal. The information concerning the right of withdrawal in paras (h) – (j) can be provided in the form of Model Instructions set-out in Annex1(A) provided the relevant details are filled-in correctly.\(^ {34}\)

**Para (k)** – where the is no right of withdrawal, as provided for in Article 16 (such as where the goods are made to the consumer’s specifications or are clearly personalised; or where the goods are liable to deteriorate or expire rapidly) the consumer must be informed accordingly. Moreover, the consumer must be informed of the circumstances where the right to withdraw is lost (as where, for example, sealed audio, video recordings or computer software are unsealed after delivery).

\(^{31}\) Art 14(1).

\(^{32}\) Art 14(1).

\(^{33}\) Art 14(2).

\(^{34}\) Art 6(4).
According to Commission Guidance, the trader is under the obligation to remind the consumer of the legal guarantee of conformity of goods, and so the trader should specify that, under EU law, he is liable for any lack of conformity that becomes apparent within a minimum of two years from delivery of the goods and that national laws may give the consumer additional rights. In a UK and Irish context, these additional rights take the form of statutory implied terms; and remedies including the right to reject the goods, and/or claim damages, within a 6 year limitation period.

Para (m) and (n) – both these information obligations only apply, ‘where applicable’.

(o) the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
(p) where applicable, the minimum duration of the consumer’s obligations under the contract;
(q) where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
(r) where applicable, the functionality, including applicable technical protection measures, of digital content;
(s) where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of;

Paras (o) – (s) – not applicable to the once-off sale of goods.

Para (t) – not mandatory, but only applies ‘where applicable’.

**Article 8 formal requirements**

Article 8 contains three further pre-order information requirements, in relation to the obligation to pay, payment means and delivery restrictions. First, in addition to the above, Article 8(2) states that if a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader must make the consumer aware in a clear and prominent manner, and directly before the consumer places his order, of the information provided for in points (a), (e), (o) and (p) of Article 6(1). Moreover, the trader must ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay, such as by pressing a button marked ‘order with obligation to pay’ or other unambiguous phrase. Failure to comply with this formal requirement means that the consumer will not be bound by the contract or order. Second, Article 8(3) requires that trading websites must indicate clearly and legibly, at the latest at the beginning of the ordering process, whether any delivery restrictions apply. Third, Article 8(3) also requires that trading websites must indicate clearly and legibly, at the latest at the beginning of the ordering process, which means of payment are accepted. For the purpose of this survey, “at the latest at the beginning of the ordering process” was identified as the stage at which a consumer places their first item in a shopping basket or other facility, before moving onto later stages in the ordering / purchasing process, such as reviewing an order or placing an order/paying for the order.

**The ODR/ADR legislative framework**

As noted above, the ODR/ADR legislative framework comprises two measures: Directive 2013/11/EU on alternative dispute resolution for consumer disputes (ADR Directive), and Regulation 524/2013 on online dispute resolution for consumer disputes (ODR Regulation). In terms of information obligations, the ADR Directive provides that where a trader is committed to using, or obliged under national law to use, an ADR entity (or entities) to resolve disputes with consumers, the trader must inform consumers about the ADR entity (or entities), including the relevant websites address/es.

---

38 ADR Directive Art.13(1).
This information must be provided in a clear, comprehensible and easily accessible way on the trader’s website, where one exists and, if applicable, in the trader’s terms and conditions.\textsuperscript{39}

Further, pursuant to the ODR Regulation, all traders established in the EU who engage in online sales or service contracts, regardless of whether they use ODR or not, must provide an easily accessible electronic link to the ODR platform on their website and must state their e-mail address.\textsuperscript{40} In addition, all such online traders committed to using, or obliged to use, ADR must inform consumers about the existence of the ODR platform and about the possibility of using it for resolving their disputes.\textsuperscript{41} These traders must also provide an electronic link to the ODR platform on their websites and, if the offer is made by e-mail, in that e-mail. This information must also be provided in the general terms and conditions.\textsuperscript{42} These requirements are stated to be in addition to any other legislative requirements to provide information on out-of-court redress\textsuperscript{43} and these different sets of information should, where possible, be provided together.\textsuperscript{44}

\textsuperscript{39} ADR Directive Art.13(2).
\textsuperscript{40} ODR Regulation Art.14(1).
\textsuperscript{41} ODR Regulation Art.14(2).
\textsuperscript{42} ODR Regulation Art.14(2).
\textsuperscript{43} ODR Regulation art.14(3).
\textsuperscript{44} ODR Regulation Art.14(7).
3. Earlier Studies

A number of studies at European and national levels have identified non-compliance by traders as a real issue for the development of the online market in Europe. Shortly after Directive 97/7 on distance selling was adopted and transposed in member states, in 2003, the European Consumer Centre Network (ECC) published a report “Realities of the European online marketplace” which found evidence of significant non-compliance with the provisions of the then Distance Selling Directive throughout Europe. The report was based on a shopping exercise and an information survey of websites. The latter aspect of the report identified significant levels of non-compliance. For instance, 32% of websites failed to give information about the cooling-off (withdrawal) period; 13% contained no information about Terms and Conditions; and 7% failed to give full information about total cost. These levels of non-compliance were confirmed by a Study conducted by the authors of 80 Irish (.ie) websites in 2005. This found that almost 50 per cent of websites failed to provide adequate information about payment, delivery or performance; over 30 per cent of websites failed to provide adequate information about the consumer’s right of withdrawal; and almost 25 per cent of sites failed to comply with the requirement as to price.

More recent figures indicate that non-compliance with information obligations, pursuant to Directive 2011/83 on consumer rights, remains an issue. For example, in 2014, a ‘Sweep’ was carried out on guarantees for consumer electronics. In the course of this Sweep, national authorities checked 437 websites selling consumer electronics. Of the websites surveyed, 54% were found to be non-compliant with EU consumer law regarding information obligations about the statutory and commercial guarantees. The lack of a reminder of the existence of the legal guarantee of conformity for goods before the consumer is bound by a distance contract – as required by Article 6(1)(l) of Directive 2011/83 on consumer rights - was found in 174 websites (about 40%).

---


47 Under the Consumer Protection Cooperation Regulation - Regulation (EC) No 2006/2004, known as the CPC Regulation – national enforcement authorities, in consultation with the European Commission, can coordinate their enforcement activities, such as by EU-wide screening of websites, called ‘sweeps’, followed by appropriate actions requiring traders to cease commercial practices contrary to EU consumer law.

More specifically, in 2015, national consumer agencies conducted another Sweep by examining 697 EU websites for compliance with pre-contractual information as required by Directive 2011/83 on consumer rights. The Sweep revealed irregularities on 63% of websites examined, with websites missing or providing unclear or incomprehensible information on the right of withdrawal from a transaction. For example, websites did not contain a relevant withdrawal form, or did not inform the consumer about the exact number of days available to him/her to withdraw from an online transaction. Further, the Sweep found incomplete or unclear details about the trader in 34% of websites checked.

The Commission Report on the Evaluation of Directive 2011/83, published in 2017, provides further insights into the operation of the Directive. The Commission noted that the evaluation highlighted some factors that limited the effectiveness of the Directive 2011/83, including a lack of compliance by traders. Further details concerning trader compliance and information requirements can be found in the accompanying Staff Working Document and the related Fitness Check of EU consumer and marketing law. In order to assess compliance with the different information requirements of Directive 2011/83, an online consumer survey was conducted, as well as a mystery shopping exercise. The evaluation was that overall, the results of the online consumer survey matched with the results of a mystery shopping study which found that consumers received a fair to a great amount of information about the characteristics of the product and the accepted means of payment, although with differences at country level. It was also found that, before placing their orders, almost all mystery shoppers were clearly informed about the total price of the product, while 54%-70% of mystery shoppers were informed about its main characteristics. However, consumers did not receive much information about accessing out of court complaint and redress mechanisms. Out of the consumers responding to the online survey, 38% stated that they did not receive much information about the trader.

As regards specific pre-contractual information requirements on the right of withdrawal, the results from the mystery shopping showed that this information is often missing, with some differences

---

depending on the type of contract. For example, in relation to goods, only about half of traders specified the right to withdraw from the contract within 14 days after delivery. In contrast, consumers could easily find information on return procedures in case of sales contracts, and despite the lack of information they found the withdrawal procedures satisfactory. The mystery shopping task also revealed that withdrawal forms were quite difficult to find and in 25% of all online shops tested for tangible goods, such information was not available. This was also reflected in the responses given by consumers to the online survey, where 59% of consumers stated they were not given access to a withdrawal form.

As regards compliance with Article 8(2) of Directive 2011/83, whereby traders are required to make the consumer aware, in a clear and prominent manner, of the fact that his order implies an obligation to pay, the evaluation found that a dedicated order confirmation button was present in almost all mystery shopping cases, although with some differences at country level. The use of this visual tool was found to be effective, given that most mystery shoppers evaluated its use as (very) clear and indicated that they clearly understood that pressing the button would finalize the purchase.

While the above findings illustrate that there remains an issue with trader compliance, the findings are often expressed in general terms in relation to the EU at large, thereby masking national discrepancies which may be significant. Moreover, the above findings are not a comprehensive assessment of all information obligations. This Study seeks to address that gap by providing a granular analysis of all relevant information requirements, and in doing so, provide up-to-date information about trader compliance, as it pertains to Ireland and the UK.

In relation to ODR/ADR, a recent website Sweep investigating trader compliance with the information requirements of the ADR/ODR legislative framework provides a first insight into market practices (2017 Study). The 2017 Study involved web-scraping of 19,580 websites and a more in-depth mystery shopping exercise involving 1,005 traders from 10 EU Member States. The web-scraping aspect of the study found that just 28% of websites included the platform link on their website. There was a clear link between the size of the trader and compliance levels, with bigger

---

54 European Commission, Online Dispute Resolution: Web-Scraping of EU Traders’ Websites, JUST/2016/CONS/FW/C003/0104 (1 December 2017).
55 Ibid., p. 10. The States were: Denmark; France; Germany; Italy; the Netherlands; Poland; Slovakia; Spain; Sweden and the UK: Ibid., 20.
56 Ibid., 28.
traders and marketplaces being much more likely to include the link.\textsuperscript{57} German traders were most compliant (66\% compliance rate) while traders in Malta and Latvia were least compliant (1\%).\textsuperscript{58} Traders in Ireland and the UK had identical rates of compliance (14\%).\textsuperscript{59} In sectoral terms, financial services providers\textsuperscript{60} were the most compliant while telecoms and computer gaming were among the least compliant.\textsuperscript{61} There was a much higher level of compliance with the requirement to provide an e-mail address, with 85\% of traders doing so.\textsuperscript{62}

The mystery shopping exercise allowed for a more detailed analysis of the 1,005 websites investigated. This included a judgment-based investigation the accessibility of the ODR link. Most traders websites (58\%) placed the link in their terms and conditions, with only 14\% placing this in their complaint handling section.\textsuperscript{63} Seventy five percent of mystery shoppers found it easy or very easy to find the link (although it should be noted that these shoppers knew what they were looking for and so this finding may not accurately reflect the experience of the average consumer or, even more so, the vulnerable consumer). The link was generally (91\% of cases) accompanied by some introductory information.\textsuperscript{64} Just under half of the websites (49\%) included a statement by the trader regarding whether the trader would use the ODR platform.\textsuperscript{65} Of these, 68\% of traders stated that they would use the platform if required and 18\% said that they would not do so.\textsuperscript{66} In interesting contrast to their high level of compliance with the legal obligation to provide the link, German traders were especially unwilling to agree to ADR.\textsuperscript{67}

\textsuperscript{57} 42\% of large traders and 48\% of marketplaces provided the link but just 14\% of smaller traders did so: \textit{Ibid.}
\textsuperscript{58} \textit{Ibid.}, 29.
\textsuperscript{59} \textit{Ibid.}
\textsuperscript{60} 54\% of insurers and 46\% of payment service providers provided the link while only 23\% of computer games and telecom services did so: \textit{ibid.}, 31.
\textsuperscript{61} \textit{ibid.}, 30.
\textsuperscript{62} \textit{ibid.}, 32.
\textsuperscript{63} \textit{ibid.}, 34.
\textsuperscript{64} \textit{Ibid.}, 37.
\textsuperscript{65} \textit{Ibid.}, 37.
\textsuperscript{66} \textit{ibid.}, 37. The remaining 14\% were neutral in this regard.
\textsuperscript{67} \textit{Ibid.}, 37. 92\% of German traders said that they would not submit to ADR.
4. Research Methodology

Although Directive 2011/83 applies to distance contracts in relation to goods, services, digital content and utility contracts, the website survey which forms the basis of this report was limited to websites offering goods for sale.\(^{68}\) This is largely because goods (defined as “any tangible movable items”\(^{69}\)) remain the most commonly purchased item online.\(^{70}\) However, further research focusing digital content is planned for the future so that a more complete picture of the levels of compliance with Directive 2011/83 can be presented. Such research would also enable comparisons to be drawn between online traders who deal in goods (regulated since 2000, pursuant to Directive 97/7) and traders who supply digital content (only regulated since 2014, pursuant to Directive 2011/83).

A total of 81 websites were surveyed and these websites were selected with a number of criteria in mind, in terms of geography; size; and the types of goods sold, with a view to providing a representative sample of websites.\(^{71}\) First, websites were divided evenly between .uk and .ie websites on the basis that, for many traders, the UK and Ireland are treated as a single trading territory, with consumers in both the UK, and more especially Ireland, evidencing a willingness to shop online both “at home” and “cross-border”.\(^{72}\) Second, the websites selected were a combination of well known larger “names” or “multiples”, as well as some less well known SMEs. Third, websites were selected on the basis of the types of goods sold so that sample would reflect the types of goods commonly bought online. Therefore, a large number of websites (30) selling clothing and footwear were selected, as well as websites selling hard copy books, magazine; cosmetics, white goods; food and drinks; furniture; toys and other miscellaneous goods.\(^{73}\)

---

\(^{68}\) The Website Survey is available in Appendix A.

\(^{69}\) Directive 2011/83, Art 2(3).

\(^{70}\) In 2017, for example, the most popular categories of goods purchased online in the EU were clothes and sport goods (64 % of online buyers), household goods (46 %), books, magazines and newspapers (34 %) and computer hardware (28%); in contrast, the most popular categories of services (excluding financial services) purchased online in the EU were travel and holiday accommodation (53 %), tickets for events (39 %) and telecommunications services (29%); see Digital Economy and Society Index (DESI) 2018, available at [http://ec.europa.eu/information_society/newsroom/image/document/2018-20/3_desi_report_use_of_internet_services_18E82700-A071-AF2B-16420BCE813AF9F0_52241.pdf](http://ec.europa.eu/information_society/newsroom/image/document/2018-20/3_desi_report_use_of_internet_services_18E82700-A071-AF2B-16420BCE813AF9F0_52241.pdf) (last accessed 25 June 2018).

\(^{71}\) The full list of websites surveyed is available in Appendix B.

\(^{72}\) For example, in 2014, when the EU(28) average for domestic sales was at 65% of those who used the Internet to purchase online for private purposes, the respective Irish and UK figures were 75% and 84%: and when the EU(28) average for cross-borders sales was at 19%, the respective Irish and UK figures were 49% and 23%: see Eurobarometer report on cross-border trade and consumer protection (FL397, 2015).

The size of the survey was relatively modest. A broader sample of websites would need to be examined to enable us to draw more definitive conclusions. However, along with earlier studies, we believe that this new data, based on the examination of 81 Irish and UK websites, is sufficient to indicate general levels of compliance in relation to information obligations among traders in these jurisdictions.

The Survey Form was drafted to correspond with the information requirements of the relevant legislative measures, with some supplemental questions included. The website survey focussed on whether the different types of information were provided or not, and no findings were made in relation to the quality or accessibility of the information provided.

The survey was piloted on 10 websites. Minor revisions were made to the survey form and Instructions on Completing the Survey were prepared for the research assistant to ensure accuracy and consistency in the collection of the data. The data collection was completed in 2017 and the data was analysed using SSPS software in early 2018.

Relevant information was sought from various aspects of the websites survey. All information available via links such as, “About Us”; “Contact Us”; “Terms & Condition”; “Legal”; “Delivery”; “Returns” and “FAQs” was reviewed. A mock purchasing exercise, in relation to one random product per website was completed up to the point of “placing an order/payment” to identify other relevant pre-contract information. The mock purchasing exercise was undertaken on a PC.

No ethical approval or consent was needed for the collection of the data. All data collected was pre-existing and in the public domain; no personal data was collected. Copies of the completed survey forms and associated statistical data will be held for 10 years after completion of the survey, in compliance with UCC Code of Research Conduct.74

74 See https://www.ucc.ie/en/research/support/integrity/ (last accessed 5 June 2018).
As noted above, Article 6(1) of Directive 2011/83 on consumer rights requires that before a consumer is bound by a distance contract, such as one formed via a website, the trader must provide the consumer with various information in a clear and comprehensible manner. As noted in the Methodology section, the website survey focussed on whether the different types of information were provided or not, and not the quality of the information provided. The volume of information required has increased significantly with Directive 2011/83 (when compared with Directive 97/7 on distance sales) and, Article 6(1) specifies the particular information under 20 paragraphs (paras (a) - (t)). Further information requirements in relation to consumer redress are required pursuant to Regulation 524/2013 on ODR and Directive 2013/11/EU on ADR. Therefore, for ease of analysis, all these information requirements, as they relate to the sale of goods, have been grouped together under six different headings:

1. The Goods and the Trader (Directive 2011/83, Art 6(1) paras (a) – (d));
2. Price, Payment and Delivery; (Directive 2011/83, Art 6(1) paras (e) and (g));
3. Withdrawal (Directive 2011/83, Art 6(1) paras (h), (i) and (k));
4. Other (Directive 2011/83, Art 6(1) paras (l) - (m));
5. Formal Requirements (Directive 2011/83, Art 8(2) and (3));

5.1 The Goods and the Trader

Article 6(1)(a) refers to information about the main characteristics of the goods, to the extent appropriate to the medium and to the goods; while paras (b), (c) and (d) refer to information which identifies the trader, such as his trading name, and the trader’s contact details, including the geographical address where the trader (and where applicable, his principal) is established, and the trader’s telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently. The geographical address of the place of business of the trader (and where applicable, his principal) may also be required.

The website survey identified that the most clearly presented and accessible information provided by traders relates to the goods being offered for sale, with 100% of website complying with this requirement (see Table 1 below). Equally, the identity of the trader, such as a trading name, was also
provided on 100% of the websites surveyed with this information commonly found by following links such as “About Us” and “Contact Us”.

Table 1

<table>
<thead>
<tr>
<th>Main Characteristic of Goods</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identity of Trader</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>Geographical Address: Established</td>
<td>99</td>
<td>1</td>
</tr>
<tr>
<td>If Diff., Geographical Address: Business</td>
<td>62</td>
<td>38</td>
</tr>
<tr>
<td>Telephone Number</td>
<td>90</td>
<td>10</td>
</tr>
<tr>
<td>Fax Number</td>
<td>95</td>
<td>5</td>
</tr>
<tr>
<td>E-Mail Address</td>
<td>96</td>
<td>4</td>
</tr>
<tr>
<td>Online messaging or query form</td>
<td>62</td>
<td>38</td>
</tr>
<tr>
<td>Online Chat</td>
<td>14</td>
<td>86</td>
</tr>
</tbody>
</table>

Levels of compliance in relation to contact details was also very high with 99% of website providing information about the geographical where the trader is established (i.e. day to day economic activity); while 62% of websites provided information about the geographical address of the place of business of the trader to enable the consumer to make complaints (but this information is only required where this address is different from the trader’s place of establishment).

The trader is also required to provide contact details to enable the consumer to contact him quickly and communicate with him efficiently. Typically, this information was readily identifiable by following a link on the website such as, “Contact Us”. The trader has some flexibility in this regard to choose a suitable means of communication. The most common forms of communication provided by the websites surveyed are telephone number(s) (90% of website); e-mail address(es) (96%); and pre-forma online messaging or query forms (62%). The percentage of websites using online chat was relatively low at 14%, although this might be expected to grow. In contrast, the number of websites which provided a fax number was only 5%, perhaps reflecting the obsolete nature of communication by fax, particular C2B.
5.2 Price, Payment and Delivery

Article 6(1)(e) requires that information about the total price of the goods, inclusive of taxes, as well as, where applicable, all additional freight, delivery or postal charges or any other costs be provided by the trader. In addition, para (g) refers to information about the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods, and, where applicable, the trader’s complaint handling policy.

As illustrated in Table 2 below, there was 100% compliance of the websites surveyed in relation to the provision of information concerning the total price inclusive of taxes, and all additional freight, delivery, postal or other charges. Moreover, information about the delivery time was provided by 100% of websites, with 95% of websites providing a facility to track your delivery in real time.

Table 2

<table>
<thead>
<tr>
<th>Information</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Price, inclusive of taxes</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>All additional freight, delivery costs etc</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>When is payment?</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Use of HTTPS</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Security symbol on screen</td>
<td>86</td>
<td>14</td>
</tr>
<tr>
<td>Information on technological security</td>
<td>81.5</td>
<td>18.5</td>
</tr>
<tr>
<td>Protection re Credit Card Fraud</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Protection re Supplier’s Insolvency</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Delivery Time</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>Tracking option</td>
<td>95</td>
<td>5</td>
</tr>
<tr>
<td>Trader’s Complaints Handling Policy</td>
<td>91</td>
<td>9</td>
</tr>
</tbody>
</table>

High levels of compliance were also evidenced in relation to aspects of the arrangements for payment. Typically, websites offered a range of payment options, including debit and credit cards; in-store cards and payment via PayPal. All orders required the provision of payment details (type of payment card / account; consumer’s name and unique identifier, such as card numbers) in advance of purchase however, payments are not always processed by the trader at the time of ordering. While 79% of the websites surveyed provided information about the time payment would be processed; 21% of

---

75 Para (f) is not relevant to online sales as it refers to the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate.

76 On trader’s complaints handling policy see also Redress below.
websites did not. Of those website which provided information about the time when the payment would be processed, the most common time for processing payment was on despatch of the goods (at 47%); other times for processing payment were on placing the order (at 22%), on accepting the order (at 9%) and at delivery (only 1%), as illustrated in Table 3 below.

Table 3

<table>
<thead>
<tr>
<th>Time for Processing Payment</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>On placing order</td>
<td>10</td>
</tr>
<tr>
<td>On accepting order</td>
<td>22</td>
</tr>
<tr>
<td>On despatch</td>
<td>47</td>
</tr>
<tr>
<td>On delivery</td>
<td>1</td>
</tr>
<tr>
<td>No information</td>
<td>2</td>
</tr>
</tbody>
</table>

A persistent concern for consumers about purchasing online relates to security of payment and fears of fraud and trader insolvency.77 In that regard, and in relation to information about arrangements for payment, 100% of websites use the secure hypertext transfer protocol (i.e. https:) to process payment details, and in addition, 86% of websites survey used a security symbol (such as the “padlock” symbol); while 81.5% of websites provided information of technical security measures. In stark contrast, none of the websites surveyed provided information about consumer protection in relation to credit card fraud or the financial implication of trader insolvency where the goods are pre-paid before delivery.

Directive 2011/83 does not require that traders have a complaints handling policy but if a trader does have such a policy, information about that policy should be provided. Of the websites surveyed, 91% of websites make reference to complaints handling. However, in the vast majority of cases (90.5%) where complaints handling is mentioned on the website, no further details are provided beyond the

---

77 See e.g. Special Eurobarometer Report 464a, *Europeans’ Attitudes towards Cybersecurity* (September 2017).
standard contact details; in only 9.5% of those websites is a detailed complaints handling policy provided.

Table 4

![NATURE OF POLICY](image)

- Mere reference to complaints handlings
- Detailed complaints handling policy

5.3 Withdrawal

Article 6(1)(h) requires that where the right of withdrawal exists, information about the right - conditions, time-limits and procedures – must be provided, as well as the Model Withdrawal Form. In accordance with para (i) where the cost of withdrawal is placed on the consumer, this information must also be provided. Moreover, pursuant to para (k), where there is no right of withdrawal or where the right of withdraw may be lost, such information must be provided to the consumer.

In broad terms, the survey evidences high levels of compliance in relation to many aspects of the consumer’s right of withdrawal, as illustrated by Table 5 below.

---

78 Para (j) covers the impact of withdrawal on services contract requiring the consumer to pay a reasonable cost for services provided before withdrawal, and thus has no application to sale of goods contracts.
Of the websites surveyed, 95% provide that it is the consumer’s duty to return the goods; 93% that the consumer must inform the trader that he intends to withdraw from the contract/return the goods; while 99% of websites are clear about the time-limits for withdrawal.

Directive 2011/83 increased the time-limit for withdrawal from 7 days to 14 days. Of the websites which provided clear information about this time limit, 55% offered a withdrawal period of 14 days; while 45% of websites offered a withdrawal period of more than 14 days (see Table 6 below). The most common extended period for withdrawal from the contract/return of the goods was 28 days, with 19 websites offering this time period; 11 websites offered a withdrawal period of 30 days; 3 websites offered a withdrawal period of 60 days; 2 websites offered a withdrawal period of 90 days; and 1 website offered a withdrawal period of 365 days (a website selling sports clothing).
More generally, information about the mode of return, and the time to return the goods is provided on 97.5% and 99% respectively of websites surveyed, and, 99% of website provide clear information about who bears the cost of return (see Table 5 above). This cost is distributed to consumers in 76% of websites surveyed and retained by traders in 24% of websites surveyed (see Table 7 below).

One of the innovations of Directive 2011/83 was the use of the Model Instructions and Model Withdrawal Form. Where the Model instructions are used and correctly filled-in, it is assumed that the information in paras (h) – (j) has been provided.79 However, despite this, none of the websites surveyed used the Model Instructions and only 28% of websites surveyed used the Model Withdrawal Form (see Table 5 above).

Slightly lower levels of compliance in relation to the consumer’s right of withdrawal can be noted in relation to two matters: the non-availability of the right to withdraw and the loss of the right to

withdraw (see Table 5 above). Of the websites surveyed, 82% provided information about the non-availability of the right to withdraw in certain circumstances; while 18% of websites did not. Again, 87% of websites surveyed provided information about circumstances where the right to withdraw may be lost; 13% of websites did not.

5.4 Other Information Requirements

The remaining information requirements in Article 6(1), as they apply to once-off sale of goods contracts, require the trader to provide information to remind the consumer of the legal guarantee of conformity; and where applicable, the existence and condition of any after sale customer assistance; services; and commercial guarantees. Again, a trader is under no legal obligation to offer such assistance, services or guarantee, although provision of information about the guarantee of conformity is mandatory.\(^8^0\)

Table 8

<table>
<thead>
<tr>
<th>Other Information Requirements</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reminder of legal guarantee of conformity</td>
<td>16</td>
<td>84</td>
</tr>
<tr>
<td>W/A, existence and condition of after-sale customer assistance</td>
<td>12</td>
<td>88</td>
</tr>
<tr>
<td>W/A, existence and condition of after-sale services</td>
<td>15</td>
<td>97.5</td>
</tr>
<tr>
<td>W/A, existence and condition of commercial guarantees</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>W/A, existence of codes of conduct</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

As indicated in Table 8 above, levels of information in this regard are poor but that does not necessary reflect low levels of compliance. Only 16% of websites surveyed reminded the consumer about the legal guarantee of conformity, and in this regard, lack of such information is non-compliance as the legal guarantee of conformity is mandatory in relation to contracts for the sale of goods. However, the low levels of information about after-sales assistance (provided by 12% of websites); after-sale services (provided by 2.5% of websites) and commercial guarantees (provided by none of the websites surveyed) may reflect non-compliance or the reality that such assistance, services and guarantees are

\(^8^0\) The remaining requirements in Article 6(1) have no application to once-off contracts for the sale of goods; and instead apply to on-going contract arrangements and contracts for the supply of digital content.
not made available to the consumer (or some combination of both) in relation to the websites survey/goods bought.

5.5 Formal Requirements

Further pre-contractual information requirements can be found in Article 8 which deals with Formal Requirements for Distance Contracts. Three of these formal requirements were tested in the website survey. First, under Article 8(2) where a distance contract to be concluded by electronic means places the consumer under an obligation to pay, the trader must ensure that the consumer, when placing his order, explicitly acknowledges that the order implies an obligation to pay. Second, pursuant to Article 8(3) trading websites must indicate clearly and legibly at the latest at the beginning of the ordering process whether any delivery restrictions apply, and third, also further to Article 8(3) trading websites must indicate clearly and legibly at the latest at the beginning of the ordering process which means of payment are accepted.

As illustrated in Table 9 below, there is a high level of compliance in relation to these formal requirements. Of the websites surveyed, 83% explicitly acknowledged an obligation to pay. Common phrases used which explicitly acknowledged the obligation to pay included: “Pay”; “Pay Now”; “Pay Securely Now”; “Order and Pay”; “Proceed to Payment”; “Confirm Payment”; and “Make Payment”. In contrast, phrases used which failed to explicitly acknowledge the obligation to pay included: “Continue”; “Complete Order”; “Proceed”; “Check-out Securely”; and “Place your order”. Even higher levels of compliance were evidenced in the websites surveyed in relation to information about delivery restrictions (97.5%), and information about the means of payment accepted (99%).

Table 9
Both of these latter items of information must be provided not just before a consumer is bound by the contract but more specifically “at the latest at the beginning of the ordering process”.

Of the websites which provided information about delivery restrictions, as per Table 10 below, the majority of those websites (67%) provided this information both in general, such as in the T&Cs and/or the FAQs, and again at the beginning of the ordering process, maximising the potential impact of the information. Also in compliance with the legislation were 29% of websites surveyed which provided the information in general (e.g. T&Cs and/or the FAQs) only; as well as 4% of websites which provided the information at the beginning of the ordering process only.

### Table 10

<table>
<thead>
<tr>
<th>DELIVERY RESTRICTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>In general and at the beginning of the ordering process</td>
</tr>
<tr>
<td>In general (e.g. T&amp;Cs; FAQs) only</td>
</tr>
<tr>
<td>At the beginning of the ordering process only</td>
</tr>
</tbody>
</table>

In relation to the means of payment accepted, and again as per Table 11 below, 89% of all websites surveyed provided this information in general and again at the beginning of the ordering process; 5% of websites provided the information in general only (in T&Cs and/or FAQs); another 5% of websites provided the information at the beginning of the ordering process only; while only 1% of websites were non-complaint providing the information after the beginning of the ordering process.
5.6 Redress

Information concerning redress is a requirement of Directive 2011/83 on consumer rights, and also of Directive 2013/11 on ADR and Regulation 524/2013 on ODR.

First, Directive 2011/83 requires the trader to provide three types of specific redress information, but only where applicable: information about the trader’s complaint handling policy (para (g)); information about the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject (para (t)); and, information about the methods for having access to that mechanism (para (t)).

Second, further to Directive 2013/11 on ADR, where a trader is committed to using or is obliged to use an ADR entity (or entities) to resolve disputes with consumers, the trader must inform consumers about the ADR entity (or entities), including the relevant websites address/es. This information must be provided in a clear, comprehensible and easily accessible way on the trader’s website, where one exists and, if applicable, in the trader’s terms and conditions.

Third, pursuant to Regulation 524/2013 on ODR, all online traders, regardless of whether they use ODR, must provide an easily accessible electronic link to the ODR platform and must state their e-mail address. Moreover, all online traders committed to using or obliged to use ADR must inform

---

81 Directive 2013/11 on ADR, Art.13(1).
82 Directive 2013/11 on ADR, Art.13(2).
83 Regulation 524/2013 on ODR, Art.14(1).
consumers about the existence of the ODR platform and about the possibility of using it for resolving their disputes. These traders must also provide an electronic link to the ODR platform on their websites and, if the offer is made by e-mail, in that e-mail. This information must also be provided in the general terms and conditions provided online.

As noted above in relation to Directive 2011/83, of the websites surveyed, 91% of websites made reference to complaints handling. However, in the vast majority of cases (90.5%) where complaints handling is mentioned on the website, no further details are provided beyond the standard contact details; in only 9.5% of those websites is a detailed complaints handling policy provided. In relation to out-of-court complaint and redress mechanisms, Table 12 below shows, 39.5% of websites surveyed provided information about the possibility of recourse to out-of-court complaints/ redress schemes; and of the websites surveyed, 37% provided information about the methods for access to an out-of-court scheme; with 2.5% not providing the relevant information (the remaining 60.5% of websites did not make reference to an out-of-court scheme in the first place).

Table 12

<table>
<thead>
<tr>
<th>REDRESS</th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>TRADER’S COMPLAINTS HANDLING MECHANISM</td>
<td>91</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>W/A, POSSIBILITY OF RECOURSE TO OUT-OF-COURT COMPLAINTS / ...</td>
<td>39.5</td>
<td>60.5</td>
<td></td>
</tr>
<tr>
<td>THE METHODS FOR ACCESS TO OUT-OF-COURT COMPLAINT / REDRESS...</td>
<td>37</td>
<td>2.5</td>
<td>60.5</td>
</tr>
</tbody>
</table>

Turning to the information requirements of the ODR/ADR legislative framework, as illustrated in Table 13 below, over half of websites (60.5%) provide the link to the ODR platform; however, a significant number (39.5%) of websites do not comply with the legal requirement, in this regard. Of the websites surveyed, less than half (43%) of traders surveyed committed to using ADR, although of those who committed to using ADR, 100% provided the link to the ODR platform. However, only 33% of website

---

84 Regulation 524/2013 on ODR, Art.14(2).
85 Regulation 524/2013 on ODR, Art.14(2).
surveyed provided this information in their T&Cs, leaving 10% of websites failing to comply with the relevant legislation. It is also interesting to note the number of websites which expressly referred to the relevant legislation. While this is not mandated by the legislation it is a useful means of informing consumer of their legal rights and remedies, and, promoting consumer protection more generally. Of the websites surveyed, 39.5% of websites expressed referred to Directive 2011/83; while slightly less at 35% of websites referred to the ODR Regulation/ADR Directive.

Table 13

<table>
<thead>
<tr>
<th>ODR/ADR</th>
<th>YES</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the website include link to EU ODR platform?</td>
<td>60.5</td>
<td>39.5</td>
<td></td>
</tr>
<tr>
<td>Does trader commit to using ADR entity?</td>
<td>43</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>If so, does the trader inform consumer about ODR platform?</td>
<td>43</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td>Is this information also provided in T&amp;Cs?</td>
<td>33</td>
<td>10</td>
<td>57</td>
</tr>
<tr>
<td>Was Directive 2011/83 expressly referenced on website?</td>
<td>39.5</td>
<td>60.5</td>
<td></td>
</tr>
<tr>
<td>Was the ODR Regulation/ADR Directive expressly referenced?</td>
<td>35</td>
<td>64</td>
<td></td>
</tr>
</tbody>
</table>

Lastly, we compared some of the findings in relation to redress on a jurisdictional basis, comparing the UK and Irish websites. These jurisdictions adopt quite distinctive approaches in terms of availability of ADR/ODR. In the UK, there are 44 ADR entities across a wide range of sectors available through the ODR platform, while in Ireland there are just 2: Netneutrals.eu is the residual provider (required under the ODR Regulations) while second entity, the Commission for Regulation of Utilities, relates only to the energy sector. They therefore facilitate an analysis of the extent and operation of trader participation in two very different and still EU law compliant legal contexts. In relation to providing the EU ODR link on your website (whether a trader is committed or required to use ADR or not), 49% of .ie websites provided the link compared to 32.5% of .uk websites; leaving 51% of .ie websites and 67.5% of .uk websites in breach of this information requirement. In this regard, almost half of .ie websites surveyed are compliant with the relevant information requirements when compared with about one-third of .uk websites surveyed (see Table 14 below).
In terms of whether traders committed on their websites to using ADR, 46% of .ie websites and 37.5% of .uk websites committed to using ADR; while the majority of website (54% of .ie websites and 62.5% of .uk websites) did not make such a commitment. Again, the ie. websites perform slightly better than their .uk counterparts, in this regard (see Table 15 below). Moreover, of those traders who committed to using ADR, all .ie and .uk traders (100%) provided the link to the EU ODR platform.
6. Analysis of Research Findings

6.1 Preliminary points
In reviewing the findings outlined here, some preliminary points should be noted. First, the research methodology for this study differs in some respects from other studies presented in Part 3. For this reason, it is important to be careful in drawing comparisons with other studies. The 2005 Study conducted by the authors is methodologically the closest to the Study reported here. Although this study related to Directive 97/7; was restricted to .ie websites; and, is now more than a decade old, it is nonetheless useful in tracing change in the field. Second, the Study compares websites in terms of their compliance with each individual information obligation of the relevant measures; it does not make an assessment of each website in terms of its overall level of compliance. Further, because a number of the information obligations only apply ‘where relevant’, a lack of information concerning a particular obligation may not be indicative of non-compliance.

6.2 Lessons in the Detail
One clear finding which emerges from the Study reported here is that many of the CRD legal requirements are uniformly the subject of very high (and in some cases full) compliance. The Study reported here found that 100% of websites provided information to consumers about the characteristics of the goods. The replicates the authors’ earlier (2005) Study and is in line with the CRD Evaluation where a mystery shopping study which found that consumers received a fair to a great amount of information about the characteristics of the product, although there were differences at individual Member State level. Information about the means of payment was also found to be provided in all cases. The provision of this information is of course in the trader’s (as well as the consumer’s) interest. Without this basic information, consumers will not engage in online commerce. Thus, it is probably more accurate to regard these high levels of compliance as market (rather than compliance) driven.

Compliance levels with information in respect of the trader and contact information is also very high, with this Study recording 92-100% compliance levels across the different information requirements. This is largely in line with the findings of the authors’ 2005 Study of .ie websites although far higher than the 2015 website sweep which found incomplete or unclear details about the trader in 34% of websites checked and the Commission’s CRD Evaluation where 38% of consumer did not get much information about the trader. This would suggest that there is a wide variation in compliance levels across member states. In terms of contact, a positive feature which this Study identifies is the
development of new / better form of communication with consumers e.g. online query forms; online chat forums. This might be expected to increase in the future and should, hopefully, reduce the need for consumers to have to engage in redress processes. Once again, the market is likely to be an important driver in terms of whether/how quickly this happens.

The Study also found 100% compliance with the requirement to provide information about price and all additional freight, delivery, etc. costs. Again, this reflects similar high levels of compliance in the Commission’s CRD Evaluation. As with details of the characteristics of the goods, the provision of this kind of information provision is market driven; consumers demand to know the price before they purchase. The provision of information was noticeably absent in respect of less consumer attractive information, such as what might happen in the event of supplier insolvency or loss through fraud/hacking. There are currently no legal obligations in respect of this kind of information; however, it is important for consumers to know and the lack of such information raises the question of whether legal obligations to provide this information should be imposed on traders.

This Study found high levels of compliance across a range of information obligations relating to withdrawal (between 82% - 99%). This is in contrast to European-wide studies, with the 2015 Website Sweep finding irregularities on 63% of websites examined, with websites missing or providing unclear or incomprehensible information on the right of withdrawal from a transaction and the Commission’s CRD Evaluation also finding information on withdrawal to often be missing (e.g. only about half of traders provided information on the 14-day period for withdrawal in respect of goods). Given the relative sizes of the studies and the different methodologies it is not clear whether this Study indicates higher compliance levels in the UK and Ireland or indeed that compliance levels are rising more generally. One notable feature of the Study, however, is that it indicated no trader take-up whatever on the Model Instructions and limited (28%) usage of the Model Form which were first introduced in Directive 2011/83 on consumer rights. The aim of these model instructions and form had been to make compliance easier for traders by setting out all the elements of the withdrawal right in one place but clearly it has not impacted significantly, in practice.

In contrast to the low uptake on the Model Form, the information obligations around the Article 8 formal requirements, also first introduced in Directive 2011/83, elicited a more compliant response from traders with compliance levels ranging from 83- 98% of websites. Such findings are in line with the CDR Evaluation which found in relation to the obligation to explicitly acknowledges that an order implies an obligation to pay that ‘almost all’ websites examined were found to be complaint.
While compliance was generally very high, especially when driven by market, as well as legal forces, compliance is much lower with respect of two aspects of the legal framework. First, there were low levels of compliance with the requirement in respect of legal guarantees, with only 16% of websites providing the necessary information. Second, compliance levels around complaints and redress mechanisms are low. Although 91.5% of websites included a reference to complaint handling mechanisms, only 9.5% provided detail on this. This is line with the Commission’s CRD Evaluation which found consumers did not receive much information about accessing out of court complaint and redress mechanisms. Compliance levels were much lower in respect of information regarding out-of-court redress and ODR (33% - 60%). This reflects also the findings of the Commission’s 2017 Website Study. The low may reflect the fact that these obligations derive from the ODR Regulations rather than the CRD, with which traders (and their advisors) may be less familiar. It may also reflect a lack of market impetus to encourage the provision of this kind of information.

Further questions

It is important to be aware of the limitation of this Study: the sample size is small; its focus is on two jurisdictions; and the survey examined websites selling goods only. Nonetheless, it would seem that compliance levels with information obligations are improving in all but a small number of areas. This might be attributable, in part, to the fact that pre-contract information obligations have been part of the EU legal landscapes for the best part of twenty years in relation to the distance selling of goods. This conclusion may be supported by our findings of lower compliance levels in relation complaints and redress, including those imposed by the ADR/ODR framework, which are newer additions to the regulatory framework. A similar response may be seen in relation to the underwhelming trader engagement with some of the more innovative features of Directive 2011/83, such as the Model Withdrawal Form and Model Instructions. Another innovative feature of Directive 2011/83 was the introduction of digital content contracts with its scope. Targeted testing of compliance levels in relation to digital content contracts is now needed to allow more firm conclusions to be drawn regarding the ways in which new regulatory measures to impact on trader practices.
Appendix A

The Website Survey Form

Website Survey Form  No: __________

_E-Commerce, Distance Contract & ADR Information Website Survey_

1. Date of Survey: ________________________________
   - Duration of survey

2. URL Address of the website: ________________________________

3. Does the website sell:
   Goods  □
   Digital content  □

Comment: (i.e. type of product – in accordance with list)

What item was ordered?

4. Are contract terms and conditions made available?  Yes  No  N/A
   □  □

   If yes: are they accessible from:
   Home page  □
   Every page  □
   At point of placing order  □

   Are T&C incorporated by:
   Click wrap  □
   Browse wrap  □
**Directive 2011/83 - Art 6**

5. Is the following information provided on the website:

   (a) the main characteristics of the goods or digital content  
       Yes  No  N/A

   (b) the identity of the trader  
       Yes  No  N/A

   (c) the geographical address at which the trader is established and
       - the trader’s telephone number,  
       - fax number and  
       - e-mail address,  
       - online messaging/query form  
       - online chat

       where applicable, the geographical address and identity of the trader on whose behalf the trader is acting  
       Yes  No  N/A

   (d) if different from the address provided in accordance with 5(c), the geographical address of the place of business of the trader  
       Yes  No  N/A

   Where applicable, the geographical address of the place of business of the trader on whose behalf the trader is acting  
       Yes  No  N/A

   (e)

   (i) the total price of the goods or services inclusive of taxes,  
       Yes  No  N/A

   or

   where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated,  
       Yes  No  N/A

   (ii) where applicable, all additional freight, delivery or postal charges and any other costs  
       Yes  No  N/A

   or

   where those charges cannot reasonably be calculated in advance, the fact that such additional charges may be payable  
       Yes  No  N/A

   (f) ...
(g1) arrangements for payment

- information as to time of payment
  - On placing order
  - On accepting order
  - On despatch
  - On delivery

- use of https domain
- presence of a security symbol on screen
- information on the technological security of payment
- information as to consumer’s legal protection should credit card fraud occur
- information as to consumer protection in the case of supplier insolvency

(g2) arrangements for delivery

- Trader’s undertaking as to time of delivery
- Tracking option

(g3) trader’s complaint handling policy

If so is there:
- A detailed complaint handling policy
- or
- Are customers simply told to refer complaints to trader

For goods only

(h) where a right of withdrawal exists

Does the website use the Model Instructions on Withdraw (Annex 1(a))?  

If no, does website provide information on the following:

- the conditions consumer’s duty to return consumer’s duty to inform consumer’s liability for diminished value
- time limit
State time in days:

- Less than 14 days
- (Within) 14 days
- More than 14 days

If more than 14 days, how many days: ______________________

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>procedures for withdrawal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>In particular, does the website provide information on:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unequivocal statement of withdrawal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mode of return</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time of return</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other procedural requirements</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does website use Model Withdrawal Form (Annex 1(b))?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i1) who bears the cost of returning the goods in case of withdrawal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trader’s cost</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consumer’s cost</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Comment on any variation:

(i2) the cost of returning the goods where the goods by their nature cannot normally be returned by post

(j) ..... 

(k1) the circumstances under which the consumer loses his right of withdrawal (under Art. 16)
| (l) the existence of a legal guarantee of conformity | □ | □ |
| For Goods and Digital Content | | |
| (K2) where there is no right to withdraw (see Art. 16) a statement that the consumer will not benefit from a right of withdrawal | □ | □ |
| (m) the existence and the conditions of: | | |
| after sale customer assistance | □ | □ |
| after-sales services | □ | □ |
| commercial guarantees | □ | □ |
| (n1) the existence of codes of conduct | □ | □ |
| (n2) how copies of code can be obtained | □ | □ | □ |
| (o) the duration of the contract | □ | □ | □ |
| or | | |
| if the contract is of indeterminate duration or is to be extended automatically, conditions for terminating the contract | □ | □ | □ |
| (p) the minimum duration of the consumer’s obligations under the contract | □ | □ | □ |
| (q) the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader | □ | □ | □ |
| (t1) the possibility of having recourse to an out-of-court complaint and redress mechanism | □ | □ |
| Is the recourse internal to the trader? | □ |
| Or, is an external body utilised? | □ |
Yes  No  N/A

(t2) the methods for having access to the out-of-court complaint mechanism  □  □  □

Directive 2011/83 - Art 8

6. At the point when consumer is placing his order, does the website explicitly acknowledge that the order implies an obligation to pay (such as statement ‘order with obligation to pay’ or ‘order and pay now’) ?  □  □

What phrase is used:

7. Does the website indicate whether any delivery restrictions apply  □  □

If yes, at what stage:

- general website  □
- before/at beginning of ordering process  □
- at a later stage in ordering process  □

Does the website indicate which means of payment are accepted?  □  □

If yes, at what stage:

- general website  □
- before/at beginning of ordering process  □
- at a later stage in ordering process  □

ODR Regulation

8. Does the website include a link to the EU ODR Platform?  □  □

9. Does the trader commit to using an ADR entity?  □  □

If so:

Does trader inform consumers about the ODR platform and the possibility of using the ODR platform for resolving their disputes.  □  □
Is this information also provided in the general terms and conditions? □ □

10. Was the following legislation expressly referenced:
   Directive 2011/83 □ □
   ODR Regulation/ ADR Directive □ □
Appendix B

List of Websites Surveyed

Goods (81 websites in total)

30 websites: clothing + footwear, etc
1. www.brownthomas.com
2. www.harveynichols.com
3. www.selfridges.com
4. www.elvery.ie
5. www.jdsports.ie
6. www.asos.com
7. www.riverisland.com
8. www.topshop.com
14. www.oasis.com
15. www.newlook.com
16. www.office.co.uk
17. www.thetiestore.co.uk
18. www.store.manutd.com
19. www.tmlewin.co.uk
20. www.premiersport.co.uk
21. www.dunelondon.com
23. www.houseoffraser.co.uk
24. www.grenson.com
25. www.arnotts.ie
26. www.shop.irishrugby.ie
27. http://www.clarks.co.uk/
28. www.dunnesstores.com
29. ie.sportsdirect.com
30. https://www.carraigdonn.com

10 websites: books, magazines (hard copy)
1. www.waterstones.com
2. www.nationalgeographic.com
3. www.dauntbooks.com
4. www.foyles.co.uk
5. www.betterworldbooks.co.uk
6. www.poolbeg.com
7. www.schoolbook.ie
8. www.highstreetbooks.ie
9. www.whsmith.co.uk
10. www.kennys.ie
### 10 websites: cosmetics
1. www.beautybay.com
2. www.feelunique.com
3. www.boots.co.uk
4. www.fragrancedirect.co.uk
5. www.costeticsfairy.co.uk
6. www.inglot.ie
7. www.makeupshop.ie
8. https://pharmacystore.ie/
9. www.lloydspharmacy.ie
10. www magees.ie

### 8 websites: white goods
1. www.appliancesdirect.ie
2. www.harveynorman.ie
3. www.soundstore.ie
4. www.currys.ie
5. www.did.ie
6. www.maplin.co.uk
7. www.electricaldiscountuk.co.uk
8. www.hughes.co.uk/

### 10 websites: food and drink
1. www.harrods.com
2. www.fortnumandmason.com
3. www.asda.com
4. https://www.sainsburys.co.uk/
5. www.veenas.com
6. www.groceries.ie
7. www.tesco.ie
8. www.shopsupervalu.ie
10. https://www.evergreen.ie

### 13 sites furniture / toys / miscellaneous
1. www.dfs.ie
2. www.debenhams.ie
3. https://www.caseys.ie/
4. www.lauraashley.com
5. www.next.co.uk
6. www.habitat.co.uk
8. https://www.bargainmax.co.uk/ (e-commerce award winner!!!)
9. www.vjhomefitness.com
10. www.hsamuel.co.uk
11. http://www.pennylaneflowers.co.uk/
12. http://www.richmondsilver.co.uk/
13. http://www.rose&grey.co.uk/