

Realities of the European online marketplace

A cross-border e-commerce project
by the European Consumer Centre's Network



Content

1. Foreword	4
2. Introduction	5
3. Project experiences	6
4. Research methodology	7
4.1. Background and organisation	7
4.2. Questionnaire design	8
4.3. Evaluation and external examination	8
4.4. External statistical processing	8
5. Shopping exercise	10
5.1. Brief summary of the key findings	10
5.2. Results	10
5.2.1. Confirmations, payments and deliveries	10
5.2.2. Delivery	11
5.2.3. Payment	12
5.2.4. When the products arrived	13
5.2.4.1. The final cost	13
5.2.4.2. Receipt or invoice	13
5.2.4.3. Written information on revocation and returning rights	13
5.2.4.4. Written information on after-sales service, warranty and guarantee conditions ..	13
5.2.4.5. Explanation of returns procedure	13
5.2.4.6. Had to give reason	13
5.2.5. Returns	13
5.3. Conclusions and comments of the shopping exercise	15
6. The information quality examination	17
6.1. Brief summary of the key findings	17
6.2. Results of the information quality examination	17
6.2.1. Language(s) of the sites	17
6.2.2. Ordering price	18
6.2.3. Information on stock availability and warranty	19
6.2.4. Delivery Information	19
6.2.5. Payment methods	20
6.2.6. Terms and conditions	22
6.2.7. Languages of the website / Terms and conditions	23
6.2.8. Retailer Information given	24
6.2.9. Privacy	25
6.2.10. Complaints	25

6.2.11. Security	26
6.2.12. Trustmarks	27
6.3. Conclusions and comments of the information quality examination	28
7. Legal and practical analysis of the cooling-off period	31
7.1. Introduction and summary of the analysis	31
7.2. Legal analysis of the cooling-off period provisions. By Karl von Rumohr	33
7.2.1. Presentation of the Distance Selling Directive	33
7.2.2. Implementation of the Distance Selling Directive in the member states	34
7.2.3. Registered restrictions to the exercise of the right of withdrawal in practice	36
7.2.4. Registered exceptions to the right of withdrawal	38
7.2.5. Who has got to bear the costs resulting from the withdrawal?	39
8. Annexe	41
8.1. List of ECC participants	41
8.2. Questionnaires a, b, and c	42
8.3. List of countries to order/buy from	50
8.4. List of external examiners	51
8.5. Institute for the statistical evaluation	51
8.6. List of webtraders from which the purchases was made	51
8.7. List of the webtraders that were examined for information quality	53

I. Foreword

Internet shopping did not take off as it was initially expected. In the beginning, it was surrounded by a tremendous hype, whereby it was forecasted to dramatically change the market. However, many of the initial e-business projects failed, as they did not manage to attract sufficient consumer interest. The consumers were rather sceptical about e-commerce and the industry did not succeed to gain their trust and confidence.

However, according to recent statistics, e-commerce is on the rise again. More and more consumers use the digital shopping mall as an alternative to traditional shopping and it is possible to speak of a second wave of e-commerce. Evidently, consumer trust in the digital environment is increasing, however there is still a long way to go before the early market predictions are realized.

Distance Selling is of great importance for the fulfilment of the Internal market. This is especially highlighted in the EC legislation. The third recital of the Distance Selling Directive points that out:

“Whereas, for consumers, cross-border distance selling could be one of the main tangible results of the completion of the internal market, whereas it is essential to the smooth operation of the internal market for consumers to be able to have dealings with a business outside their country,…”

An open and free cross-border distance selling market would enhance the competition and thus increase the consumer’s choice and ideally result in lower prices. The most efficient way for a consumer to engage in cross-border distance selling is, without a doubt, e-commerce.

The European Consumer Centres Network has specific interest in this issue. The ECC is co-financed by the European Commission and the role of the network is to help European consumers understand better how to make the Internal Market work for them and to provide advice and assistance if they encounter problems. The aim is to ensure that they feel as confident when shopping in another country as they do at home. An additional important task of the network is to provide the European Commission with important “grassroots” information on consumer concerns.

It is necessary for the ECC Network to perform empirical research projects in order to fulfil this role and e-commerce was chosen as the first common project since it is such an important sector within the cross-border market.

A developed, accessible and competitive European e-commerce market is the most realistic way for a European consumer to frequently take full advantage of the Internal market. Thus the aim of our project is to examine if the cross-border e-commerce market actually is accessible, convenient and secure for the consumers and if the industry respects the consumer’s rights.

The European Consumer Centre in Düsseldorf led the project in close cooperation with the Centre in Stockholm.

Monika Appmann
ECC Düsseldorf
monika.appmann@vz-nrw.de

Fredrik Nordquist
ECC Stockholm
fredrik.nordquist@konsumenteuropa.se

2. Introduction

The project consists of three major parts and involved staff from thirteen ECC offices and two consumer organisations. Nine external examiners were involved in order to confirm the results of the ECCs. A doctoral student from the Humboldt University in Berlin, who is an expert in distance selling law, carried out a comparative analysis of the cooling-off period and a statistics institute made the statistical evaluation.

The main objective of the project was to examine the quality of Internet shopping in the internal market on the basis of the Distance Selling and the E-commerce Directive.

The first part is a shopping exercise in which the ECC staff performed cross-border shopping from foreign e-commerce companies. A total of 114 orders were made.

The second part is a quality examination of the information that was given on the webtraders website. In total, 262 websites were checked in this part.

The third part is a comparative analysis of the implementation of the Distance Selling Directive with special regard to the cooling-off period. That part also includes an analysis of cooling-off restrictions that we encountered during the shopping exercise.

The shopping exercise and the website examination was carried out in the second half of 2002. The external examiners did their work at the end of 2002 and the beginning of 2003. The report was written in March and April 2003.

The size of the project is relatively small. Even more purchases and website checks would have been necessary in order to claim that the statistics are scientific facts of the problems in the EU e-commerce market. However, 114 purchases and 262 website examinations are more than sufficient in order to achieve strong indications and to identify problematic aspects of the consumer position in cross-border e-commerce. The statistical percentages in the report are rounded off.

3. Project experiences

The first major obstacle for the researchers was to actually find webtraders that offered cross-border sales. We knew that most e-commerce companies operate mainly in their domestic market, however it still came as a bit of a surprise to learn that it's only a very small minority of the EU based webtraders that offered their products and services to the whole of the internal market. This fact caused the project to be more time-consuming and difficult than anyone initially predicted. The webtraders that did not sell to foreign consumers could be divided into two categories. The first relates to those that limited their market by language and the second to those that explicitly informed the consumer that they did not deliver abroad or to certain specified countries. Several of the webtraders that did not offer cross-border sales failed to inform the consumer about this.

The Internet and e-commerce is often described or even defined as a global and border-less shopping mall, however according to our study it seems to be a domestic or regional marketplace.

The result of our shopping exercise showed that the consumer's situation in cross-border e-commerce is rather unfavourable. Frequently, orders were not delivered, key information regarding the consumer's rights was missing and returned products were not reimbursed. These are just examples of the obstacles a consumer will encounter and they are also reasons why a lot of consumer may refrain from, or be reluctant to engage in cross-border e-commerce.

A worrying fact is that our results, in many aspects, are even more negative than the results found in Consumers Internationals study, "Should I buy?".¹ One explanation for this might be that Consumer Internationals study included both national and international purchases, whereas our project dealt exclusively with cross-border transactions. That indicates that consumers, who buy from foreign webtraders are more likely to encounter problems than those who buys from domestic companies.

¹ Consumer International, 2001. Available at <http://www.consumersinternational.org>.

4. Research methodology

4.1. Background and organisation

The project was suggested by ECC Stockholm, whilst ECC Düsseldorf agreed to lead the project. The participants of the project were members of the European Consumer Centres in Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, Austria, Portugal, Finland and Sweden.² The Danish Consumer Council and the General Consumers' Federation (INKA) from Greece also took part.³ The Netherlands participated via the ECC Düsseldorf. The European Consumer Centres in Stockholm and Düsseldorf performed the evaluation of the project and prepared the report.

The project consists of three parts; a shopping exercise, a qualitative check of the information on the website and an analysis of the implementation of the Distance Selling Directive with emphasises on the consumer's right to withdraw from the contract during the cooling-off period.

It was agreed to concentrate on EU cross-border shopping only. Consequently each participant ordered all items only from webtraders in other EU countries. The participants were supposed to carry out the cross-border shopping in three different countries. The project leader set up a list of countries particularly taking the researchers knowledge of different languages into account.⁴ It was also decided that the majority of products should be returned in order to assess the quality of the returns process (this would allow us to assess factors such as additional costs, problems obtaining refund, level of refund). The researchers ordered the following products:

1. T-shirt
2. Ink-cartridges
3. Paper (or other office supply)
4. CD
5. DVD
6. Toy
7. Dictionary
8. Watch

These products were chosen because they are popular Internet purchases. It was decided to include clothing as it raises issues regarding consumer-friendly return policies. In the beginning the network was considering more expensive goods such as computer hardware, video cameras, TV-sets or travel tickets in order to examine a broader range of products, however the project participants deemed the financial risk as being too high.

The researchers searched for websites to buy from and then placed the addresses into a list of websites. Search engines, directories provided by the portals or recommendations in magazines or other media were all helpful. In addition, major well-known e-commerce companies were also included. It was decided that all researchers ordered all products under the identity of private persons. In order to gain objective results it was considered as being useful that the retailers had no idea that they were dealing with an individual from a European consumer organisation or agency.

² The European Consumer Centre Düsseldorf carried out the evaluation of the British websites, since the European Consumer Centre in the United Kingdom did not participate.

³ The General Consumers' Federation (INKA) from Greece only participated in the national website check and so did the European Consumer Centre in Italy.

⁴ For a list of the countries, please refer to the Annexe.

4.2. Questionnaire design

Questionnaires were developed for all survey parts in such a way so as to gather the needed information in an objective manner. Hence detailed questionnaires were utilised by the researchers during the shopping exercise, the quality check of the national websites and the implementation of the Distance Selling Directive⁵.

The questionnaire for the shopping exercise (part A) was concentrated on the following objects of investigation: (1) The quality of the Information on the website, (2) circumstances concerning the delivery and (3) practical issues regarding the return.

For the quality check of the national websites (part B) the same questionnaire was used, however the delivery and return sections were excluded. When elaborating upon the questionnaires for both parts the regulations of the Distance Selling and the E-commerce Directive were generally taken into account. The aim was to comprise all relevant factors that influence the quality of e-commerce, in order to obtain a clearer picture about the situation of consumers.

In part C of the project we wanted to realise the benefits of being a European network by looking in detail at the implementation of the Distance Selling Directive in each member state with special regard to the cooling-off period. For part C, the researchers were supposed to examine the same websites as those during the examination of national websites. The questionnaire concentrated on the legal requirements regarding information and conditions of the consumers right to withdraw from the contract during the cooling-off period. The result served as background information for the comparative analysis of the implementation of the Distance Selling Directive

4.3. Evaluation and external examination

The information concerning each individual purchase was verified by one of the project leaders together with the ECC employee that had placed the order.

In order to ensure high quality and accurate statistics, the evaluation team called in external examiners for part B (quality check of the information that was given on the webtraders website). The criteria for the examiners was that they should be highly qualified academics or professionals and specialised in e-commerce and/or legal aspects of Information Technology. With one exemption, all examiners are lawyers that either have or are currently studying for a Master of Laws degree in Information Technology Laws at the University of Strathclyde in Glasgow, Scotland. The remaining examiner is an e-commerce researcher.⁶ The external examiner worked from the same questionnaire that the ECC staff had utilised and they performed their assessments individually and without access to the ECC results. The results from the external examiners were compared to those of the ECC staff. In cases where there were any differences in the assessments the external examiner would then undertake another examination of that question, and made a final decision together with the project leader.

4.4. External statistical processing

The number of websites analysed in the examination of national websites⁷ combined with the other aspects examined, were deemed too high as to be evaluated without the support of a statistical research institute. The German institute “Hommerich Forschung” in Bergisch Gladbach was assigned to carry out the statistical evaluation. The ECCs in Düsseldorf and Stockholm prepared a detailed

⁵ To view the contents of the questionnaires, please refer to the Annexe.

⁶ There is a complete list of the external examiners in the annexe.

⁷ The questionnaires of Part A were included in the evaluation of the national website check.

list of criteria and question combinations as a guideline for the evaluation. As an example regarding the languages of the websites we asked: How many websites offer more than one language? How many websites are bilingual (percentage)? With regard to the payment methods: How many websites offer more than one method of payment? An example for a question combination is: If the websites are bilingual / multilingual, do they offer terms and conditions in different languages? In most of the cases we asked for the answer as a percentage of yes or no. The institute prepared diagrams to make the statistical results more vivid.

5. Shopping exercise

5.1. Brief summary of the key findings

A total of 114 orders were made in the shopping exercise, with all orders being cross-border and within the EU. However, only 75 of those orders resulted in a delivery. That means that 34% of the orders were not delivered. Of even more concern was the fact that 8% of the ordered products were not delivered even if they had been paid for.

Payment was often instantly withdrawn from the researcher's credit card when he/she places an order. That happened in 24% of the cases where credit cards were used. This payment policy causes problems, especially when many of the paid goods are not delivered.

We returned 57 of the 75 products we received. In 18 of those cases we did not receive any refund. That means that 31.5% of the returned goods were not refunded. Only 37% of all returns resulted in a reimbursement including the delivery fee.

According to the Distance Selling Directive, the consumer has the right to withdraw from the contract without reason within a specific number of days. Nevertheless, 24% of the webtraders that we returned the products to asked for a reason. The question could very well be optional, however it was often presented in such a way that the consumer might believe that an acceptable reason was a demand for the reimbursement.

5.2. Results

5.2.1. Confirmations, payments and deliveries

The statistics in this part of the report are based upon 114 attempted purchases. They have been categorised into 6 different groups depending on order confirmation, payment and delivery.

The first category is attempted orders that did not cause the webtrader to react at all. In these cases we did not receive any confirmation and no charges or deliveries were made. Out of our 114 orders, 9 are placed in this category, which represents 8% of the total orders made. One could argue that there is no harm caused if the consumer is not charged anything. However, it does place a question mark over the webtrader's customer policy and the technical reliability of the website. It is important that the consumer is informed if the order has not been processed, that the product is out of stock or that the webtrader, for some reason, do not wish to sell to the consumer.

The second category is orders that were not confirmed but later charged and delivered. This occurred on 6 occasions, which represents 5% of the total orders. In these cases the webtrader didn't inform the consumer that the order had been accepted and the consumer could not be sure if he/she could expect a delivery in the near future.

The third category relates to orders that were confirmed but neither charged nor delivered. This occurred in 21 cases, which represent 18% of the total number of orders made. Again one could argue that there's no harm caused since the consumer has not been charged. However, it is a serious problem when webtraders ignore their contractual obligations. A confirmed order would most likely be regarded as a binding contract regardless of which national law that applies. A failure to fulfil the order is simply a breach of that contract.

The fourth category refers to orders that were confirmed, charged but not delivered. This happened 9 occasions, which represent 8% of the total orders. Failure to deliver products that the

consumer has paid for is a serious offence. It also severely damages the consumer's confidence in e-commerce, which threatens the development of cross-border online sales.

The fifth category relates to orders that were confirmed and delivered but not charged. This happened in 4 cases, which represent 3.5% of the total orders made. There are two possible explanations for this. It could indicate that the webtrader's ordering and payment system is unreliable and that this unreliability could cause negative effects for the consumer in other cases. It is also possible that the webtrader chose to delay the withdrawal until the cooling-off period had expired. All of these products were returned to the webtrader and there was obviously no need for a reimbursement transaction. This latter scenario would ensure that the consumer experience a higher level of security, whilst saving the webtrader time and money.

The sixth and final category relates to when the order was confirmed, charged and delivered. This occurred in 65 cases, which represent 57% of all orders made. It's a low number considering that this has to be regarded as the normal procedure for any business transaction.

5.2.2. Delivery

In total 75 products were delivered. That represents a delivery rate of 66% of all ordered goods. The average time that it took for an ordered product to arrive was 11 days. However, that number is of course negatively affected by the fact that 3 products took more than 30 days to arrive (35, 41 and 67 days). According to the Distance Selling Directive, the webtrader shall deliver within 30 day from the day when the goods were ordered and 4% of the webtraders failed to meet that limit. The longest delivery time was 67 days for a T-Shirt to arrive in Luxembourg from Austria. The table below shows that the vast majority of products were delivered within 5-14 days after the ordering date. That is satisfactory for cross-border sales and deliveries. However, one must keep in mind that these statistics only relates to the 66% of the ordered goods that actually were delivered.

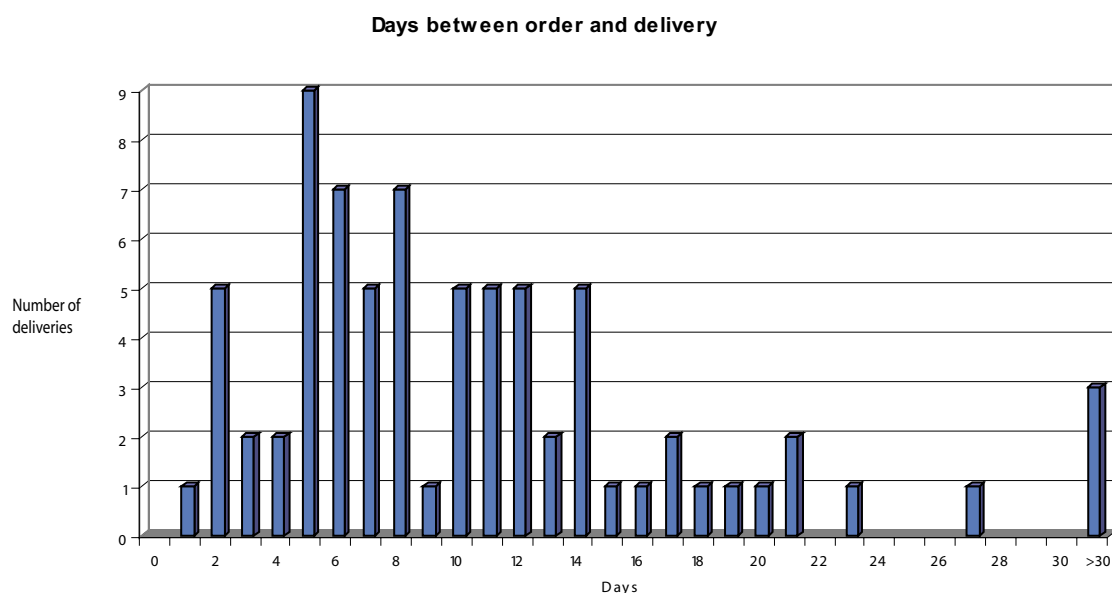


Table 1: Days between order and delivery

5.2.3. Payment

The majority of the purchases were paid by credit card. The following statistics only relate to credit card purchases, which amount to 68. The consumer gives the credit card number when he/she is making the order and it is, in practice, determined by the webtrader's policy as to when they perform the withdrawal. The average time between the dates when the consumer makes the order and when the webtrader withdraws the payment from the credit card is 5 days. However, that average is influenced by the fact that some companies withdraw the money rather late. The table below shows that 24% (16 out of 68) of the withdrawals are performed on the same day as the order is placed, and that more than half of the withdrawals were made within 2 days of the ordering date.

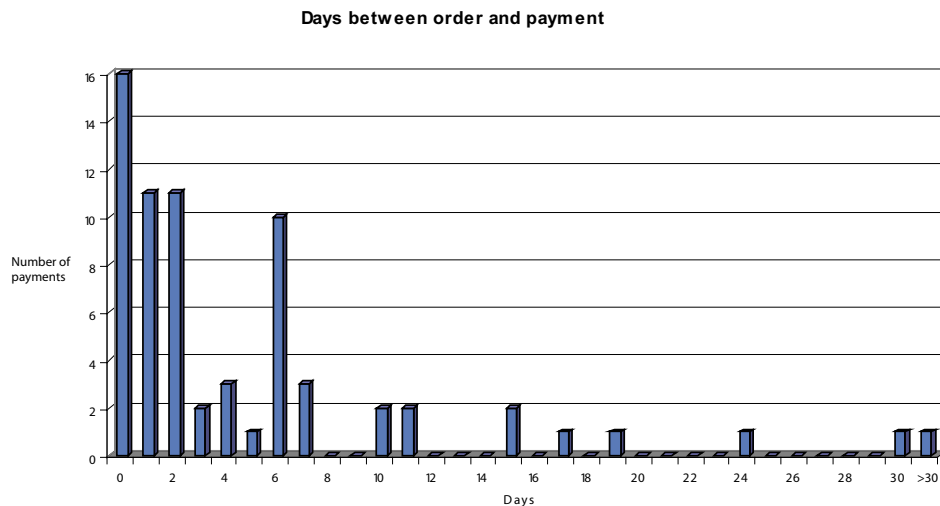


Table 2: Days between order and payment

The payment issue can also be observed from a different perspective. The following table shows how many days it took from the payment date to the date the product was actually delivered. The average time from the payment being withdrawn to the goods being delivered was 6 days. There were some webtraders (6%) that managed to withdraw the money on the same day as the consumer received the goods. The worst example was a British webtrader that delivered an ink-cartridge to Germany 40 days after they had withdrawn money from the consumer's credit card.

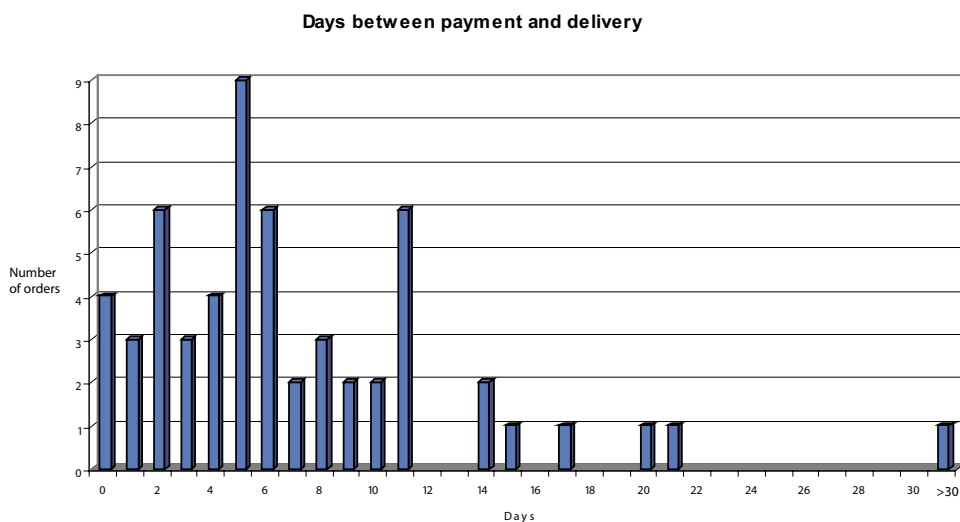


Table 3: Days between payment and delivery

5.2.4. When the products arrived

The transaction usually ends when the consumer receives the ordered merchandise. However, that is not always the case. There may be something wrong with the item or the consumer might want to return it for other reasons. It is also possible that there are financial matters that are not clear, which the consumer has to solve. In order to do so the consumer needs information about the procedure and it is helpful for both parties if as much information as possible is included in the package. The following statistics represents the information that was included in our deliveries. The final costs section is a comparison between the contract and our financial records.

5.2.4.1. The final cost

The total cost of the transaction including delivery fees should be clearly stated at the website and in the confirmation. That price should of course also be the one that is finally debited. When comparing the confirmed prices to the charged prices in our project, we found that they were the same in 96% of the cases.

5.2.4.2. Receipt or invoice

It is important that the consumer is provided with a receipt or similar financial record of the transaction, especially when credit cards are used. However, only 83% of the deliveries included any receipt or invoice.

5.2.4.3. Written information on revocation and returning rights

The webtrader has to give the consumer information regarding returns and the cooling-off period. This information is often given on the webtraders website or in the confirmation but it is desirable that it is also included in the delivery. Among the deliveries we received, 36% contained information regarding the consumer rights to return the goods.

5.2.4.4. Written information on after-sales service, warranty and guarantee conditions

The same requirements apply to this information. Only 31% of the deliveries included any information about after-sales services or guarantees.

5.2.4.5. Explanation of returns procedure

Not only is it important that the consumer is informed about his/her return rights but also how this right should be carried out in practice. In 56% of the deliveries, we received such information.

5.2.4.6. Had to give reason

The consumer has the right to return an item during the cooling-off period. The consumer can do this without giving a reason. Nevertheless 24% of the webtraders that we returned goods to demanded us to give a reason.

5.2.5. Returns

In order to ascertain if the webtraders in practice respected the withdrawal right in practice, 57 out of the 75 products were returned. We were reimbursed for 39 of the items we returned, which represent a refund rate of 68.5%. We did not receive any reimbursement at all in the remaining 18 cases. That represents 31.5% of all returns.

According to the Distance Selling Directive, the only fee that the consumer should pay is the direct cost of returning the product. That means that the consumer should only have to pay for the return freight charge unless the national law states that even that fee should be refunded. Hence,

delivery charges that the consumer has paid to receive the goods should always be included in the reimbursement. However, only 21 of the 39 webtraders that issued reimbursements included delivery charges in the refund. The rest simply ignored the delivery fee.

In 28% of the cases (16 out of 57) the webtraders that received returns had not informed the researcher about the cooling-off period prior to the purchase. One theory was that the offenders would be found in this category. However it showed that this assumption was not correct. Almost half of those (7 out of 16) did actually issue the reimbursement. That also means that 22 % (9 out of 41) of those that did inform the researcher about the cooling-off period did not issue the reimbursement when the consumer utilised his/hers right to return the product.

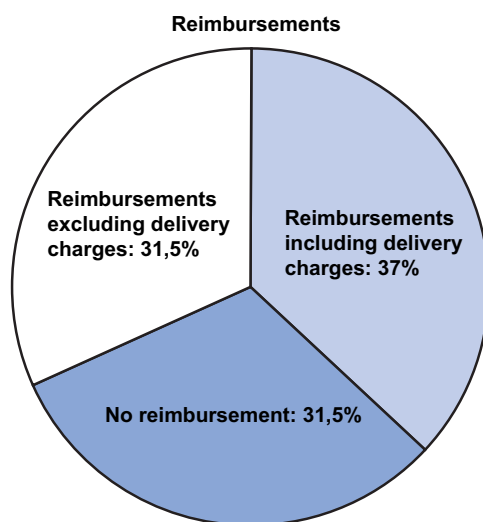


Table 4: Reimbursements

We also measured the time taken for the webtraders to issue the reimbursement. The time that is recorded is from the date the researcher sent the product back to the webtrader, to the date the reimbursement was deposited in the researcher's account. The average time was 13 days, however that number suffers from the fact that a Swedish webtrader required 77 days to reimburse our Danish researcher. The table below shows that almost 60 % of the reimbursements took place within 7-14 days after the date that the researchers returned the goods. However, one must keep in mind that the researcher did not receive any reimbursement at all in almost a third of the cases and those results are not included in this part.

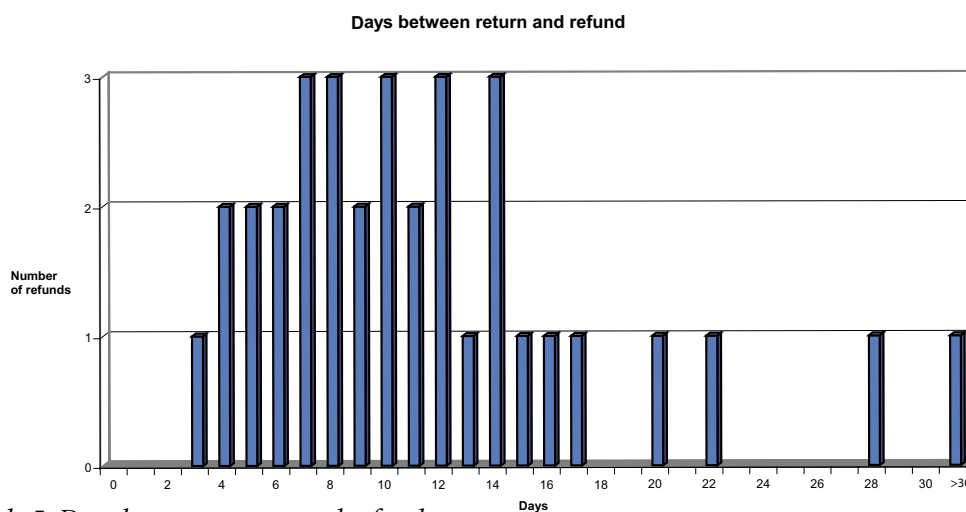


Table 5: Days between return and refund

5.3. Conclusions and comments of the shopping exercise

It is clear that it is not easy for European consumers to conduct cross-border e-commerce within the EU. Approximately one third of the ordered products in our survey were not delivered and almost one third of the webtraders refused to reimburse the researcher if they decided to return the product. In addition, almost half of the refunds did not include the delivery fee.

It is not acceptable that only 66% of the ordered products were delivered. Products displayed on a webtraders website should be available. Of even more concern is the fact that 8% of the ordered goods were not delivered, even in circumstances where the researcher had paid for them.

These facts show that there are needs for stricter market surveillance, since the consumer's position in cross-border e-commerce is unsatisfactory. The obvious risk is that the consumer may become resentful of the whole e-commerce market if he/she experiences similar troubles that we did.

It is a worrying fact that 24% (16 out of 68) of the withdrawals were performed on the same day as the order was placed. The vast majority of withdrawals were also performed before the consumer received the goods. Pre-payment of ordered goods are only permitted if the consumer and webtrader have agreed on this before the contract has been concluded. However, consumers are very rarely informed of this procedure. This procedure in combination with the fact that a lot of ordered and paid goods are not delivered, makes pre-payment in online sales questionable.

In addition, the statistics regarding the information included in the deliveries is far from satisfying. The vast majority of cases, 83%, do include some form of receipt or invoice in the package. But the fact that it was missing in 17% of the cases shows that there is still room for improvements. Ideally, such records should be given both in electronic format at the time of confirmation, and in a physical format included in the delivery. The same argument stands regarding information on revocation and returning rights and information on after-sales service, warranty and guarantee conditions. Only 36% and 31% respectively of the webtraders included any written information regarding these issues. It cannot be certain that the consumer has access to the Internet at the place of delivery or has been able to save the previously given information. There is certainly room for improvements in customer service in this respect.

However, 56% of the webtraders included information about the return procedure. This means that more webtraders inform the consumer about the return procedure than about the legal and contractual conditions regarding the return. Nevertheless, 56% is by far an unsatisfactory result, hence it is vital that the consumers are informed about both in order to avoid any misunderstandings.

The fact that 24% of the webtraders asked for a reason when we returned the goods is somewhat troublesome. The consumer has the right to withdraw from the contract without giving a reason, however our impression is that the state of consumer knowledge about this right is limited. The consequence is that such a question could very well make the consumer believe that the return will not be accepted unless he/she has a good reason. It is understandable that webtraders wish to attain information regarding why the consumers chose to return the products they ordered. A return indicates that the consumer is disappointed or dissatisfied which could be harmful for the company's image and development. A reputable company would of course want to investigate the reasons so that this could be avoided in the future. The simplest way to attain this information would of course be to ask the consumer at the time of the return. However, in cases where such a question is asked, it must be made absolutely clear to the consumer that it is not a condition for the return. The consumer must be unambiguously informed that it is optional to give this information.

It is understandable for one to conclude that there are few positive aspects to be taken from these results. This is not the case, however the positives certainly lose their focus when compared to the negative results. There are some very professional webtraders in Europe who are doing their utmost to satisfy their customers. However, the industry as a whole seems to suffer from the performance of the less professional.

If one concentrates only on the average results from the cases where the product has been delivered and the company has reimbursed the consumer for a return, the following scenario may be postulated. The consumer receives the product 11 days after making an order. If he/she has used a credit card the webtrader withdraws the money 5 days after the order date and 6 days before the delivery date. That indicates that the webtrader has withdrawn money about the same time as when they have dispatched the goods. And if the consumer chooses to return the goods, he/she can expect a refund 13 days later. These results are by no means lamentable, however there is room for improvement. The state of cross-border e-commerce in the EU would be rather good if these average results were a representation of the whole market. However, they are not so because of the observations we have already made, hence measures are necessary in order to improve the consumer's position.

Unfortunately, the only way to place emphasis on the professional webtraders is by anecdotes. One British webtrader was exceptionally efficient, with the researcher receiving the refund 14 days after he had placed the order. During that time the webtrader had confirmed the order, withdrawn money from the credit card, delivered the goods to a foreign country, handled the return, confirmed the reception with an email in which they thanked the buyer that he returned the product in good condition and finally deposited the refund in the researchers credit card account. To be able to perform all this in 14 days in a cross border e-commerce transaction is certainly professional. This is especially the case when one considers that the product was under transportation during 9 of those days.

In another example, a Dutch webtrader claimed that they never received a return. But the managing director of the firm initiated an investigation with the responsible postal authority and spent considerable time tracking the parcel. Finally the post office admitted that they had lost the parcel during its transport and that they were responsible. The postal authorities compensated the researcher for the value of the goods and the freight cost. The commitment displayed by the managing director in order to help the customer in this case proved that she had a genuine will to satisfy and help the customer even if the company was not to blame for the problem.

Unfortunately, it is possible to summarize this part of our project with a rather cynical conclusion: Cross-border e-commerce in the EU is a good shopping alternative unless something goes wrong, which it frequently does.

6. The information quality examination

6.1. Brief summary of the key findings

The webtraders are required to give full information about the total cost but 7% failed to do so. It was also difficult to find all relevant price information on some websites and only 33% of the webtraders gave a total cost in a truly convenient and accessible way.

The terms and conditions of the contract were often missing key information. In 32% of the cases, the website gave no information regarding the cooling-off period and a further 13% contained no information whatsoever about the Terms and Conditions of the contract. In 41% of the cases, the webtraders with bi- or multilingual sales information did not offer the legal terms in all those languages.

Only 65% of the webtraders had an accessible complaints section on their websites.

Information regarding the geographical location of the webtrader was inadequate in 9% of the cases.

46% of the webtraders did not have satisfactory information regarding their data protection policy.

39% of the webtraders failed to give adequate information or proof regarding their security practices.

6.2. Results of the information quality examination

According to the Distance Selling Directive a webtrader has to give certain information to the consumer prior to the conclusion of the contract. In this part of the project, we examined if these requirements were fulfilled. We also examined the information regarding customer service and data protection.

Our standards were strict and the information had to be clear and unambiguous in order to qualify. In total, 262 webtraders were examined in this part.

The information quality test was divided into 11 parts where different types of information were assessed. The different parts were:

Languages of the website, Ordering price, Stock availability, Delivery information, Payment methods, Terms and Conditions, Retailer information, Privacy, Complaints, Security and Trustmarks

6.2.1. Language(s) of the sites

Among the 262 assessed sites, the majority 76% only contained information in their native language. Approximately one fourth, 24%, had information in more than one language. Not surprisingly, the most common alternative language was English.

However, approximately 20% of these 262 webtraders are companies that we made purchases from. Due to the fact that we had problems locating webtraders that actually sold to foreign consumers, the researchers were forced to actively search for webtraders that had a clear international approach. These webtraders are more likely to have information in several language versions than the average webtrader. The result is that the 24% is probably not an accurate representation of the EU e-commerce market in general. The probable number of bi- or multilingual European e-commerce websites is likely to be significantly less.

What the result does clearly indicate is that the vast majority of e-commerce companies within the EU only target consumers in their own country or linguistic region.

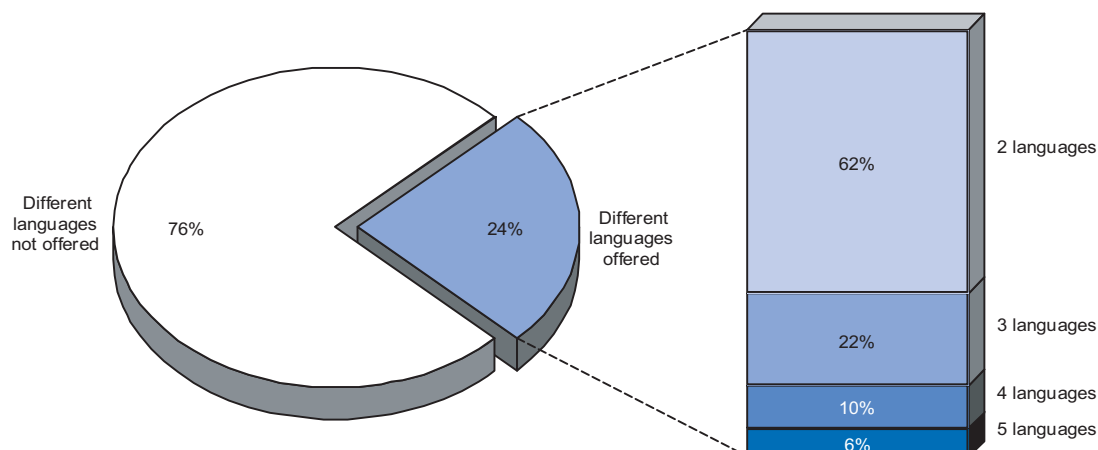


Table 6: Languages offered.

6.2.2. Ordering price

The webtraders are required by law to inform the consumer about the full price of the product including taxes and delivery charges, before the consumer makes the purchase. However, the prices are not always very clear and the consumer often has to spend a lot of time searching for the information. Often only the price of the product is presented at first and the consumer has to look at other parts of the website in order to find additional information about delivery charges. On some occasions it is even necessary to initiate a purchase in order to obtain information about the total cost. The ideal situation is when a consumer can obtain clear information about a total price inclusive of delivery charges without having to search on different parts of the website or by having to initiate a purchase. These situations are labelled “Total price clearly stated” in the table below. The less perfect situation, but still in accordance with the law, is if the delivery charge is published on a separate page. These situations are called “Information on additional charges” in the table. It is clear that the latter situation is most common, representing 60% of the assessed cases. One third (33%) of the websites give full price information in an easy and convenient manner. In 23% of the cases both criteria are actually fulfilled. That is a situation when the webtrader does give full information about the total price inclusive of delivery, however has a separate page for optional charges such as insurance, express delivery or special gift-wrapping etc. Among the 262 assessed websites, 7% are infringing the law since they do not provide the consumer with full information regarding the total cost.

Total price clearly stated / Information on additional charges	Information on additional charges	
	yes	no
Total price clearly stated	23%	60%
Information on additional charges	10%	7%

Table 7: Total price clearly stated / Information on additional charges.

6.2.3. Information on stock availability and warranty

The fact that a product is advertised on a website does not necessarily mean that it is in stock. Orders are sometimes cancelled by the webtraders for this reason even if the order has initially been confirmed. This fact is troublesome since advertised products should be available and it is reasonable to demand that the e-commerce websites are sufficiently updated. However, the fact remains that it is difficult to find clear information about stock availability and only some professional webtraders manage to do this in a clear manner. In our survey somewhat less than one quarter of the webtraders provided that information.

Less than half of the webtraders, (41%), provide any information about provided warranties or the lack thereof.

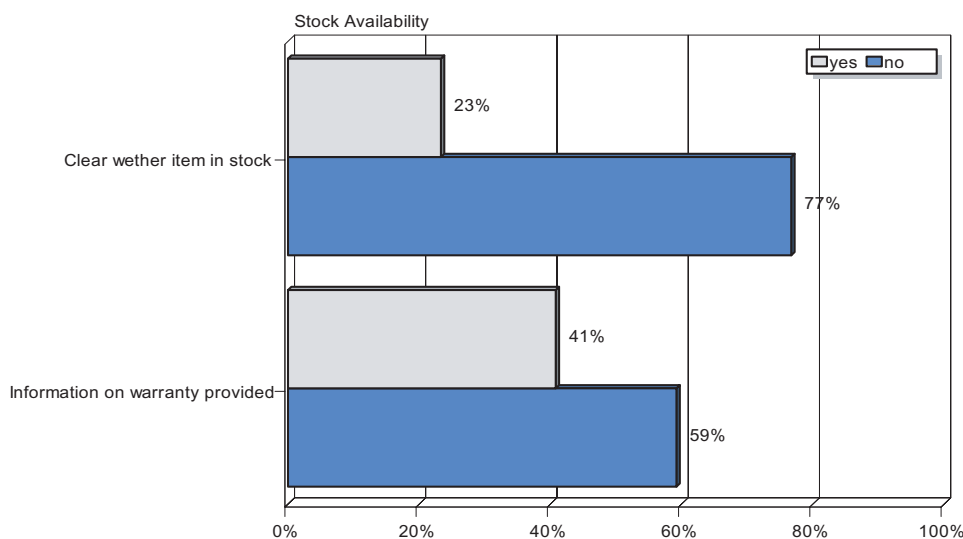


Table 8: Stock availability.

6.2.4. Delivery Information

It is important to know how long it usually takes for the webtrader to dispatch the goods. Approximately two thirds (68%) of the webtraders gave this information on their websites. It is not possible to examine the accuracy of this information in each individual case. However, the fact is that most of the companies that gave this information in the shopping exercise managed to dispatch within the stated time.

The second assessed question was “Choice of delivery times”. This refers to situations where a consumer can actually chose when he or she wants the product to be delivered, for example someone buys Christmas gifts in October, but does not want them to be delivered until December. 18% of the webtraders gave that option to the customer.

Information regarding delivery method and expected delivery time is essential. However, less than three quarters (74%) of the webtraders published this information.

Approximately one third (35%) of the webtraders gave an option to the consumer regarding the delivery method. It is preferable that the consumer is given the option of express delivery in case he/she is prepared to pay extra for this.

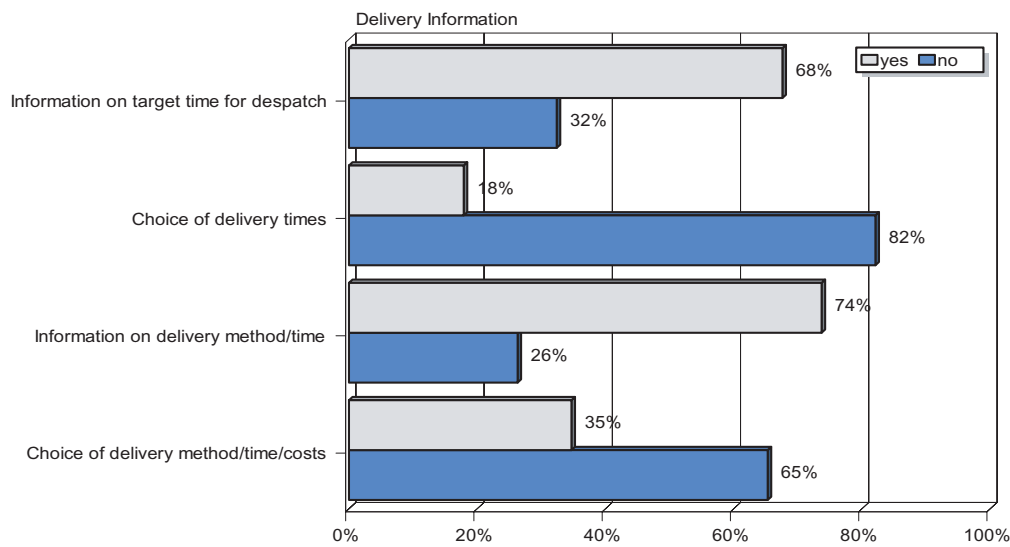


Table 9: Delivery Information.

6.2.5. Payment methods

It was difficult to make a common assessment of the payment methods since the methods vary among the member states. It was also difficult to judge if it was possible to use the same payment methods in both domestic and international transactions. The categories were assessed as follows:

Credit cards: This category includes all internationally known payment cards such as AMEX, VISA and MasterCard. In practice, VISA and MasterCard could actually be either credit cards and/or Debit/Bank cards. This practice varies among the member states. However, it would be impossible to distinguish them properly and all of these cards were placed under the “credit card” category.

Debit or Bank Card: This category includes other payment cards, which the researchers knew were either debit or bankcards, or other cards that are only used in a specific region.

Direct charge procedure: It is not uncommon for webtraders to offer some sort of direct charge procedure for regular customers. The practical arrangement for this kind of procedure varies a lot among the member states, however the common factor is that the purchase amount is withdrawn directly from the customer’s bank account. This method is almost exclusively used in domestic transactions.

Payment via bill: This category includes situations when the customer can pay via a bill either before or after the delivery. Prepayment was a more commonly adopted method than paying after delivery, however we do not have any statistics regarding that.

Cash on delivery: This category relates to two situations. The first situation is where the consumer can pay directly to a delivery firm representative when the consumer receives the goods at his/hers home address. The second situation is when the consumer pays at the post office when he/she is collecting the goods. The latter method is very common in the Nordic countries.

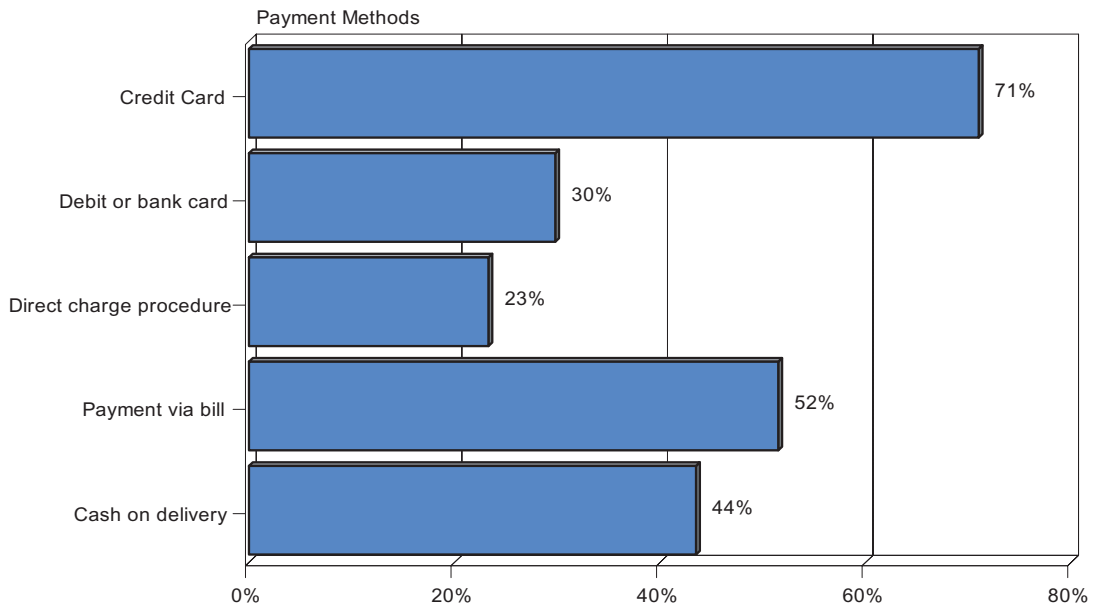


Table 10: Payment Methods 1.

The most common payment method for cross-border transaction is definitely credit cards. It is a convenient and efficient method provided it is performed in a secure manner. Security issues will be examined later in this report.

Among the webtraders we examined, 24% offered only one payment method. Rather, surprisingly, 2% of the webtraders did not disclose any information at all regarding payment.

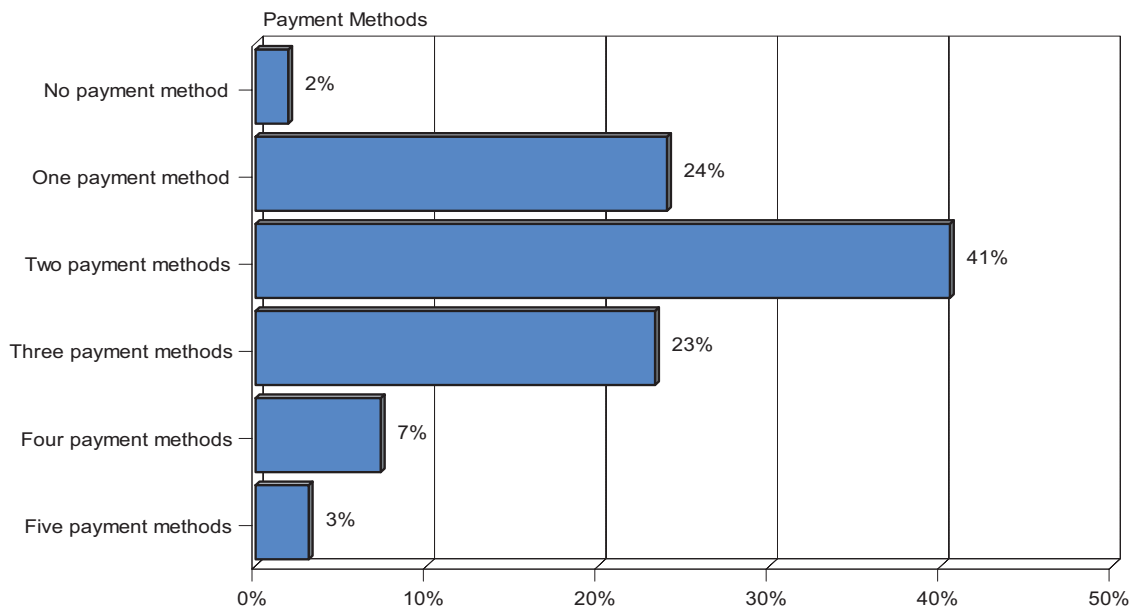


Table 11: Payment Methods 2.

Credit cards were most common option in the cases where only one payment method was offered by the webtrader. Cash on delivery and payment via bill were also common options, each representing approximately one-quarter of the assessed websites.

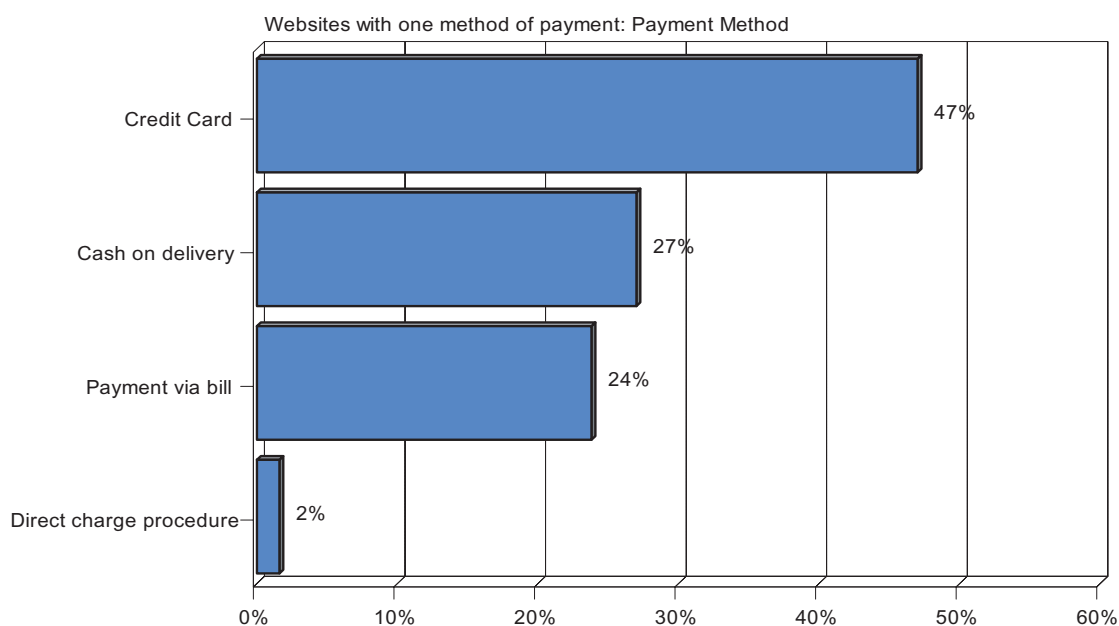


Table 12: Websites with one payment method.

6.2.6. Terms and conditions

It is absolutely essential that the terms and conditions of the contract be communicated to the consumer in a clear and comprehensive manner before the order is placed. These terms should of course include all information that is required by law.

In 16% of the assessed cases the legal information was available in different languages. The interesting point in this part can be seen from the next diagram, which shows that only 59% of those that have bi- or multilingual websites also provide the legal information in more than one language.

Approximately half of the examined webtraders automatically displayed the terms and conditions to the consumer, prior to the contract being concluded. The contract was either displayed in full to the consumer before he/she proceeded to the check-out stage or there was a weblink to the contract in combination with a tick-box in which the consumer, by marking it, admitted that the he/she had read the terms and agreed to them.

In other cases the legal terms were published on a separate part of the website or were missing altogether.

Some 38% of the webtraders had a choice of law clause in their legal terms. The law of the webtrader's country was the preferred choice. However, according to the Rome Convention, a choice of law clause can be invalid, as far as mandatory consumer protection regulations are concerned. It is possible that it is the legislation of the consumer's country's that will apply in these cases. Only a small minority of webtraders makes any reference to this fact. However, the chosen law will still govern legal issues that are not covered by mandatory consumer protection regulations and hence, are important. However, "chosen law" may not be the correct term since it is hardly negotiated between the parties. It is more of a "take it or leave it" choice faced by the consumer.

At first, the difference between the next two assessed questions may be difficult to distinguish between. The first question “Mention of revocation and returning rights” concerns information regarding the return of products that are faulty or otherwise lacking in conformity. The right to repair of such products are covered by this question as well. The question regarding “Mention of cooling-off period” concerns information regarding the consumer’s legal right to withdraw from the contract without reason within a period of at least 7 working days (this period and conditions differ between the member states. Please refer to the Cooling-off section of the report). Our assessment shows that most webtraders (74%) informed the consumer about the former issue. Only 68% of the webtraders informed the consumer about the cooling-off period.

The next two questions are also related. They are “chance to review details before placing order” and “clear when the final stage is reached”. The percentage of webtraders that fulfilled the conditions in these questions was 80% and 77% respectively. The consequence of this is that the consumer is not always certain when he/she is actually placing an order.

Only 44% of the webtraders gave any information regarding the possibility to cancel the order before it has been dispatched.

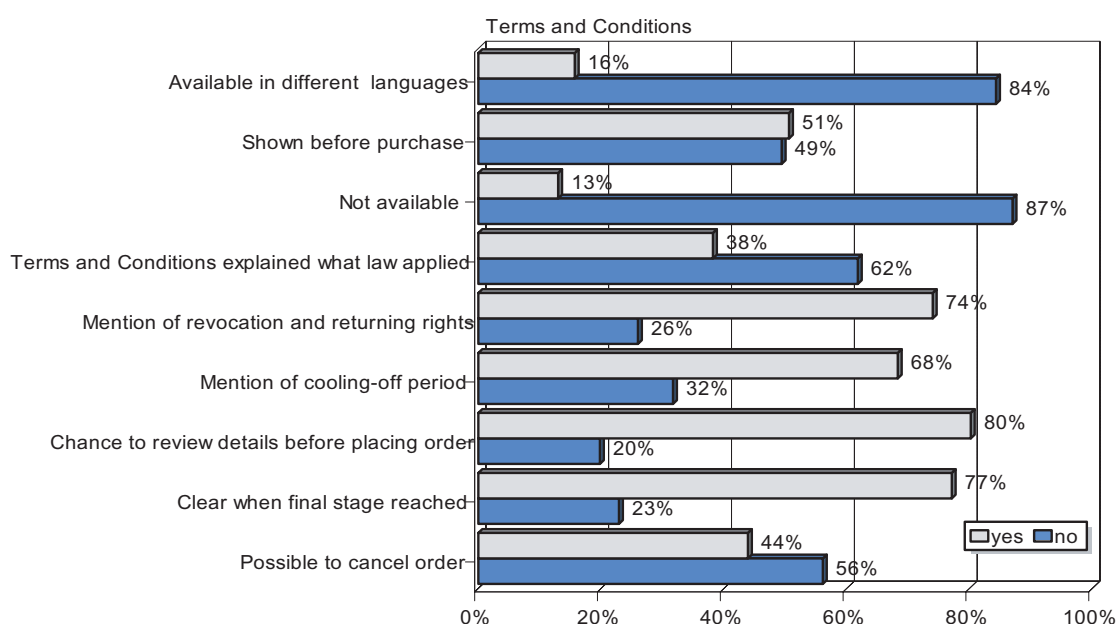


Table 13: Terms and conditions.

6.2.7. Languages of the website / Terms and conditions

As we previously mentioned, only 59% of the bi- or multilingual webtraders gave full legal information in all languages that are used on the website.

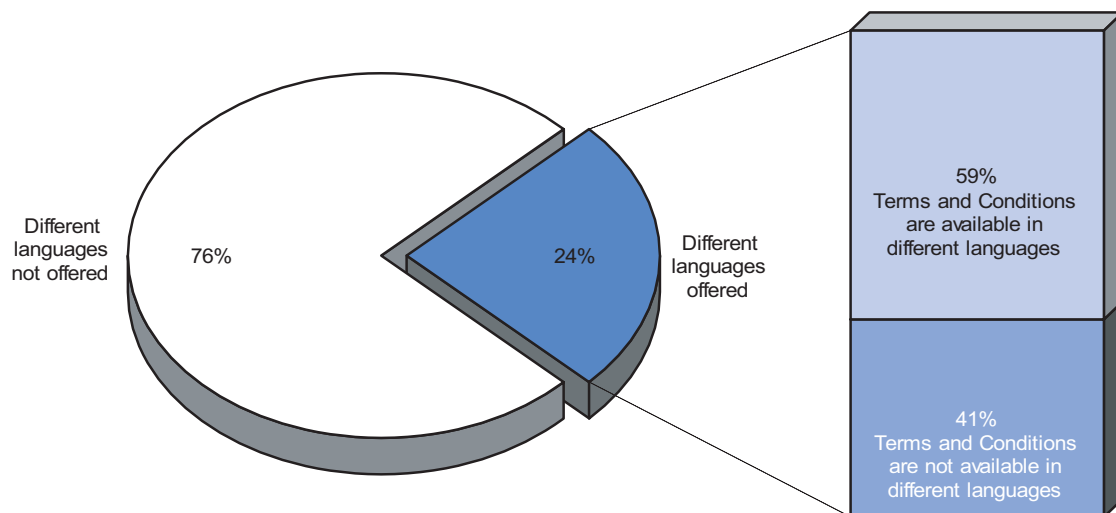


Table 14: Languages of the website / Terms and conditions available in different languages.

6.2.8. Retailer Information given

Due to the anonymous nature of the digital environment, it is absolutely necessary that the webtrader reveal as much information as possible about the company. However, not all of them give the consumer a complete address. In 9% of the assessed cases, the webtrader did not publish sufficient information about their physical location.

The majority (61%) of webtraders did not publish their company's registration number.

In 94% of cases, the webtraders published a phone number for queries and 95% provided an email address.

Only 19% gave the name of a contact person for queries.

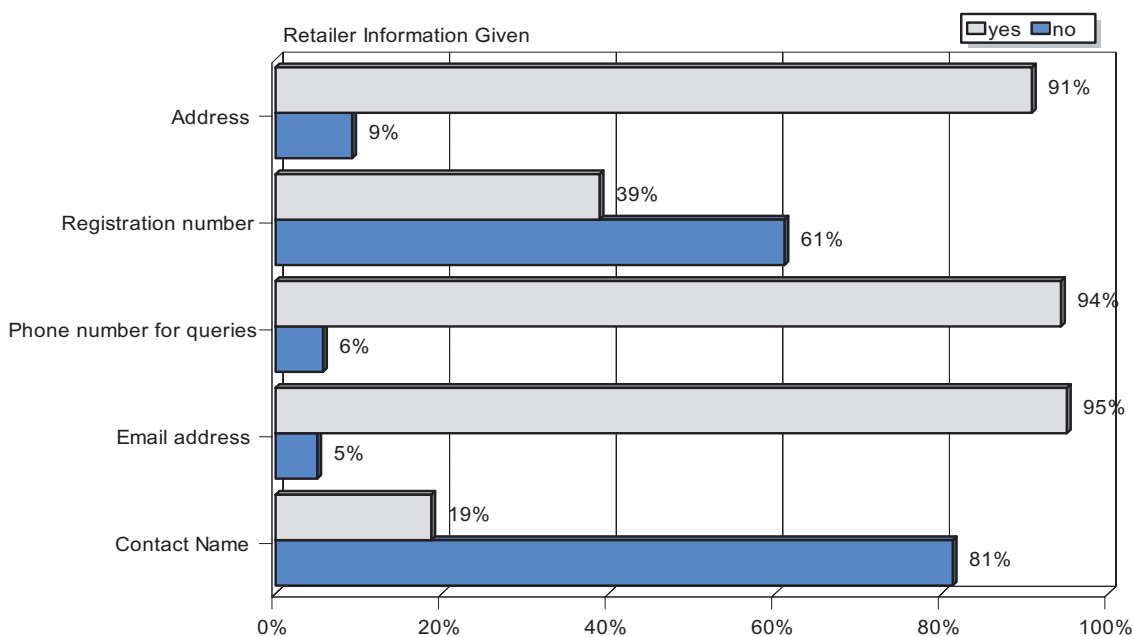


Table 15: Retailer information given.

6.2.9. Privacy

Issues regarding privacy and data protection will always be of importance when one examines e-commerce. Concerns regarding the consumer's personal data have been raised since the very beginning of online sales and are regarded as one of the main reasons why consumers refrain from electronic shopping malls.

Less than half (49%) of the examined webtraders provided a tick box for mailing lists. Among the remainder are webtraders that do not have mailing lists at all, or simply do not ask for permission. The researchers still receive unsolicited emails from some companies that we made purchases from. However, the vast majority of the 51%, that did not have a tick box, evidently do not have mailing lists.

55% of the examined webtraders provided the consumer with the possibility of preventing their personal data being passed on to third parties. Webtraders that stated that they would never pass on the consumer's personal data under any circumstances (unless requested to do so by law enforcement agencies) were included in this category.

In 54% of the cases, the webtraders also gave additional information about privacy issues.

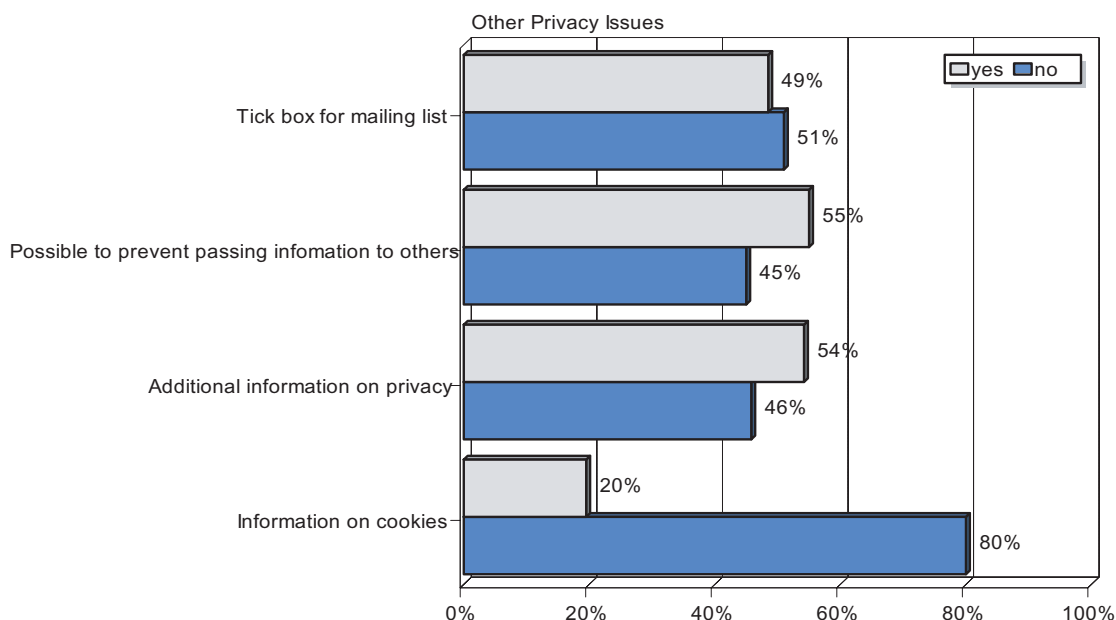


Table 16: Other privacy issues.

6.2.10. Complaints

A reputable webtrader should have a well-developed complaint procedure and that procedure should be easily accessible on their website. However, our examination revealed that it is not always easy to find this information. According to the opinion of our researchers, the complaint procedure was easily found in 65% of the cases. Some webtraders did not publish any information regarding complaints.

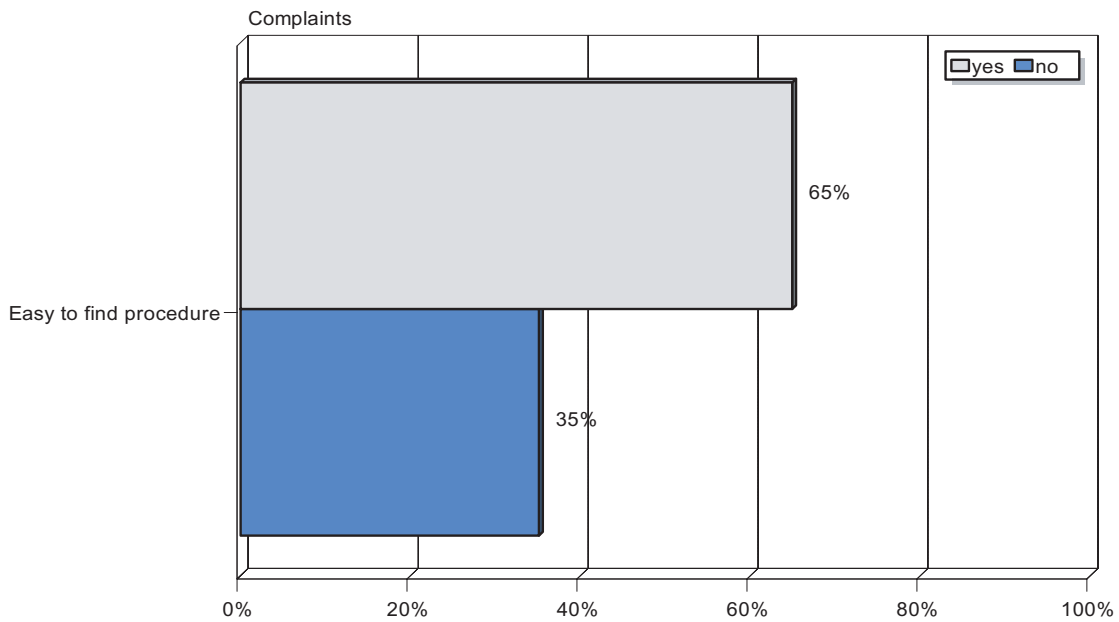


Table 17: Complaints.

6.2.11. Security

It is crucial that the website is secure for online payments if the consumer intends to use a credit card or a Debit/bank card. However, it is not always easy for the consumer to find sufficient information about this. The researchers were given the task of examining every webtrader in the project regarding this issue. In 61% of the cases the researchers found enough information to be convinced that the website was secure. Indications of this were either the closed padlock symbol, or if the address started with “https” or a secure payment trustmark. Unfortunately, 39% of the websites did not convince the researchers that they were secure for online payments and a lot of those sites did accept credit cards. 45% of the websites also offered additional information about their security measures.

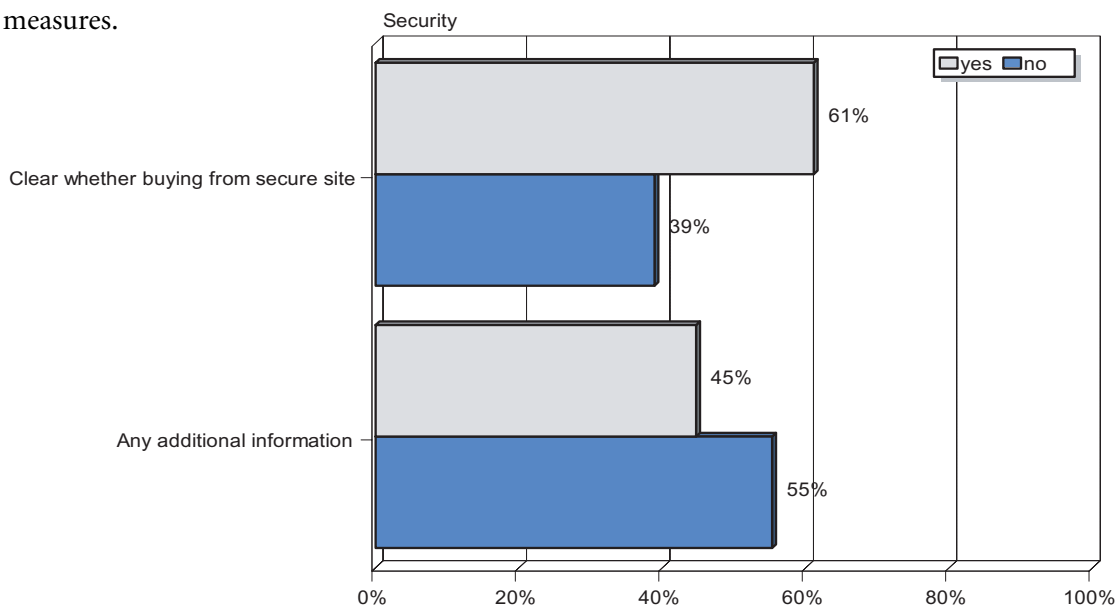


Table 18: Security.

6.2.12. Trustmarks

The subject of e-commerce trustmarks present several difficult issues. Currently, we have observed a widespread development of e-commerce trustmarks, trust certifications or trustseals. Trustmark organisations award their trustmarks to certain e-vendors for display on their websites. In order to obtain the trustmark, the e-vendor has to comply with the organisation’s code of conduct, standards, criteria or code of practice. The purpose of the trustmark is that it shall inspire more trust in the consumer and make him feel confident that the certified webtrader is trustworthy, law-abiding and efficient. However, there is a whole flood of various e-commerce trustmarks and schemes, which differ considerably from each other. Some trustmarks only deal with matters of data protection or secure payments whereas others act as neutral third parties and mediate in disputes between consumers and businesses.

We set up two criteria that we used to decide if a trustmark would be considered in our project.

1. The trustmark’s code of conduct should include provisions concerning consumer protection and business ethics issues similar to the ones we have examined in this project.

2. It should act as a third party which the consumer can turn to for mediation or dispute resolution in case the consumer has a problem with one of the certified companies.

Among the examined websites, 13% (34 out of 262) were certified with a trustmark⁸. This number is most likely overly representative since trustmark organisations were used as a method by some of the researchers to find webtraders. Therefore, it is not possible to state that 13% of the webtraders within the EU have some sort of e-commerce trustmark that fulfil our above-mentioned criteria. The actual number is probably significantly less, however it was not within the scope of our project to examine that.

Some 71% of those webtraders with a trustmark offered some sort of explanation about what the certification was for and what it meant for the consumer.

One could also assume that a webtrader would choose to place a trustmark on a prominent position on the website. However, only 79% of the certified webtraders did that.

Just above one-quarter of the certified webtraders (27%) offered the information in more than one language. It shows that the existing trustmarks are focused mainly on domestic e-commerce.

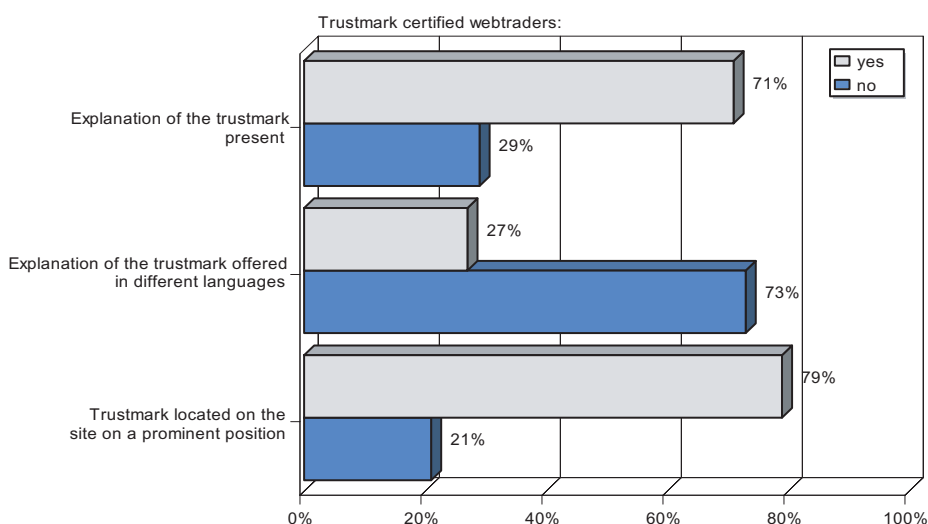


Table 19: Trustmark certified webtraders.

⁸ Among the trustmarks we included were the German Trusted Shops and Geprüfter Online-Shop, the Danish e-maerket, The Austrian Guetezeichen, the Dutch Thuiswinkel Waarborg, the Spanish Atiendes and the British Which Webtrader. Unfortunately, Which Webtrader have closed down their operations since. But we chose to keep them in the report since the statistics are concerning the results at the time of the assessment.

An interesting question is if the webtraders that are certified with a trustmark actually offer better information than the ones that are not certified. We chose to examine this in respect of two questions, “Mentioning of cooling-off periods” and “information on returns”, which was examined in part 6 of this section.

It turned out that 82%, (28 out of 34) of the webtraders that have a trustmark inform properly about both issues. In 12% (4 out of 34) of the cases, they properly inform about returns but fail to sufficiently inform about the cooling-off period. Some 6% (2 out of 36) failed to inform about either.

Sides with trustmarks		
Returns information offered \ Mentioning of cooling-off period	yes	no
	yes	82%
no	12%	6%

Table 20: Sides with trustmarks.

Among the webtraders that were not certified with a trustmark, 60% offered sufficient information about both return and the cooling-off period. Approximately 13% inform about returns but fails to inform about the cooling-off period. 6% inform about the cooling-off period but do not have satisfactory information about returns. Finally, 21% of the uncertified webtraders fail to inform about both issues.

Sides without trustmarks		
Returns information offered \ Mentioning of cooling-off period	yes	no
	yes	60%
no	13%	21%

Table 21: Sides without trustmarks.

6.3. Conclusions and comments of the information quality examination

As in the shopping exercise the focus will inevitably concentrate on the negative results. The statistics indicate very well that vital information is often missing and that a large percentage of the webtraders do not meet the legal requirements.

It's absolutely necessary that information regarding the legal conditions is comprehensive, correct and accessible. However, the statistics indicate that this is one of the most problematic areas. It is a

worrying fact that 41 % of the websites that had sales information in different languages failed to offer legal information in those languages. As a result the consumer might be lured into a contract due to marketing reasons, but be denied of the opportunity to examine the legal content. It's also of major concern that 13% of the examined webtraders did not publish any legal information whatsoever.

Approximately, half of the webtraders displayed the contract automatically before the consumer confirmed the order. This was either in full or via a weblink and tick box option. It is technically simple for a webtrader to show the legal terms automatically by either of these two methods and it is desirable that more than 51% make use of that.

Information about the returning rights and withdrawal rights under the cooling-off period is essential. The result showed that 74% and 68% respectively, of the webtraders assessed gave sufficient information about these issues. That is a particularly poor result since they are required by law to inform the consumer about this.

It was also difficult to know when exactly an order was placed and confirmed. It is vital that the shopping procedures are performed in steps and that the customer is aware of when he/she is actually placing an order. However, in some cases it was very difficult to know when an order was submitted. This is especially troublesome since many webtraders do not give full information regarding the total cost, legal terms etc, unless the consumer actually initiates a purchase. The result was that the researchers accidentally placed orders on some occasions. The webtraders have to make sure that the consumers are sufficiently informed and it should be unambiguously clear when the final stage is reached.

The anonymous environment in e-commerce makes it necessary for the vendor to give clear and comprehensive information about the company. A registration number and a reference to the register in which they are listed might be the only way for a consumer to actually perform a check-up of the company. Only in 39% of the cases did the webtrader give information about that and there is certainly room for improvement here.

Only a minority of the webtraders gave the name of any contact person for queries. A name and, better still, a picture of the person responsible for orders or complaints would most likely enhance the consumer's confidence in that company.

One of the major obstacles to the development of e-commerce has been the consumers concern over data protection. However, only 54% of the examined webtrader gave satisfactory information regarding this. This means that a staggering 46% of the examined webtraders failed to give sufficient information to the consumers regarding one of the main problems for the industry.

However, it is worth mentioning that some reputable companies gave exceptionally good information about their data protection policy with a reference to the applicable data protection legislation.

It is remarkable that some webtraders, although few in number, did not give any information at all about payment method. In these cases the payment method was announced and decided upon after the consumer had placed an order. This procedure is perplexing as it is difficult to understand why a company would exclude this information.

The positive side is that 33% of the webtraders offered three or more payment alternatives. Credit cards may be the most efficient and convenient method but consumers still distrust online payments. Therefore it is important that there are some alternatives available, in order to reach those consumers who are not comfortable with credit card payments.

The information about trustmarks provided some noteworthy results. The number of examined websites was too low in order to claim any statistical facts, however they do give some interes-

ting indications. The results suggest that the information regarding returns and the cooling-off period is better on websites that are certified with a trustmark. However, the fact that not all of the certified webtraders managed to inform about these issues could raise questions concerning the quality of the trustmarks code of conduct, or indeed their ability to monitor the webtraders that subscribe to their certificate.

One could assume that a webtrader would place the trustmark in a prominent position on the website and that they would explain the significance of the seal to the consumer. However, that was not always the case. The fact is that the consumer awareness regarding trustmarks is low. With that in mind it seems quite amazing that some companies chose to go through a certification process and pay the annual fees for a certificate that has the purpose of enhancing consumer confidence and promoting sales, and then ignore or fail to properly inform the consumer about it?

7. Legal and practical analysis of the cooling-off period

7.1. Introduction and summary of the analysis

One of the most important features in the EU Distance Selling Directive is the consumer's right to withdraw from the contract during the cooling-off period. Due to our experience from previous consumer complaints, we knew that it is difficult for consumers to exercise this right. Some webtraders simply ignore this right or issue procedural restrictions, which make it difficult for the consumer to return the product. Our own experiences during the project confirmed this, so we decided to have a deeper look into the issue.

We chose to appoint an external researcher for this task. The task was given to Karl von Rumohr at the Humboldt University in Berlin. He is currently working on a Doctorate Thesis in International contract law with emphasis on conflict of law aspects of international distance selling contracts.

There were 4 main issues we wanted to examine. The following is a brief summary of Karl von Rumohr's findings, which is presented in detail in chapter 7.2.

1. A brief presentation of the implementation of the Distance Selling Directive into the national legislation of each member state.

The purpose was to give a brief background of the Directive and the motives behind it, with a special emphasis on the cooling-off period.

The EU Distance Selling Directive set the minimum rules for the cooling-off period. According to the Directive, the consumer shall have a period of at least seven working days in which to withdraw from the contract without penalty and without giving any reason for the withdrawal. The period for exercise of this right shall begin, in the case of goods, from the day the consumer receives the merchandise.

However, this is the minimum requirement and EU member states can decide to have a longer cooling-off period. Some countries have done so, with the result being that the length of the cooling-off period differs among the member states. This can confuse both consumers and businesses alike and our aim was to clarify the situation.

The key findings in this section were:

- The Distance Selling Directive has been implemented into all member states except Luxembourg.
- The length of the cooling-off period varies among the member states and three different models have been chosen. Observe the difference between working and calendar days.
- 7 working days in: Austria, Belgium, France, Ireland, The Netherlands, Spain and United Kingdom
- 10 working days in: Greece and Italy
- 14 calendar days in: Denmark, Finland, Germany, Portugal and Sweden

2. Practical restriction to the withdrawal right

It is often that the webtrader either ignores or restricts the consumer's right to withdraw from the contract within the stipulated cooling-off period. As shown before 32% of the webtraders do not mention the cooling-off period at all in their legal terms and are thus in direct conflict with the

legislation. Even the webtraders that do inform the consumer about their right to withdraw from the contract can be in conflict with the law when their return procedure includes restrictions to that right. The key findings in this part were:

9% of the webtraders had set up withdrawal conditions in the contract that constitute an illicit restriction on the withdrawal right.

The most common restriction was that the cooling-off period granted in the contract was shorter than the one provided in the national legislation. This is a clear violation of the consumer's mandatory rights. Other webtraders stated that the wish to withdraw had to be noticeably expressed before the expiry of the otherwise entirely granted cooling-off period. However, this restriction equals a shortening of the cooling-off period since the consumer effectively has got less time to think it over should he/she want to make use of their right.

The second most common restriction is that the consumer had to give a reason for the return. This is actually an even bigger problem in practice. In this examination we are only concentrating on the webtraders that have this restriction in their legal terms. However, as shown in our shopping exercise, 24% of the webtraders asked for a reason when the researcher informed them that they wished to return the product. This is also a clear violation of the consumer's rights since the Directive explicitly states that the consumer shall be able to withdraw from the contract without giving a reason.

Several other restrictions were also found which practically hinders the consumer's ability to make use of the withdrawal right. Two of those are rather common and can cause problems. Some webtraders demanded that the merchandise should be kept in the undamaged original packaging in order to accept the return. The practical effect of such a condition is that the consumer might lose the possibility of examining the merchandise closely. The consumer has a right to examine the product before making the decision to withdraw from the contract and some packages will inevitably be damaged when the product is unpacked. Some suppliers only accepted the return if the return package was marked with a return number, which the consumer has to obtain from the seller. The webtraders reason for this is most probably to optimise the return procedure. However, the question is if the webtrader can refuse to accept a return that lacks a return number. Such a condition could infringe the consumer's unilateral right to withdraw from the contract.

3. Evaluation of the exceptions of the cooling-off right

There are exceptions to the consumer's right to withdraw from the contract during the cooling-off periods. These exceptions are listed in Article 6, section 3, in the Distance Selling Directive. However only 7 out of 260 examined websites sold products that are exempted, which shows that only a small portion of the goods offered over the Internet fall under this category. The majority of these cases were because the objects of the contract were goods that are liable to deteriorate or expire rapidly (i.e. flowers and foodstuffs).

4. Costs resulting from the withdrawal from the contract

According to the Distance Selling Directive, "the only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods." Our ambition with this analysis is to clarify exactly what that actually means. Our shopping exercise showed that refunds from returns is one of the most problematic areas. Only 68.5 % of the webtraders issued a reimbursement and just over half of those included the delivery charge. One webtrader even issued a penalty fee of 20 % of the purchase price and claimed that this was a restocking fee.

The main conclusion of this analysis is that “direct costs” only include the ones being met by the consumer. In other words, the consumer should only pay for the return freight. Consequently, delivery fees should be included in the reimbursement and penalty fees, such as a restocking fee, are illicit.

7.2. Legal analyse of the cooling-off period provisions. By Karl von Rumohr

7.2.1. Presentation of the Distance Selling Directive

On 20th of May 1997 the European Parliament and the Council enacted the so-called “Distance Selling Directive”.⁹ The Directive, which comprises 19 articles, serve the following two purposes. Firstly, it is designed to raise the standard of consumer protection in Europe in the area of contracts that are made between a consumer and a supplier over a spatial distance. Secondly, it is supposed to encourage the cross-border turnover of goods and services in Europe.¹⁰ The member states of the European Union had the duty to implement the Directive into their own national law.¹¹ In relation to consumer protection the Directive lays down a minimum standard.¹² This means that in transforming the Directive into national law, the member states could deploy its regulations in favour of the consumer.

In the first three Articles, the Directive describes its own area of application and to which type of contracts it applies to.¹³ Articles 4 to 6 stipulate the duty of the supplier as being to inform the consumer about explicitly listed details of the object of the contract, and about the settlement of the contract. Furthermore, the consumer attains the right to withdraw from the contract. At this point, the Directive shall not be presented in detail. Instead this section is going to concentrate on the right of withdrawal, which is granted in Article 6 of the Distance Selling Directive, and especially on the cooling-off period.

The Distance Selling Directive grants a right to the consumer to withdraw from the contract without giving a reason. He/she can do this within a period of seven working days.¹⁴ The beginning and the duration of the cooling-off period depend on two factors. Firstly, it is decisive that the operator supplies the consumer in writing with the information as provided by the Distance Selling Directive. Secondly the beginning of the cooling-off period depends on whether the contract concerns the supply of goods or of services.

For a contract concerning the supply of goods, the cooling-off period begins at the earliest opportunity on the day on which the consumer receives the bought goods. For contracts concerning the provision of services, it begins on the day on which the contract was concluded. However, the cooling-off period only commences at this time under the condition that the supplier has carried out all of his duties concerning the supply of information, which are set out in the Distance Selling Regulations.

⁹ Its official title is Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.

¹⁰ These aims are also expressed in the 24 recitals that are set before the Directive, particularly in recital number 3.

¹¹ According to Article 15 par. 1 of the Distance Selling Directive, this had to be done by June 2000. The Directive was published in the Official Journal of the European Community on June 4th 1997.

¹² According to Article 14 of the Distance Selling Directive. The principle of ‘minimum harmonisation’ is also laid down in Article 153 par. 5 of the Treaty of the European Community.

¹³ This is where the central term of the “distance contract” is defined.

¹⁴ By using the expression “at least seven working days” the Directive points out that it only sets up minimum guidelines concerning the consumer protection, which could be widened at the occasion of the transformation into national law.

If the supplier does not carry out these duties according to the law, the cooling-off period will extend for a period of up to three months. For a contract concerning the supply of goods, the three-month period starts at the moment in which the consumer receives the goods. For a contract concerning the provision of services this three-month period commences from the day when the contract was concluded. If the supplier carries out the duty of confirming this information in writing, as prescribed by the Distance Selling Regulations, in the course of these three months, then the seven day cooling-off period will start respectively from the date of receipt of that information.

Furthermore, the Directive lists several contracts that can be concluded as a distance contract, however in such cases, the consumer is not legally entitled to a right of withdrawal.

7.2.2. Implementation of the Distance Selling Directive in the member states

The Distance Selling Directive has already been implemented in almost all member states of the European Union, which means that it has been adopted into the national laws of the member states.¹⁵ In several member states, the implementation of the Directive has been executed by creating a new domestic law.¹⁶ In other cases, the regulations of the Distance Selling Directive have been incorporated into pre-existing regulations.¹⁷

Due to the fact that the Distance Selling Directive sets up a minimum standard of consumer protection, the newly created national laws are not necessarily identical, but have in some cases, widened the level of consumer protection to an extent that is higher than the standard of the Directive. A comparison of the national laws which implement the Distance Selling Directive shows that suppliers and consumers have to be prepared for varying interpretations of the regulations by member states, with regards to the right of withdrawal and the cooling-off period.

Concerning the *length of the regular cooling-off period*, the Distance Selling Directive was implemented in three different ways in Europe. Most of the member states have taken over the Directive's minimum guideline of seven working days.¹⁸ In Luxembourg, the law that is applicable as a substitute grants the same period. The Italian and Greek implementation of the law is the only ones that extend the cooling-off period to ten working days. In the remaining states the cooling-off period has been extended to fourteen calendar days.¹⁹

The member states of the European Community have taken over the regulations concerning the *start of the cooling-off period* without making changes.²⁰ Hence all over Europe, the cooling-off period starts running when the following conditions are fulfilled: conclusion of the contract,

¹⁵ An implementation in Luxembourg is still to come. Information on the actual state of the implementation in Luxembourg can be obtained on the Internet www.etat.lu.

¹⁶ For example, The United Kingdom, Statutory Instrument 2000 No.2334, The Consumer Protection (Distance Selling) Regulations 2000. Ireland, Statutory Instrument S.I. No. 207 of 2001, European Communities (Protection of Consumers in respect of contracts made by means of distance communication) Regulations, 2001. *This article only refers to the wording of the national laws that officially implement the Distance Selling Directive. It does not take into account any additional jurisdiction, comments or regulations that elaborate the national distance selling law.*

¹⁷ For example Austria, § 5a fol. Konsumentenschutzgesetz. Germany, §§ 312 b fol. Bürgerliches Gesetzbuch.

¹⁸ Austria, Belgium, France, Ireland, The Netherlands, Spain, United Kingdom.

¹⁹ Denmark, Finland, Germany (German law actually speaks of 2 weeks), Portugal, Sweden.

Another factor that has lengthened the duration of the cooling-off period when the Directive was implemented into national regulations was that some states, such as France, Finland and Austria do not include Saturdays as 'working days'. If the cooling-off period ends on a Saturday, Sunday or a public holiday it will extend to the next working day. The expression 'working day' is not homogeneously interpreted within the European Community. For example, in some states, Saturday is viewed as a working day, whilst not in others. *Micklitz in Grabitz/Hilf, Das Recht der Europäischen Union (The law of the European Union), Kommentar (Commentary) Band III, A 3 Rn 69.*

²⁰ For example, Austria, Belgium, Italy, Ireland, The Netherlands, France and Portugal. *See Footnote 15.*

confirmation of the information, and concerning contracts of the supply of goods, after the reception of the goods by the consumer.²¹ According to the Directive, the *cooling-off period is prolonged* in cases where the webtrader fails to inform the consumer about the right of withdrawal. However the national laws in the member states contain different criteria and various lengths.²² When implementing the regulations on the *exceptions to the consumer's right of withdrawal*, less than half of the member states adhered to the guidelines of the Directive.²³ The other states elected to undertake small modifications.²⁴

Due to the remaining differences in the national distance selling regulations in the member states, it is still a point of contention in establishing which national law will apply to an international distance-selling contract. Before the courts within the European Union, this question will be answered in most cases by reference to Article 5 of the “Rome Convention on the law applicable to contractual obligations”. In certain enumerated cases this article leads to the application of the law of the country in which the consumer resides. A choice of law will be invalid as far as the law of the consumer's home country grants a higher level of consumer protection than the chosen law. In this case, singular regulations of this law will apply additionally to the chosen law. If a consumer accepts a distance-selling offer from an alien operator from his home country, on first sight, the applicability of Article 5 of the Rome Convention seems likely. However, the application of this regulation on distance selling contracts leads to a lot of unsolved problems.

²¹ Most of the member states also adhered to the wording of the Directive in counting the day on which the decisive event for the start of the cooling-off period occurred as being the first day of the cooling-off period. Exceptions are made by the English Statutory Instrument 2000 No. 2334, Regulation 11 par 2, 3, 4 and Regulation 12 par 2, 3, 4 and by the Belgian law on commercial practices of 14th of July 1991, Chapter 6 Section 9 Article 80 § 1. See *Footnote 15*.

²² In Finnish distance selling law, the cooling-off period only extends to the length of three months if the supplier sends a written confirmation to the consumer and this confirmation does not comply with the legal demands. If the supplier does not undertake any measures to provide the consumer with a written confirmation the consumer's possibility of dissolving the contract will extend to one year (Finnish Consumer Protection Act chapter 6 section 15 par 2 and section 20 par 1).

-In Swedish distance contract law, the extension of the cooling-off period depends on the question regarding which information the supplier does not provide in a written confirmation. In consequence, the cooling-off period partially extends to three months and partially to a year from the conclusion of the contract, or from the delivery of the goods (Swedish Act on the protection of consumers in respect of distance contracts and home sales, section 16).

-The German Bürgerliches Gesetzbuch rules that the cooling-off period does not prolong to three months but to six months if the supplier does not properly provide the consumer with the supposed information in writing. (§§ 312 d I, 355 III Bürgerliches Gesetzbuch).

-According to English law the cooling-off period, in diverging from the Distance Contracts Directive, always extends by three months and seven days if the supplier does not carry out his duty of providing a written confirmation of the owed information. (Statutory Instrument 2000 No. 2334, Regulation 11 par 4 and Regulation 12 par 4). See *Footnote 15*.

²³ France, Italy, Ireland, The Netherlands, Portugal, and United Kingdom. See *Footnote 15*.

²⁴ In diverging from the Directive's regulation that there is no right of withdrawal in contracts concerning the supply of newspapers, Austrian law grants a legal right of withdrawal in contracts on the delivery of “periodic print publications” (§ 5 f Nr. 5 of the Austrian Konsumentenschutzgesetz).

-In Finnish law there is the right of withdrawal in the cases of home deliveries and leisure services if the operator makes his offer by way of “cold calling”. (Article 3 par. 2 of the Distance Selling Directive. Chapter 6 of the Finnish Consumer Protection Act, Section 7 par 2). In diverging from the Directive, the consumer has a right of withdrawal in contracts concerning the supply of newspapers and magazines if the operator's offer is made by way of “cold calling”. (Chapter 6 of the Finnish Consumer Protection Act, Section 16 Nr. 6).

-Other than that provided by the Distance Contracts Directive, the German distance contract law is applicable to contracts that are concluded by way of an auction. However in these cases the consumer has no legal right of withdrawal (§ 312 d IV Nr. 5 of the German Bürgerliches Gesetzbuch).

-Swedish law did not adopt the exclusion of the right of withdrawal in contracts for the supply of goods made to the consumer's specification, or clearly personalised goods. Instead, the business operator and the consumer may agree in writing that the cooling-off period shall begin to run from the time of the arrival of the written confirmation of the information pertaining to the consumer, even if he has not as yet received the goods. (Article 6 par 3 Nr. 3 of the Directive on Distance Contracts. Section 14 par 3, Section 15, par 3 of the Swedish Act on the protection of consumers in respect of distance contracts and home sales). See *Footnote 15*.

7.2.3 Registered restrictions to the exercise of the right of withdrawal in practice

The studies conducted on distance selling offers on the Internet carried out by the ECC Network show that in a significant number of web sites, the existence of a consumer's right of withdrawal is expressed, however it is frequently hampered by hindrances and restrictions.²⁵ In 9% of the assessed web sites the operator set up rules for the use of the right of withdrawal which can implement the effect of such restrictions.²⁶ The examples given by the study of the ECC Network are suitable for a discussion, if the traders on the Internet alter the consumer protection rights of their customers by modifying the right of withdrawal and its exercise. Alternatively, it is illicit if the supplier makes special demands for the exercise of the right of withdrawal. In this case the supplier must accept the returned goods without further ado, even if the consumer did not obey the special demands when withdrawing from the contract.

The most frequently registered modification of the consumer's right of withdrawal by the supplier on his web site is the shortening of the cooling-off period.²⁷ The consumer's right of withdrawal is a key element of consumer protection in distance contracts. When a consumer buys a good in a shop he can personally examine it and get all necessary information from the seller before the conclusion of the contract. Under these circumstances, he decides whether to enter into a contract with the seller or not. Due to the fact that in a distance contract the consumer does not have these possibilities, he is granted a certain period of time in which he can think over the conclusion of the contract once again.²⁸

The legal cooling-off period does not lay down an approximate number of days that can be subjected to small reductions. Instead it sets up a binding minimum time for the consumer to think over the conclusion of the contract. The shortening of the legally granted cooling-off period has the effect of representing a serious loss of rights for the consumer. Even an individual agreement signed by the consumer does not take effect if it reduces the cooling-off period to the extent that it is shorter than the period of time provided in the national regulations. Only the legal regulations determine the period of time within which the withdrawal is possible.

The second most frequent restriction of the exercise of the right of withdrawal turned out to be that where the consumer had to give reasons for the withdrawal.²⁹ The Distance Selling Directive clearly provides that the consumer may withdraw from the contract without giving reasons. But some member states failed to include this provision clearly when implementing the Directive.³⁰ However, this does not mean that the operator can make the consumer's withdrawal dependent on the submission of an explanation. The national distance contract regulations must be interpreted in a way so that they are not conflicting with the Distance Selling Directive. National law must not deviate from the Directive to the detriment of the consumer. In case of uncertainties in the use of the national law, this has got to be interpreted in a way that conforms to the Directive.

²⁵ It is not the supplier who gives the right of withdrawal to the consumer. Instead it is granted to him by regulations in the national distance selling laws.

²⁶ 35 % of the tested web sites did not comply with the national regulations on the cooling-off period. On 24 of the 260 tested web sites, the supplier set up rules for the exercise of the consumer's right of withdrawal which do not comply with the distance contract laws.

²⁷ 29.2% of all discovered modifications of the right of withdrawal were reductions of the cooling-off period.

²⁸ So already reason number 13 of the first draft of the Distance Selling Directive of 1992; Official Journal EC C 156, 23.6.1992, p.15

²⁹ In 20.8% of all registered restrictions of the right of withdrawal, the dissolution of the contract was accepted only with an explanation.

³⁰ For example, the regulations relating to distance contracts in Austria, Finland, Spain, Sweden and United Kingdom. See Footnote 15.

The passage that states that the consumer does not have to give reasons for his withdrawal from the contract was already added in an earlier draft of the Distance Selling Directive.³¹ Later on, this regulation was not subject to any further changes. If the withdrawal has to be explained this means that an additional amount of work is involved, creating a psychological obstacle and a complication of the exercise of the right of withdrawal. Due to the priority of the clear wording of the Directive, the withdrawal has to be accepted by the operator, even without explanations.³²

On several of the examined websites the possibility of the consumer withdrawing from the contract was available only on the condition that, prior to the return of the good, notice was given.³³ The evaluation of the legitimacy of such a demand is not easy to carry out, as the Distance Selling Directive as well as the national implementing laws differentiate between the declaration of the will to withdraw from the contract and the actual return of the good.³⁴ Only a few member states clearly regulate if the withdrawal from the contract and the return of the good can be done at the same time.³⁵ As long as a clear regulation is missing, one could consider it as legitimate if the supplier asks for a declaration of the withdrawal separately from the return of the goods.

In some of the examined cases the intention of making use of the right of withdrawal had to be expressed before the expiry of the otherwise granted cooling-off period. This surely is illicit. The exclusion of the further right of withdrawal in case the intention of making use of it is not expressed at an earlier stage equals a shortening of the cooling-off period. The consumer has effectively less time to think it over if he wants to make use of his right.

Some operators approved the withdrawal from the contract and the return of the good only under the condition that the good was still kept in the undamaged original packaging. It is the aim of the right of withdrawal that the consumer is given the opportunity to closely examine the good at home and consider his position. As long as the removal of the original packaging does not result in the good being rendered worthless, and hence can still be sold by the operator after the replacement of the packaging, the return of the good has got to be accepted even if the original packaging is missing.

Some web sites determined that a withdrawal could only be declared by using pre-determined means of communication. The Distance Selling Directive contains no formal requirements for the exercise of the right of withdrawal. The elaboration of such was to be determined by the member states.³⁶ If the supplier prescribes the use of one or more means of communication for the exercise of the right of withdrawal, which are commonly utilised by consumers, then this does not sound

³¹ *Micklitz*, in *Grabitz/Hilf*, *Das Recht der Europäischen Union* (The law of the European Union), *Kommentar* (Commentary) Band III, A3 Rn 89; *Common position* (EC) Nr. 19/95 of the council, 29 th June 1995, *Official Journal* EC 1995, C 288, p. 4.

³² It is understandable that web traders want to achieve information that explains why the consumers chose to return the products they ordered. A return indicates that the consumer is disappointed or dissatisfied, which could be harmful for the company's image and development. A reputable company would of course want to investigate the reasons so that this could be avoided in the future. The simplest way to attain this information would of course be to ask the consumer at the time of the return. However, in certain cases where such a question is asked, it must be made absolutely clear to the consumer that it is not a condition for the return. The consumer must be unambiguously informed that it is voluntary to give this optional information.

³³ 16.6% of all restrictions consisted of the demand for an announcement in advance, for the purpose of returning the bought good.

³⁴ *Micklitz*, in *Grabitz/Hilf*, *Recht der Europäischen Union* (The law of the European Union), *Kommentar* (Commentary) Band III, A3 Rn 74.

³⁵ *Micklitz*, in *Grabitz/ Hilf*, *Das Recht der Europäischen Union* (The law of the European Union), *Kommentar* (Commentary) Band III, A 3 Rn 74. If and to where extend there should be demands in the exercise of the right of withdrawal was left to the member states and their implementation of the directive. Examples for the explicit approval of the combination of the declaration of the withdrawal and the return of the good are the Finnish and the German regulations.

³⁶ *Micklitz*, in *Grabitz/ Hilf*, *Das Recht der Europäischen Union* (The law of the European Union), *Kommentar* (Commentary) Band III, A3 Rn 74.

like an infringement of the consumers' rights. However, at the end of the day the legitimacy of this narrowing of the right of withdrawal will depend on the individual case.³⁷ Therefore in general, such reductions of the accepted means of communication cannot be considered as being legitimate.

Some suppliers accepted the return of the good only under the condition that a "return number" marked the outside of the return package. If the consumer wants to make use of his right of withdrawal he firstly has to get himself such a "return number" from the supplier and put this on the return package. Neither the Distance Selling Directive nor its national implementations provide regulations that would clearly prohibit such a procedure. The fact that the request for such a number in advance expresses the purpose of withdrawing from the contract cannot be regarded as an impediment to the withdrawal. An acceptable reason for such a demand from the supplier would be for the purpose of optimising the procedures for the reception of the returned goods. However, this aim can also be reached by sending each consumer a return number together with the bought good. The necessity of an interaction between the consumer and the supplier before the return of the good could raise a psychological barrier and cause retardation in the exercise of the right of withdrawal. The Directive and the national regulations describe the right of withdrawal as a unilateral action by the consumer. The exercise of the right of withdrawal shall depend on nothing apart from the consumer's will. There must not be any obstacles that hinder the immediate use of the right.

7.2.4 Registered exceptions to the right of withdrawal

Out of 262 operators on the Internet who were tested in the study carried out by the ECC Network, 32% did not comply with the cooling-off period of the national regulations. In addition, 43.5% failed to follow the national legislation and rules concerning the exercise of the right of withdrawal from the contract.

In seven cases the operator was not obliged to grant the right of withdrawal because of a legal exception. This represents only 2.7% of the examined web sites. Due to the fact that these exceptions refer predominately to special kinds of goods, the study proves that these objects relating to a contract make up only a small part of the goods offered over the Internet. In the majority of the named cases there was no obligation to grant a right of withdrawal because the objects of the contract were goods which are liable to deteriorate or expire rapidly (i.e. flowers and foodstuffs). In one instance the consumer did not have the right of withdrawal when goods made to the consumer's specification were to be delivered (i.e. tailor made shirts). These two exceptions are listed in one breath by the Distance Selling Directive and make it clear that the Directive is designed for today's mass production of goods and standard services.³⁸

Among the examined offers on the Internet there were cases in which not only the right of withdrawal fell away but in addition, as provided by the Distance Selling Directive, the supplier's duty to give information was not applicable. Namely contracts were closed for the supply of foodstuffs intended for everyday consumption, which were to be supplied to the home of the consumer by regular roundsmen. Another example related to a contract for the provision of transport, where the supplier undertook to provide the service on a specific date (in this case, booking of a flight).

³⁷ There is the danger that the operator is not available over the prescribed means of communication. In any case, not every consumer has got access to every means of communication available, even if it is a common method.

³⁸ *Micklitz in Grabitz/Hilf, Das Recht der Europäischen Union (The law of the European Union), Kommentar (Commentary) Band III, A 3 Rn 95.*

7.2.5. Who has got to bear the costs resulting from the withdrawal?

The Directive provides that “the only charge that may be made to the consumer because of the exercise of his right of withdrawal is the direct cost of returning the goods”. When the Distance Selling Directive was implemented in the national laws, this issue represented a crucial bone of contention.³⁹

In analysing the procedure of returning the goods, the following aspects can incur costs: repackaging of the good itself, and packaging in a way that is suitable for transportation; transport to the carrier; postage for the transportation; administration and handling charge of the operator; (transport) insurance and other fees. It is still in question as to what exactly the expression “direct cost of returning the goods” means. Undoubtedly the expression “direct costs” includes those incurred on the consumer’s side. However, it is worth discussing if the costs on the supplier’s side can be categorised under this term. If the supplier can contractually place costs on the consumer that are incurred by him from the returning of the goods.

The first clue in determining what the European legislators had in mind when defining the term can be found in Article 6 of the Distance Selling Directive. If the legislator had wanted to point out that the wording should also cover amounts exceeding the actual postage costs, he could have been more explicit in his definition.⁴⁰ The actual wording only refers to the costs that result from the return *itself*. In addition, the expression “*direct cost*” illustrates this intention. In the end, the operator’s costs do not arise directly from the return of the good but indirectly as a result of it.

The history of the Distance Selling Directive also indicates that the “costs of the returning of the goods” only refers to the postage costs arising on the consumer’s side. The first draft of the Distance Selling Directive presented by the European Commission in 1992 provided in Article 11 that the only costs that could arise for the consumer were eventually the direct costs of the returning of the goods.⁴¹ Following the 13th recital of this draft of the Directive, it is necessary to limit the costs carried by the consumer to the postage costs for the returning of the goods, otherwise the right of withdrawal would become a hollow and formal right.⁴² These formulations of the draft and its reason were also kept in the further development of the Directive over the following years.⁴³

It is an aim of the Distance Selling Directive to contribute to the completion of the Internal Market of the European Union. The protection offered by the Distance Selling Directive is to

³⁹ Description of the discussion in the German legislative procedure on the internet www.bundestag.de/aktuell/bp/2000/bp0003/0003036a.html and www.bundestag.de/aktuell/hib/2000/0007803.html and www.bundesrat.de/pr/pr85_00.html. When the Distance Contracts Directive was implemented in the member states, several operators’ associations played an active role in the discussion of this topic. Some operators did not agree in the result of the Directive’s implementation concerning this issue in their home state. The charge of a “restocking fee” or alike on a web site, in cases of the return of goods can therefore be understood to be a “silent protest” against the national regulations. See results of part A of this study of the Swedish ECC Network.

⁴⁰ With this in mind, the wording of Article 6 of the Distance Contracts Directive is an indication of a narrow understanding of the expression “direct cost of the returning of the good”. Micklitz, in Grabitz/ Hilf, Das Recht der europäischen Union (The law of the European Union), Kommentar (Commentary) Band III, A 3 Rn 85.

⁴¹ Official Journal EC C 156 of 23rd June 1992, p. 17.

⁴² Official Journal EC C 156 of 23rd June 1992, p. 15.

⁴³ Official Journal EC 1993 C 176/86, p. 92; Official Journal EC 1993 C 308/21, p. 27. Official Journal EC 1995 C 288, p.4. Official Journal EC 1996 C 17, recital no. 12 and article 6.

strengthen the consumers' confidence and therefore promote the international conclusion of contracts. The creation of an impediment to the exercise of the right of withdrawal by introducing additional costs for the consumer would undermine the purpose of the Directive.⁴⁴ The right of withdrawal shows its desired effect to the full extent only if the consumer does not have to bear additional costs when exercising his right.⁴⁵

The comparison of the national regulations on Distance Selling law gives an overview of the interpretation of the Directive in the member states. Unfortunately, most of the implementing laws have modified the regulation concerning the costs of returning goods by only a little or not at all.⁴⁶ The wording of those implementing laws that linguistically changed this regulation show that their understanding of "the direct costs of the returning of the goods" refers to the costs for the postage of the goods which are to be met by the consumer.⁴⁷ For example, some replaced the literal expression by regulating who has got to bear the "returning postage", or some determine that the supplier has got to compensate the consumer for costs which arise in his/her case when returning the good.

As a result, the provision of the Distance Selling Directive concerning the "direct costs of the returning of the goods" exclusively refers to costs that arise on the consumer's side. In reaction to the exercise of the right of withdrawal, the supplier must not burden the consumer with further charges such as banking fees, exchange fees, administrative or other handling charges.⁴⁸ Additional costs resulting from changes to the place of business, involvement of a special carrier or from insurance are the responsibility of the supplier.⁴⁹ The charge of any fees of this kind is therefore an infringement of the law.

⁴⁴ The returning of the goods can create costs for workers and for materials on the supplier's side. Encumbering the consumer with these costs that arise from the supplier would have the effect of creating an uneven share of the burden. For the operator it is easier to unify the procedures in connection with the returning of the goods and to arrange them in a cost-saving manner. However, due to a lack of routine this is often impossible for the consumer. The supplier benefits when a right of withdrawal that is easy to exercise strengthens the consumer's confidence in distance contracts. This might possibly raise his own turnover. Therefore he has got to bear the risk of the exercise of this right. If it comes to this, he ought to bear his own costs himself. The Distance Selling Directive grants the consumer a right of withdrawal, due to the fact that in a contract concluded over a distance, unwanted actions, misunderstandings and mistakes can easily arise. The returning of the goods would be an unpleasant experience for the consumer if he had to suffer for his mistake by also bearing the costs arising from the supplier.

⁴⁵ *Micklitz*, in *Grabitz/Hilf*, *Das Recht der Europäischen Union* (The law of the European Union), *Kommentar* (Commentary) Band III A3 Rn 85.

⁴⁶ § 5 g II Austrian *Konsumentenschutzgesetz*; Art. L 121-20 French *Code de la consommation*; § 357 II German *Bürgerliches Gesetzbuch* (It is remarkable that in the German regulation, the costs of the returning of the good can only be contractually imposed on the consumer if the price of the ordered good is up to 40 €. If it is more than this the supplier will have to bear all the costs of the returning of the good); Art. 5 VI Italian *Decreto Legislativo* No. 185 del 22.5.1999; Regulation 6 (1)(b) Irish *Statutory Instrument* S.I. No. 207 of 2001; Art. 7.1.9A.4 *Burgerlijk Wetboek* of the Netherlands; Art. 8 par. 1 Portuguese *Decreto-Lei* No. 143 / 2001. *See Footnote 15*.

⁴⁷ For example, Article 80 § 1 *Belium law on commercial practices and consumer protection*; Section 17 par. 2 *Finnish Consumer Protection Act*; Section 19 par. 2 *Swedish Act on the protection of consumers in respect of distance contracts and home sales*; Section 14 par. 5, 6 *Statutory Instrument* 2000 No. 2334 of the United Kingdom. *See Footnote 15*.

⁴⁸ *Micklitz*, *ZEuP* (Journal of European Private Law) 1999, p. 875, 887.

⁴⁹ *Palandt-Heinrichs*, *Commentary on the German Bürgerliches Gesetzbuch* 62. Edition, § 357 BGB Rn 6. *MünchKomm-Wendehorst*, *Commentary on the German Bürgerliches Gesetzbuch*, § 3 *FernAbsG* Rn 136.

8. Annexe

8.1. List of Participants:

13 European Consumer Centres (ECCs) and 2 consumer organisations in Denmark and Greece

Belgie (ECC Belgium):

Centre Europeen des Consommateurs/
Europees Verbruikerscentrum
Rue des Chevaliers 18/Ridderstraat 18
B-1050 Bruxelles/Brussel

Deutschland (ECC Germany):

Europäisches Verbraucherzentrum Düsseldorf
Mintropstr. 27a
D-40215 Düsseldorf

Deutschland (ECC Germany):

Europäisches Verbraucherzentrum Kiel
Willestr. 4-6
D-24103 Kiel

Espana (ECC Spain):

Centre Europeu del Consumidor
Gran Via Carles III, 105, Ilettra B-1
ES-08028 Barcelona

Espana (ECC Spain):

Centro Europeo del Consumidor
Donostia-San Sebastian 1
ES-01010 Vitoria-Gasteiz

France (ECC France):

Centre Europeen des Consommateurs
47bis rue B. Delespaul
F-59000 Lille

Ireland (ECC Ireland):

European Consumer Centre
13A, Upper O'Connell Street
IRL-Dublin 1

Italia (ECC Italy)

Centro Europeo dei Consumatori
Via Piemonte 39°
IT-00187 Roma

Luxembourg (ECC Luxembourg)

Centre Europeen des Consommateurs
55 rue des Bruyères
L-1274 Howald

Österreich (ECC Austria)

Europäische Verbraucherberatung
Mariahilfer Str. 81
A-1060 Wien

Portugal (ECC Portugal)

Centro Europeu do Consumidor
Praça Duque de Saldanha, 31 1°
P-1069-013 Lisbon

Suomi (ECC Finland)

European Consumer Centre of Helsinki
City of Helsinki Environment Centre
Helsinginkatu 24, Helsinki 53)
P.O.Box 500
Fin-00099 City of Helsinki

Sverige (ECC Sweden)

Konsument Europa
P.O. Box 16014
SE-103 21 Stockholm

Consumer Organisation in Denmark

Danish Consumer Council
Fiolstraede 17
DK-1017 Copenhagen K

Consumer Organisation in Greece

INKA - General Consumers' Federation of Greece
Akadimas Ave 7
GR-106 71 Athens

8.2. Questionnaires for part a, b and c

Questionnaire a):

1. Address of the website

Address	www.
---------	------

2. Information on sites, leading up to the placing of order

Language(s) of the website	yes	no	remarks
Different languages offered			
English			
French			
German			
Spanish			
Other Languages			
Relying on the web-site's first language			
Relying on other options			

Ordering Price	yes	no	remarks
Total price clearly stated			
Information on additional charges			
Help in converting price (are the prices also given in Euro on English, Danish and Swedish websites?)			
Information on exchange rates (particularly for English, Danish and Swedish consumers)			
Information on period of validity of special offers especially with regard to the price			

Stock Availability	yes	no	remarks
Clear whether item in stock			
If not, clear when it would be available			
Information on warranty provided			

Delivery Information	yes	no	remarks
Information on target time for despatch			
Choice of delivery times			
Information on delivery method / time			
Choice of delivery method / time / costs			

Payment Methods	yes	no	remarks
Credit Card			
Debit or bank card			
Direct charge procedure			
Payment via bill			
Cash on delivery			

Terms and Conditions	yes	no	remarks
Available in different languages			
Shown before purchase			
Had to search for them			
Not available			
Terms and Conditions explained what law applied			
Mention of revocation and returning rights			
Mention of cooling-off period			
Chance to review details before placing order			
Clear when final stage reached			
Possible to cancel order			

Retailer Information Given	yes	no	remarks
Address			
Registration number			
Phone number for queries			
Email address			
Contact Name			

Privacy: Information Requested	yes	no	remarks
Title			
Name			
Address for delivery			
Billing address			
Email address			
Phone number			
Payment card number			
Gender			
Marital Status			
Age			
Occupation			
Income			

Other Privacy Issues	yes	no	remarks
Tick box for mailing list			
Possible to prevent passing information to others			
Additional information on privacy			
Information on cookies			

Returns	yes	no	remarks
Information offered			
Easy to find			

Complaints	yes	no	remarks
Easy to find procedure			
good service offered			

Security	yes	no	remarks
Clear whether buying from secure site			
Any additional information			

Trustmarks	yes	no	remarks
Trustmark present			
Explanation of the trustmark present			
Explanation of the trustmark offered in different languages			
Trustmark located on the site on a prominent position			

3. Delivery of the goods

Delivery – After placing order	yes	no	remarks
Email confirmation received			
Notification of despatch received			

Payment	yes	no	remarks
Amount as expected			
Time of payment if credit card is used (please indicate in column: „remarks“)			

When goods arrived	yes	no	remarks
Within time quoted			
Handling charges			
Problems with goods			

Were following included?	yes	no	remarks
Receipt			
Invoice			
Written information on revocation and returning rights			
Written information on after-sales service, warranty and guarantee conditions			

4. Returning the goods

Returns/Refunds	yes	no	remarks
Explanation of returns procedure			

Returning the Goods	yes	no	remarks
Easy and convenient			
Restrictions on returns			
Costs incurred			
Had to give reason			
Refund received			

How much refunded	yes	no	remarks
Full amount including postage			
Price of goods excluding postage			
Still awaiting refund			

Questionnaire b):

Address of the website	
Address	www.

Language(s) of the website	yes	no	remarks
Different languages offered			
English			
French			
German			
Spanish			
Other Languages			
Relying on the web-site's first language			
Relying on other options			

Ordering Price	yes	no	remarks
Total price clearly stated			
Information on additional charges			
Help in converting price (are the prices also given in Euro on English, Danish and Swedish websites?)			
Information on exchange rates (particularly for English, Danish and Swedish consumers)			
Information on period of validity of special offers especially with regard to the price			

Stock Availability	yes	no	remarks
Clear whether item in stock			
If not, clear when it would be available			
Information on warranty provided			

Delivery Information	yes	no	remarks
Information on target time for despatch			
Choice of delivery times			
Information on delivery method / time			
Choice of delivery method / time / costs			

Payment Methods	yes	no	remarks
Credit Card			
Debit or bank card			
Direct charge procedure			
Payment via bill			
Cash on delivery			

Terms and Conditions	yes	no	remarks
Available in different languages			
Shown before purchase			
Had to search for them			
Not available			
Terms and Conditions explained what law applied			
Mention of revocation and returning rights			
Mention of cooling-off period			
Chance to review details before placing order			
Clear when final stage reached			
Possible to cancel order			

Retailer Information Given	yes	no	remarks
Address			
Registration number			
Phone number for queries			
Email address			
Contact Name			

Privacy: Information Requested	yes	no	remarks
Title			
Name			
Address for delivery			
Billing address			
Email address			
Phone number			
Payment card number			
Gender			
Marital Status			
Age			
Occupation			
Income			

Other Privacy Issues	yes	no	remarks
Tick box for mailing list			
Possible to prevent passing information to others			
Additional information on privacy			
Information on cookies			

Returns	yes	no	remarks
Information offered			
Easy to find			

Complaints	yes	no	remarks
Easy to find procedure			
Good service offered			

Security	yes	no	remarks
Clear whether buying from secure site			
Any additional information			

Trustmarks	yes	no	remarks
Trustmark present			
Explanation of the trustmark present			
Explanation of the trustmark offered in different languages			
Trustmark located on the site on a prominent position			

Questionnaire c):

Please indicate if your country has implemented the distance selling directive and attach a short summary of the national rules.

	yes	no	remarks
The distance selling directive is implemented			

Then fill in the questionnaire. If the website in question fails to follow the national rules, please indicate in "remarks" the nature of the failure.

1. Address of the website

Address	
---------	--

2. Does the site tested comply with the national legislation as to information on:

	yes	no	remarks
The supplier and his address,			
Main characteristics of the goods or services			
The price of goods/services including taxes			
Delivery costs, where appropriate			
Arrangements for payment, delivery or performance			
The existence of right of withdrawal (unless exceptions apply)			
The cost of using the means of distance communications, if calculated by other than basic rat			
The period for which offer/price remains valid			
The minimum duration of contract, where appropriate			

3. Does the site comply with the national cooling-off period of 7 or more days?

	yes	no	remarks

4. Does the site comply with legislation and rules concerning the exercise of that right?

	yes	no	remarks

5. If the website in question fails to follow the national rules, please indicate in "remarks" the nature of the failure.

Remarks

List for continuing updates for the shopping exercise.

Company	Order	Confirmed	Charged	Delivered	Returned	Refund

8.3 List of countries to order/buy from

Belgie: ECC Belgium

France
Luxembourg
United Kingdom

Italia: ECC Italy

Ireland
Portugal
Spain

Danmark: Danish Consumer Center

Italy
Ireland
Sweden

Luxembourg: ECC Luxembourg

Austria
Germany
United Kingdom

Deutschland: ECC Kiel / Germany

Denmark
Italy
The Netherlands

Nederlands: The Netherlands via ECC Düsseldorf / Gronau

Austria
Denmark
Germany

Deutschland: ECC Düsseldorf / Gronau

Finland
Greece
United Kingdom

Österreich: ECC Austria

France
Germany
Greece

Espana: ECC Spain - Barcelona

France
Italy
Portugal

Portugal: ECC Portugal

Belgium
France
United Kingdom

Espana: ECC Spain - Vitoria

Belgium
Portugal
United Kingdom

Suomi: ECC Finland

Austria
Germany
Sweden

France: ECC France

Finland
Italy
Spain

Sverige: ECC Sweden

Germany
The Netherlands
United Kingdom

Ireland: ECC Ireland

France
Germany
Spain

8.4. External Examiners

The external examiners checked the following countries:

Austria and Germany: Eva N. Dzepina, Attorney at Law, LL.M., Düsseldorf, Germany

Denmark and Sweden: Flemming Christensen, Associated Lawyer, LL.M., Copenhagen, Denmark

Belgium, The Netherlands, Luxembourg and France: Frederik Nevejan, Legal Counsel, LL.M., Gent, Belgium.

Italy and Ireland: Massimo Pasquale Coluzzi, Attorney at Law, Rome, Italy / Glasgow, UK

United Kingdom: Brian Davidson, BA (hons), LL.M., Glasgow, UK

Spain: Natalia Enciso Benitez, Attorney at Law, Moreno, Paraguay

Finland: Petteri Repo, PhD (econ), Senior researcher, Helsinki, Finland

Greece: Panagiota Kontogeorgou, Legal Adviser, LL.M., Athens, Greece

Portugal: Cláudio de Lucena Neto, Attorney at Law, Campina Grande, Brazil

8.5. Institute for the statistical evaluation

Hommerich Forschung

Am Broich 2

51465 Bergisch Gladbach

Germany

8.6. Webtraders from which the purchases was made

www.aaronson.de

www.abshop.it

www.achats.lu

www.alapage.com

www.alpha-stock.com

www.amazon.de

www.amazon.fr

www.amazon.co.uk

www.annalibreria.com

www.aosl.ie

www.bader.de

www.baedeker.de

www.bengan.se

www.bijouterie-gelea.com

www.blackfields.com

www.bol.nl

www.booben.se

www.books-m-greek.gr

www.brigittevonboch.de

www.buch.de

www.calcioitalia.com

www.camerata.es

www.cdskiven.dk

www.cdzone.co.uk

www.celticlink.com

www.chebello.com

www.deskstore.com

www.discoweb.com/es

www.dmail.pt

www.dvd.it

www.dvdstore.at

www.dvdworld.co.uk

www.e-sportarena.com

www.eason.ie

www.edirectory.co.uk

www.elcorteingles.es

www.elosito.com

www.emp.de

www.eveiletjeux.com

www.fcbayern.de

www.fnac.com

www.gadget.com

www.giftstore.ie

www.glitterhouse.de

www.goldy.fr
www.gongdiscos.com
www.harder-tintenpatronen.de
www.hartlauer.at
www.hmv.co.uk
www.ink2u.co.uk
www.inkclub.com
www.inkjet-cartridges-4less.co.uk
www.irelandink.com
www.internetbookshop.it
www.intersaxonia.de
www.jetmedia.co.uk
www.jpc.de
www.karstadt.de
www.kappastore.com
www.klockor.nu
www.kamisetas.com
www.libreriaaltair.com
www.ludizoom.com
www.lojadoswatch.com
www.legoland.dk
www.mavitrine.com
www.mdl.lu
www.mediabooks.pt
www.minfo.pt
www.museesdefrance.com
www.musicscotland.com
www.musicshop.gr
www.musicstore.gr
www.nissan.co.at
www.ottobre.fi
www.ophrys.fr

www.palashop.it
www.pc-maeuse.de
www.playfactory.at
www.polar-blue.fi/cybershop
www.primusmedia.de
www.prismaker.com
www.promod.com
www.quantis.de
www.quelle.de
www.readireland.ie
www.sapo.pt
www.scanbix.zillionshop.dk
www.shop.de
www.shopmat.be
www.sripnet.nl
www.squiggly.com
www.store.tintin.com
www.swatch-shop.co.uk
www.t-rax.at
www.tantestorie.it
www.teezz.co.uk
www.timeworld.com
www.tinco.com
www.townhouse.de
www.uktees.com
www.vanleest.nl
www.vistapapers.co.uk
www.voxpop.sapo.pt
www.watch-heaven.com
www.wefra.at
www.whsmith.co.uk

8.7. List of the webtraders that were examined for information quality

www.abacoarte.com
www.7plus7.gr
www.abao.be
www.abeillemusique.com
www.abshop.it
www.acaia.it
www.adlibris.se/shop/
www.adventuretoys.co.uk
www.agora.gr/holshop
www.agrival.gr
www.ainm-music.com
www.alapage.com
www.alla-casa.de
www.alpha.stock.com
www.alphamoda.com
www.alstrom.dk
www.amazon.fr
www.amokka.dk
www.annalibreria.com
www.anypokemon.com
www.aromas-shop.com
www.artgiftshop.com
www.asport.lu
www.aum.at
www.babycadeau.nl
www.babycadeau.nl
www.babyshop.24.de
www.bartsmit.nl
www.bastelwelt.de
www.bazarvirtual.pt
www.beate-ushe.at
www.beauty24.de
www.bengans.se
www.bertrand.pt
www.bijenkorf.nl
www.bike-box.de
www.bikebuster.dk
www.billa.at
www.biomarkets.com
www.bloembollen.nl
www.bluebox.se
www.bol.de
www.bolia.com
www.booben.se
www.bookplace.co.uk
www.borderart.co.uk
www.bouquet.gr
www.brantano.lu
www.bruna.nl
www.buecher.de
www.buy4now.ie/arnotts
www.buy4now.ie/source
www.buynet.dk
www.calcioitalia.com
www.canal3000.com/casajamon
www.ccb-paris.com
www.cdbox.it
www.cdshop.de
www.cdiskiven.dk
www.chapitre.com
www.chipsworld.co.uk
www.chl.it
www.christ.de
www.ciberguia.pt/cibercatalogo/public/loja.asp
www.cigarworld.pt
www.cinestore.com
www.classic-green
www.classicouk.com
www.clerys.ie
www.comet.co.uk
www.condisline.com
www.conrad.nl
www.continente.pt
www.cutipol.pt
www.danybijoux.fr
www.datorbutiken.com
www.decofloralia.pt
www.decoron.com
www.deskstore.com
www.dessous24.de
www.diderich.com
www.dieboxhifi.de
www.directfun.com
www.discobole.gr
www.dmail.pt
www.douglas.de
www.dvdgo.it
www.e-tec.at

www.eduscho.at
www.el-stroem.dk
www.elcortesingles.es
www.enetural.pt
www.ept.lu
www.ernster.com
www.esoterik-boutique.de
www.etam.com
www.eurisko.fr
www.eveiletjuex.com
www.expansionlibros.com
www.fallkniven.com
www.fcbayern.de
www.filmmix.com
www.fitnessadresse.de
www.florline.es
www.fona.dk
www.fotohasse.fi
www.fraganzia.com
www.fraganzia.pt
www.freerecordshop.nl
www.gad.dk
www.gales.lu
www.game1.de
www.gammabike.com
www.giacomellisport.com
www.gift.be
www.ginza.se
www.glitterhouse.de
www.globetrotter.de
www.goldy.fr
www.goodtaste.se
www.grimesco.ie
www.gsmonline.be
www.guinness-webstore.com
www.hairstore.fi
www.haribo.de
www.hartlauer.at
www.heliosagora.gr
www.hmv.co.uk
www.hogm.dk
www.houseofireland.com
www.iberia.es
www.inclub.com
www.inedita.com/individro
www.inkjet-cartridges-4less.co.uk

www.interflora.dk
www.internetbookshop.it
www.intersaxonia.de
www.irishmusicmail.com
www.jamelda.com
www.jartoy.com
www.jewellerynow.co.uk
www.joyaviva.com
www.just-eat.dk
www.kadoservice.nl
www.kalixrom.com
www.kamisetas.com
www.killarneybookshop.ie
www.klockor.nu
www.kochmusic.com
www.kontaktlinsenversand.de
www.kukuxumus.com
www.laaseri.com
www.lantz.ie
www.lapela.net
www.laredoute.fr
www.lego.com
www.l Mercerie.it
www.librairie.lu
www.librosmadrid.com
www.loslibros.com
www.lotties.de
www.lubo.lu
www.magenta.gr
www.malhus.pt
www.mangoshop.com
www.manufactum.de
www.mariebelle.nl
www.markantalo.fi
www.mdatasoftware.gr
www.mediabooks.pt
www.medioclub.be
www.mediemarkt.de
www.megaposter.nl
www.merlin.dk
www.mexx.com
www.microcraft.be
www.mifarmacia.com
www.minfo.pt
www.mistergooddeal.com
www.morsiusgalleria.com

www.museesdefrance.com
www.neck.be
www.neckermann.de
www.needapresent.com
www.netanttila.com
www.netista.com
www.netkids.gr
www.netmalhas.shopping.sapo.pt
www.netonnet.se
www.officio.de
www.offtek.co.uk
www.ondine.fi
www.onlineit.com
www.ophrys.fr
www.opticien.lu
www.optize.es
www.otto-supermarkt.de
www.ottoversand.at
www.paginegialle.it/ilcellularesnc
www.paravision.be
www.pashminashawls.nl
www.pcashop.nl
www.pcsuperstore.fi
www.pharmacy2u.co.uk
www.pietrasantart.com
www.pikkukenguru.fi
www.planalfa.com/alfatienda
www.playwell.be
www.portoeditora.pt
www.portugalshopping.pt/autosom/
www.poster.de
www.primusmedia.de
www.primusmedia.de
www.proxis.be
www.netanttila.com
www.readireland.ie
www.richersounds.ie
www.sbs.o.se
www.schlecker.com
www.sesderma.com
http://shop.soon.fi
www.shoplive.be
www.shopmat.be
www.sms.kidware.de
www.soumalainen.com
www.squiggly.com
www.stay-active.nl
www.streetsonline.co.uk
www.sunglassesuk.com
www.swarovski.at
www.tailoronline.com
www.tangamoda.com
www.tantestorie.it
www.tchibo.de
www.teledanmark.dk
www.tina-modelleisenbahn.at
www.tinkco.com
www.tmx.de
www.todovino.com
www.tonerireland.com
www.top-kosmetiikka.com
www.topachat.com
www.toys-n-ireland.com
www.tradgardsbolaget.se
www.tyrolia.at
www.universal.at
www.users.skynet.be/saveurs/index.htm
www.vakalis-pub.gr
www.ving.dk
www.virginwines.com
www.vivirelvino.com
www.vobis.at
www.voxpop.sapo.pt
www.wein-web.de
www.weinco.at
www.whiskey.fr
www.whsmith.co.uk
www.worten.pt
www.yves-rocher.at
www.zgonc.at
www.zooplus.de