

European Commission – DG Justice

Study on the application of Directive 2005/29/EC
on Unfair Commercial Practices in the EU

Part 1 – Synthesis Report

Final Report

*Conducted by:
Civic Consulting*

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Executive summary

Directive 2005/29/EC on Unfair Commercial Practice (the UCPD) was adopted on 11 May 2005. The objective of the UCPD is to fully harmonise the law on unfair commercial practices harming consumer economic interests. The UCPD does not deal with commercial practices in business-to-business (B2B) relations. The UCPD follows, in principle, the concept of full harmonisation (Article 4); which means that one common standard should apply in all Member States of the EU. Nevertheless, under Article 3(9) financial services and immovable property were exempted from the full harmonisation programme of the UCPD.

According to the Terms of Reference (TOR), the purpose of the study is to analyse the application of the UCPD in the fields of financial services and immovable property across the EU. The aims are threefold:

1. To identify any rules other than the national implementation of the UCPD which the Member States (and Norway and Iceland) have in place to fight unfair commercial practices in the fields of financial services and immovable property;
2. To describe the most common unfair commercial practices in these sectors;
3. To recommend whether the exemption under Article 3(9) should be kept or removed and, where appropriate, suggest specific regulatory action at Union level, based on national best examples/practices.

The study is based on in-depth desk research; interviews with key stakeholders at EU level and in selected Member States; complementary surveys in the areas of financial services and immovable property targeting government ministries, enforcement agencies, consumer organisations, ombudsman schemes, ADR schemes and European Consumer Centres in the Member States; preparation of two databases of most common unfair commercial practices in the areas of financial services and immovable property; detailed country reports of 10 countries; and preparation of 29 country fact sheets.

The results are presented in two parts: Part 1 presents the main findings from the study, including the conclusions and recommendations, and the country fact sheets. Part 2 presents the 10 detailed country reports, covering Austria, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Poland, Spain and the United Kingdom.

Key conclusions of the study include:

National implementation of the UCPD

The technical choices Member States made in order to implement the UCPD vary greatly: Some Member States have implemented it in pre-existing codifications, for example in their acts against unfair competition, in their consumer law codes, in their civil codes or in special existing acts. Other Member States have implemented the UCPD by passing a regulation which essentially copies out the UCPD.

Few Member States have made explicit use of Article 3(9) UCPD (in the sense of actually including special rules for financial services and/or immovable property in legislation that implements the UCPD). France and Belgium are exceptions to this. They have reacted to the ECJ ruling in *Total Belgium* by abolishing the contested general prohibition of joined offers; but have maintained this prohibition in the area of financial services where this was permissible.

However, in a number of Member States numerous pre-existing and also new rules can be found that operate as separate regimes from the legislation implementing the UCPD. Such rules may be national public/state regulatory trading laws; rules of professional regulation; and rules belonging to the wider sphere of contract law, in particular pre-contractual information duties and prohibitions of certain terms in standard contracts.

These rules usually have their own enforcement systems (public law enforcement and/or private law remedies); but in addition to that they can also often be enforced through the national enforcement system of the UCPD. The most comprehensive system is the financial services regulation in the UK, which simply operates alongside the national implementation of the UCPD and is considered to meet at least the fairness standards of the UCPD.

Most Member States have entrusted public authorities with the enforcement of the national implementation of the UCPD. Often, however, both public authorities and consumer organisations operate alongside each other; with the consumer organisations being able to bring law-suits in court, and the public authority also being able, in addition, to issue desist orders and fines.

The UCPD explicitly leaves the decision to introduce individual remedies to the Member States. Individual remedies exist in a majority of Member States, although in some Member States these remedies seem to consist in a complaint to the competent authority which will then take up the case.

National provisions against unfair commercial practices in financial services

This study has identified a wealth of rules in the field of financial services that go beyond the standards of the UCPD, or that operate alongside national implementation of the UCPD.

Commercial practices that are banned by national legislation and that do not form part of the blacklist of the UCPD are reported from close to half of the Member States, namely Austria, Belgium, Bulgaria, Denmark, Finland, France, Lithuania, Poland, Portugal, Slovakia, Spain and the UK. The blacklisted prohibitions vary greatly. Direct selling features prominently among per se prohibitions that do not form part of the blacklist of the UCPD. Similarly, sales promotions and tying have been restricted in some Member States. Another category is the prevention of conflicts of interest. Some Member States have enacted regulations that are meant to protect particularly vulnerable consumers, such as young people. Finally, special practices in the area of banking or insurance have been blacklisted, as have been stricter bans regarding pyramid schemes.

The separation of misleading actions and misleading omissions is sometimes difficult since sector-specific legislation of the Member States does not necessarily distinguish according to these categories. With regard to misleading actions, 11 Member States have indicated that in addition to applying the national implementation legislation of the UCPD they also apply national legal provisions that are not based on any EU legislation. This was the case with 10 Member States with regard to misleading omissions. In the area of aggressive practices, fewer Member States (6) have reported national rules that go beyond the level of protection of the UCPD. Where these have been reported they often relate to cold-calling or unsolicited emails.

In many cases, regimes that predated the UCPD were upheld simply because they had been elaborated over a long time on the basis of experience and because they worked well. Often, they are much more detailed than the open-textured provisions of the UCPD that wait to be concretised by case law. Most importantly, they usually avoid the UCPD's so-called 'transactional decision making' test. This test imposes an additional burden on authorities, consumer organisations, individual consumers or other claimants that attack special commercial practices in court or before other bodies. Those challenging the practice, being satisfied with evidence of non-compliance with the traditional rule, must also establish that the practice is likely to affect the 'transactional decision making' of the average consumer.

A number of traditional provisions take into consideration the particular risks that consumers are exposed to when they make hasty and imprudent transaction decisions in the context of financial services. This policy is reflected in numerous prohibitions or restrictions of direct selling of financial services where the same practices are allowed otherwise, i.e. in the context of the sale of goods and services other than financial services. Another set of national rules deals with the protection of vulnerable consumers. Member States appear to recognize that a very general obligation not to abuse such vulnerability (such as that contained in the UCPD) is insufficient to protect vulnerable consumers; and that clear and specific rules must exist that prohibit certain practices that typically affect the most vulnerable.

In other cases, the legislation of the Member States is well in line with developments at EU level but has proceeded faster, for example by extending the MiFID regime to the so-called grey capital market; or by imposing restrictions and/or transparency requirements on financial intermediaries in general

A number of Member States regard the breach of pre-contractual information obligations as an unfair commercial practice; which extends the national law of unfair commercial practices beyond the scope of the UCPD to include all kinds of purely national information obligations. In other Member States where that link is less explicit, pre-contractual information obligations may be used by the courts to specify what information may be "material information" that the trader must provide under Article 7(1) UCPD.

National provisions against unfair commercial practices in immovable property

In the area of immovable property, most Member States have not enacted specific legislation dealing with unfair commercial practices. Some Member States have

established specific information obligations, either related to advertisements or to the pre-contractual stage, in particular, but not necessarily, related to estate agents.

Fewer Member States reported practices which are banned nationally but not included in Annex I of the UCPD in immovable property than in financial services – six out of the 25 competent authorities reported such bans. Some of these appeared to relate to contract law or the prohibition of cold calling. However, others relate to abuse of the potentially weaker position of the consumer, for example.

Member States have introduced a variety of special information obligations. Some of them focus on the property and establish specific information obligations related to the property and its circumstances. Others deal with the transaction itself, or regulate the activities of real estate agents. Finally, there are rules regarding construction contracts, and particular information requirements for home insurance.

National legal provisions regarding aggressive practices in the area of immovable property that are not based on any EU legislation are not common.

The most interesting sector-specific national legislation perhaps deals with the exploitation of the weaker position of the consumer in special situations; namely the situation of persons seeking accommodation when accommodation is scarce, and the situation of persons seeking to buy property when affordable property is difficult to obtain. Sensitivity to such ‘situation-based’ vulnerability is reflected in Austrian and Danish law. Danish law applies a mechanism that comes under the law of unfair commercial practices law, namely a prohibition of tying, whilst Austrian law works with a right of withdrawal. The abuse of these types of pressure situations may also be covered by Article 8 UCPD on aggressive practices or by the general clause of Article 5(2) UCPD but the application of these general rules may be difficult in the individual case.

In an overall perspective, a minority of Member States have established special rules on unfair commercial practices in the area of immovable property. The very detailed information obligations related to the property reflect the fact that the decision to purchase property is probably the most important purchasing decision one makes; which has always been reflected in the law, in particular in more stringent formal requirements than those that normally apply in contract law. These rules are not only very specific, they also seem to go beyond the “material information that the average consumer needs, according to the context, to take an informed transactional decision” as required by Article 7(1) UCPD.

The concept of ‘consumer’ applied in financial services and immovable property compared to the concept of ‘consumer’ in general

In financial services, it seems to be generally acknowledged in academic writing that financial literacy of the average consumer is not yet sufficient, and EU legislation has reacted to that by introducing sector-specific pre-contractual obligations that go beyond the mere provision of information. In the case law of national authorities and courts this issue is not dealt with very explicitly. Courts seem to take different approaches.

No special consumer concept is being formally applied in the sector of immovable property. Case law on unfair commercial practices is generally scarce in this area, which may also be related to the fact that there are generally no specialised authorities or enforcement agencies dealing with immovable property.

Reasons for the application of national provisions against unfair commercial practices

The reasons for the application of national provisions instead of or in addition to the application of the national implementation of the UCPD are manifold. Key reasons provided are that national legislation is more specific, goes beyond the level of protection provided by the UCPD and results are reported in these cases to be easier to obtain under this legislation than under the UCPD.

Only a few national provisions clearly exceed the level of protection of the UCPD. The most prominent category consists of restrictions to pressure selling in the area of financial services, and some prohibitions of tying. Another relevant category contains provisions that are meant to protect the weaker or vulnerable party. They exist in the area of financial services as well as in the area of immovable property.

Otherwise, some Member States' laws state very specific information obligations. This is particularly significant in the area of financial services but also occurs in the area of immovable property. These information obligations do not necessarily provide for a significantly higher level of protection than the UCPD. However, the specific national information obligations usually apply regardless of their suitability to mislead the consumer, and are therefore easier to handle for authorities, courts, businesses and consumers. Often, they also come under a different enforcement system. Accordingly, the survey has shown a preference for pre-existing rules in those Member States that had information obligations already in place.

Most common unfair practices in financial services

In the area of financial services common unfair commercial practices were documented for 28 of the 29 countries subject to this study. One fifth (20%) of unfair practices for which information was available on the category of the practice were found in the category 'essential information not included in advertising'. Related practices were reported by authorities and other organisations from 17 countries – more than half of the countries surveyed for this study.

Common unfair commercial practices regarding financial services also frequently fall into the category 'product was mis-described'. Related practices were identified for 14 countries. Many of these practices related to credit.

Often common unfair commercial practices fall into several legislative categories. Misleading actions and omissions were most often reported together. Individually, 64% of the relevant practices are categorised as being a misleading action, 53% as being a misleading omission. Aggressive practices were less common, as were practices which are on the UCPD blacklist. Practices which are not included on the UCPD blacklist but are banned in the reporting country were reported from Belgium, Cyprus, Denmark, France, Germany and the UK.

Responding enforcement authorities and other organisations were asked to indicate the type of evidence used to determine that a particular practice in the field of financial services is an unfair commercial practice. For more than half of the documented practices (58%) the evidence is complaints data, followed by decisions of enforcement bodies (36%) and court cases (25%).

A total of approximately 248,831 complaints concerning common unfair commercial practices in the area of financial services were reported between 2008 and 2010 from 19 countries. This number is substantial and (as also indicated by other sources such as the Consumer Scoreboard) suggests dissatisfaction with financial services throughout the EU, Iceland and Norway. Complaints regarding common unfair commercial practices most frequently relate to 'other loans' (those which excluded secured loans but included consumer credit). The next most frequently chosen products were mortgages, life insurance, credit cards, and stocks, shares, bonds or derivatives.

Where an unfair commercial practice was identified and action was taken, the most frequent action (excluding the category 'other') was to make an administrative decision (41% of relevant practices). For 27% of relevant practices, guidance for businesses was issued, for 22% the procedure for a judicial decision was initiated, and for 22% a warning about the trader or the practice was issued. Respondents also referred consumers to a relevant enforcement body or to another body such as an ADR scheme.

Most common unfair practices in immovable property

In the area of immovable property common unfair commercial practices were reported from 23 countries. Reported unfair commercial practices most commonly related to buying property (66%).

The most frequent category of unfair commercial practices identified was 'essential information not included in advertising'. This category applied to 27% of the relevant reported practices (average of all sectors). Other common problems were grouped into three areas: problems with agents; misleading information on costs; and withholding of title deeds.

Most of the relevant practices identified are categorised as being a misleading omission (60%). This was closely followed by misleading actions (56%). Aggressive practices were less common (26%), as were practices on the UCPD blacklist (16%). Often, common unfair commercial practices fall under several legislative categories, such as misleading omissions and misleading actions.

A total of approximately 17,661 complaints were reported by authorities and other responding organisations between 2008 and 2010 related to the documented unfair commercial practices in the area of immovable property.

Of those responding authorities and other organisations that identified an unfair commercial practice and took action, the most frequent action was to make an administrative decision (53% of relevant practices). This was followed by 31% of relevant practices where a public warning about either the trader or the practice was issued. Respondents who used public warnings said they tended to find this effective.

Conclusions and recommendations

This study shows that most Member States have maintained or adopted legislation in the areas of financial services and immovable property that goes beyond the protective standards of the UCPD. The smallest part of that specific legislation is enshrined in unfair commercial practices law as such. Rather, unfair commercial practices law is complemented by general legislation in the area of financial services, or by sector-specific legislation that addresses certain financial services or certain issues in the area of immovable property.

Partly, the special rules in the areas of financial services and immovable property consist of prohibitions and can thus be equated with black-listed unfair commercial practices. By far the larger part of special rules, however, consists of sector-specific pre-contractual and contractual information obligations.

This study concludes that it would be undesirable to remove the exemptions for financial services and immovable property as enshrined in Article 3(9), and to apply the current level of protection of the UCPD in these areas. Large majorities of responding stakeholder organisations in both the area of financial services and immovable property also consider it very or fairly important to keep the exemption under Article 3(9) UCPD.

Reasons for this conclusion of the study include:

- The higher financial risk of financial services and immovable property, as compared to other goods and services;
- The particular inexperience of consumers in these areas, combined with a lack of transparency in particular of financial operations;
- Particular vulnerabilities that occur in both sectors that make consumers susceptible to both promotional practices and pressure;
- Existing experience of enforcement bodies with a nationally grown system; and
- The functioning and the stability of the financial markets as such.

Moreover, the country reports of this study have underlined the desirability of maintaining the Member States' competence to add to the blacklist of the UCPD in order to react to country-specific unfair practices. Also, particular vulnerabilities exist in the areas of financial services and immovable property. Consumers heavily depend on access to certain goods or services, in particular to a bank account, to credit or to accommodation. Access to essential services, or services of general interest, has been subject to sector-specific EU legislation in areas such as electricity and gas supply, telecommunications services and postal services, where special rules related to access to these services (under the concept of universal service) and to the protection of particularly vulnerable consumers have been introduced. In contrast, such specific rules do not exist yet in the areas of financial services and immovable property, and it should be open to the Member States to afford specific protection to consumers that are vulnerable due to problems in obtaining access on the basis of the free market.

Finally, the study concludes that a very important factor of unfair commercial practices law is its enforceability, and the country reports of this study as well as the survey responses of and interviews with competent authorities have established a clear connection between the sector-specific rules (whether going beyond the standards of the UCPD or not) and enforcement issues. In fact, in many Member States financial services legislation, in particular, is enforced by specialised bodies. These bodies have great experience in applying their regimes, which have been developed over a long period of time, and they are therefore able to enforce the law. In contrast, many Member States have reported difficulties in enforcing unfair commercial practices law as derived from the UCPD, with its open-textured provisions that wait to be concretised by case law. Two elements of national rules have often been mentioned to mediate that risk: a greater level of detail, and the avoidance of the UCPD's 'transactional decision making' test that is felt to make the success of litigation less calculable. At the same time, this type of regulation increases legal certainty, as the assessment of what is allowed and what is not is easier for all sides.

The possibility of Member States to adopt or maintain stricter provisions than those in the UCPD gives them the flexibility that they need to deal with newly developed (unfair) commercial practices that react to the specifics of national legislation in the areas of financial services and immovable property, and the removal of Article 3(9) would harm well-working enforcement system and therefore lower the level of consumer protection if not in theory (due to potentially equivalent or similar levels of protection provided by the UCPD) but certainly in practice.

1 Introduction

Directive 2005/29/EC on Unfair Commercial Practice (the UCPD) was adopted on 11 May 2005. The Directive is based on the principle of full harmonization. By way of exception to the principle of full harmonization, in the field of financial services Article 3(9), recognises the right of the Member States to go beyond the provisions of the Directive to further protect the economic interests of consumers. Likewise, in the field of immovable property, Article 3(9) grants the Member States the possibility to maintain or adopt stricter provisions than those of the Directive.

Under Article 18 of the Directive "the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular of Articles 3(9) and 4 and Annex I, on the scope for further harmonisation and simplification of Community law relating to consumer protection and, having regard to Article 3(5), on any measures that need to be taken at Community level to ensure that appropriate levels of consumer protection are maintained. The report shall be accompanied, if necessary, by a proposal to revise this Directive or other relevant parts of Community law."

The results and conclusions of this study will be used by the Commission to prepare the report on the application of the Directive as provided for by Article 18.

Objectives of the study

According to the Terms of Reference (TOR), the purpose of the study is to analyse the application of the UCPD in the fields of financial services and immovable property across the EU. The aims are threefold:

1. To identify any rules other than the national implementation of the UCPD which the Member States have in place to fight unfair commercial practices in the fields of financial services and immovable property;
2. To describe the most common unfair commercial practices in these sectors;
3. To recommend whether the exemption under Article 3(9) should be kept or removed and, where appropriate, suggest specific regulatory action at Union level, based on national best examples/practices.

Scope of the study

For the purposes of this study the following definitions have been used:

- Financial services are defined as 'any service of a banking, credit, insurance, personal pension, investment or payment nature'.¹
- Immovable property is defined as 'any building or part of a building for use as accommodation to which the right which is the subject of the contract relates'.²

¹ This definition is in accordance with the definition contained in Article 2(b) of Directive 2002/65/EC.

² This definition is in accordance with Article 2 of repealed Directive 94/47/EC.

The study focuses on unfair commercial practices relating to business-to-consumer transactions. Excluded from the scope of the study are those national rules and regulations which implement EU sector specific legislation in the field of financial services and immovable property related to business-to-business transactions and/or which provide for a purely contractual protection to consumers or which regulate other aspects such as conditions of establishment or authorisations regimes. However, in some cases these do have a bearing on national provisions against unfair commercial practices and they are mentioned where relevant.

National rules on information requirements and unfair business-to-consumer commercial practices which transpose other EU specific legislation applicable to retail financial services or immovable property are not the main focus of this study but are taken into account when describing national provisions against unfair commercial practices.

Geographical coverage

The study covers all 27 EU Member States, as well as Iceland and Norway. Since both countries have transposed Directive 2005/29/EC into their national legislation, no separate reference to Iceland and Norway is made except in cases where the study explicitly refers to the situation in these two countries.

Time period

The report is based on data collected from all 29 countries between May 2011 and December 2011, and is complemented by data collected through other studies, reports and academic publications, as well as in-depth legal analysis in 10 selected countries (see below).

Structure of the report

The report has been divided into two main parts.

Part 1 of this report presents the main findings from the study and is structured as follows:

Chapter 1 (this chapter) contains an introduction to the study;

Chapter 2 contains a methodology;

Chapter 3 describes national provisions against unfair commercial practices;

Chapter 4 presents the most common unfair commercial practices reported;

Chapter 5 provides conclusions and recommendations concerning whether the exemption under Article 3(9) should be kept or removed.

Annex I contains fact sheets for the 29 countries covered by this study, providing an overview of the relevant legislation, important court cases, enforcement practices, any codes of conduct, and the most common unfair commercial practices identified over the course of the study by country;

Annex II contains the questionnaires used for the survey;

Annex III presents the literature reviewed; and finally

Annex IV gives an overview of stakeholders consulted.

Part 2 of this report presents 10 in-depth reports on the following countries: Austria, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Poland, Spain and the United Kingdom.

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In addition, we are very grateful for the support of EU associations, government ministries, consumer organisations, European Consumer Centres, ombudsman schemes and ADR bodies. We also thank those EU associations who kindly distributed the surveys to their members.

Finally, we thank the Directorate-General for Justice of the European Commission, and the other Commission services who provided input, for their support throughout the study.

2 Methodology

The main methodological tools employed in this study are:

- In-depth desk research;
- Exploratory interviews with key stakeholders;
- Complementary surveys in the areas of financial services and immovable property targeting government ministries, enforcement agencies, consumer organisations, ombudsman schemes, ADR schemes and European Consumer Centres in the Member States;
- In-depth interviews in selected countries;
- Preparation of two databases of most common unfair commercial practices in the areas of financial services and immovable property;
- In-depth country reports of 10 countries; and
- Preparation of 29 country fact sheets.

Desk research and exploratory interviews

We reviewed key documentation, including existing studies, reports, the EU unfair commercial practices database,³ and policy documents to collect information relevant for the development of methodological tools.

A total of 12 exploratory interviews were conducted with relevant organisations such as national enforcement authorities, national consumer organisations and ombudsmen, as well as with a selection of academics and EU level stakeholders such as the European Banking Federation (EBF), the European insurance and reinsurance federation (CEA), and the European Consumers' Organisation (BEUC). The interviews were guided by a pre-defined set of questions.

Survey of enforcement authorities and other organisations

Complementary survey questionnaires on financial services and immovable property were developed on the basis of the desk research, exploratory interviews, and brainstorming by the study team. These were the main basis for gathering data on existing legislation and on common unfair practices. The questionnaires were divided into four main sections:

- Legislative framework;
- Most common unfair commercial practices;
- Enforcement and self-regulation;
- Stakeholders' views on whether the Article 3(9) exemption should be retained and reasons for these views.

³ See <http://ec.europa.eu/consumers/rights/>.

An overview of the stakeholders interviewed and organisations who responded to the survey questionnaires is presented in Annex IV.

In-depth interviews

30 in-depth interviews were carried out with enforcement bodies and national consumer organisations. The interviews were based on the survey responses received. Where different survey responses were received for a Member State, the interview served to clarify any discrepancies between responses. The interviews provided additional insights regarding:

- Common unfair commercial practices in the areas of financial services and immovable properties;
- Related complaints, as well as frequency and scale of a practice;
- Related decisions by enforcement authorities;
- Losses suffered by consumers;
- Coverage by UCPD and more prescriptive national legislation.

Interviewees are listed in Annex IV.

Preparation of databases of common unfair commercial practices

Based on responses to the survey we have prepared two databases of common unfair commercial practices (in financial services and in immovable property), containing the relevant information for each of the common practices identified. This includes (where reported):

- Unfair commercial practice identified;
- Relevant provisions of UCPD, other EU legislation and more prescriptive national legislation, where applicable;
- Data on complaints (where complaints are reported);
- Consumer loss due to the unfair commercial practice;
- Actions taken by respondents, including administrative and judicial decisions (for countries that report relevant decisions).

All the practices included in the database are considered by the reporting authorities and other organisations to be the most common unfair commercial practices they have observed in their country. As stated, responding authorities and other organisations were asked to give information about the most common unfair commercial practices they had encountered, including a description of the practice, the legislative category, the products most complained about, complaints data if available, and any actions taken. After receiving the description of each commercial practice, it was reviewed, edited and complemented with data from other sources, such as interviews with responsible enforcement officials. Where needed, responding organisations were consulted and asked to provide clarification concerning specific aspects. In some cases, additional

common unfair commercial practices were identified through our country reports and other documentation received. The draft overview of the most common unfair commercial practices was then communicated to the responsible enforcement authorities in each country from which a response was received. In cases where authorities provided additional comments, these were taken into account when finalising the database.

Detailed country reports

A detailed analysis conducted by our team of legal country experts took place in 10 selected Member States: Austria, Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Poland, Spain and the United Kingdom. Relevant legislation as well as selected case law was reviewed, including case law reported by the EU unfair commercial practices database. The most common unfair commercial practices in the areas of financial services and immovable property were also identified and described in the selected Member States. Assessment of whether such practices are adequately covered either by the provisions of the Directive or by more prescriptive national legislation has also been made. The country reports are presented in Part 2 of this report.

Country fact sheets

Country specific data for the 29 study countries collected through surveys, country reports and complementary research was compiled into a fact sheet providing information concerning:

- Implementing legislation of the Unfair Commercial Practices Directive;
- National legal provisions on unfair commercial practices;
- Enforcement;
- Codes of conduct and self-regulation;
- Common unfair commercial practices.

Enforcement authorities were consulted and asked to provide clarification concerning specific aspects, where needed. The draft country fact sheet was then communicated to the authorities in each country. In cases where authorities provided additional comments, these were taken into account when finalising the fact sheets (provided in Annex I).

3 National provisions against unfair commercial practices

3.1 Background

Key findings:

- (1) The objective of the UCPD is to fully harmonise the law on unfair commercial practices harming consumer economic interests. The UCPD does not deal with commercial practices in business-to-business (B2B) relations.
- (2) The UCPD follows, in principle, the concept of full harmonisation (Article 4); which means that one common standard should apply in all Member States of the EU. Nevertheless, under Article 3(9) financial services and immovable property were exempted from the full harmonisation programme of the UCPD.
- (3) The UCPD is complemented by sector-specific and other cross-sectoral legislation that contains special rules on commercial practices. National law that lawfully exceeds the standards of other EU legislation on unfair commercial practices in the areas of financial services or immovable property is a focus of this study.

The objective of the UCPD is to fully harmonise the law on unfair commercial practices harming consumer economic interests; as the different national approaches to regulating that field of law have been considered to cause legal uncertainty and to create barriers affecting businesses and consumers.⁴

The UCPD only concerns unfair commercial practices harming consumers' *economic* interests. Therefore, it does not address legal requirements for commercial practices related to taste and decency; nor does it deal with commercial practices in business-to-business (B2B) relations. It does however indirectly protect legitimate businesses from their competitors who do not play by the rules of the UCPD. To this extent, it promotes fair competition in fields coordinated by it.

In the area of business-to-consumer relations, the UCPD is complemented by sector-specific and other cross-sectoral legislation that contains special rules on commercial practices (see below).

The UCPD contains a wide general clause, two 'smaller' general clauses and a list (contained in Annex 1) of unfair (misleading and aggressive) commercial practices which are in all circumstances considered unfair.

Under the wide general clause (Article 5), unfair commercial practices are prohibited. According to Article 5(2), "a commercial practice shall be unfair if: (a) it is contrary to the

⁴ The following overview of the UCPD and national UCPD implementation legislation and legislative approaches is partly based on Civic Consulting, *State of Play of the implementation of the provisions on advertising in the unfair commercial practices legislation* (Study conducted for the IMCO Committee of the European Parliament, lead author Susanne Augenhofer), Directorate General for Internal Policies, Brussels, 2010.

requirements of professional diligence, and (b) it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers.”

The two smaller general clauses prohibit misleading commercial practices (misleading actions and misleading omissions, Article 6 and 7) and aggressive commercial practices (Article 8 and 9). Therefore the general clause has the function of a safety net: It is applied only if the commercial practice under examination is neither unfair under Annex I of the UCPD nor under one of the two small general clauses.⁵

The UCPD follows, in principle, the concept of full harmonisation (Article 4); which means that one common standard should apply in all Member States of the EU. The Court of Justice of the European Union (CJEU) has demonstrated its willingness to embrace this approach in recent case-law.⁶ As early as the 2003 proposal for the UCPD, the Commission also recognised great potential within the internal market for the full harmonisation of unfair commercial practices in the area of financial services.⁷ One obvious reason for this is that financial services are non-tangible and therefore technically easy to trade cross-border. There also seems to be the potential for developing a cross-border market related to immovable property. It is true that there are significant differences in the Member States’ property laws; and protection in this area is frequently afforded through public notaries that are involved in the conclusion of immovable property contracts in order to ensure that no hasty purchasing decisions are made. At the same time, the conveyancing market could become more European;⁸ and also the construction market is becoming ever more international.

Nevertheless, under Article 3(9) financial services and immovable property were exempted from the full harmonisation programme of the UCPD. According to recital (9),

“Financial services and immovable property, by reason of their complexity and inherent serious risks, necessitate detailed requirements, including positive obligations on traders. For this reason, in the field of financial services and immovable property, this Directive is without prejudice to the right of Member States to go beyond its provisions to protect the economic interests of consumers.”

⁵ See Micklitz, H.W., ‘The General Clause on Unfair Practices’, in Howells/Micklitz/Wilhelmsson (eds.), *European Fair Trading Law. The Unfair Commercial Practices Directive*, Ashgate, Aldershot, 2006.

⁶ See ECJ, judgment of 23/4/2009, Joined Cases C-261/07 and C-299/07 *VTB-VAB NV v Total Belgium NV and Galatea BVBA v Sanoma Magazines Belgium NV*, [2009] ECR I-2949; ECJ, judgment of 14/1/2010, Case C-304/08 *Zentrale zur Bekämpfung unlauteren Wettbewerbs eV v. Plus Warenhandels-gesellschaft mbH*, not yet reported; ECJ, judgment of 9/11/2010, Case C-540/08 *Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG v „Österreich“-Zeitungsv-erlag GmbH*, not yet reported.

⁷ See the proposal, COM(2003) 356 final, 3.

⁸ See for example Centre for European Law and Politics (ZERP) et al., *Conveyancing Services Market*, Study for the European Commission, DG Competition, 2007, available at: http://ec.europa.eu/competition/sectors/professional_services/studies/studies.html.

These areas were however put 'on watch'. According to Article 18(1) UCPD, the Commission shall submit to the European Parliament and the Council a comprehensive report on the application of this Directive, in particular of Article 3(9). The report should focus on the scope for further harmonisation and simplification of Community law relating to consumer protection.

The notions of 'financial services' and 'immovable property' are not defined in the UCPD. For financial services, Article 3(9) refers to the definition used in 2002/65/EC on the distance marketing of financial services. Financial services are there defined as "any service of a banking, credit, insurance, personal pension, investment or payment nature". This definition is also used for this report.

Immovable property is not defined in the UCPD. This report takes a broad view, including a variety of types of ownership and possession of immovable property; and the erection of buildings and services related to the acquisition of immovable property, in particular the services of real estate agents. In contrast, the mandatory protection of tenants under tenancy law that has been enacted in many Member States is not in the focus of this legal analysis.

As mentioned above, the UCPD is complemented by other EU legislation that has introduced rules on unfair commercial practices, such as Article 4 of the Consumer Credit Directive 2008/48/EC on certain forms of credit advertising. Where national laws merely implement the standards of this other EU legislation (or are not even allowed to go beyond the EU standard as in the case of Article 4 of the Consumer Credit Directive 2008/48/EC), this is not discussed in detail in this study. Other EU legislation in the area of financial services includes, for example:

- Articles 9 and 10 of Directive 2002/65/EC concerning the distance marketing of consumer financial services, dealing with the supply of financial services without a prior request on the consumer's part, when this supply includes a request for immediate or deferred payment, and with unsolicited communications; and
- Directive 2004/39/EC on markets in financial instruments as concretised by Directive 2006/73/EC as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of Directive 2004/39/EC; in particular Article 3(2) of Directive 2006/73/EC concerning the provision of information on the internet and Article 27(2) concerning specific requirements for market communications.

In the area of immovable property, we find special rules on advertisement or commercial communications in:

- Article 3 of the Timeshare Directive 2008/122/EC; and
- Article 12 of the Energy Efficiency Directive 2010/31/EU.

In contrast, national law that lawfully exceeds the standards of other EU legislation on unfair commercial practices in the areas of financial services or immovable property is considered in this study.

A cross-sectoral issue is unsolicited commercial communication. Here, EU law currently provides for rules in the Distance Selling Directive 97/7/EC (which will be repealed and replaced by the Consumer Rights Directive 2011/83/EC as of 13 June 2014; the new Directive does not regulate unsolicited commercial communication); in Directive 2002/65/EC on the distance marketing of financial services; and in the Data Protection Directive 2002/58/EC. For voice-mail messages and unsolicited faxes, the EU has introduced an opt-in system under which such practices are only allowed if the consumer has agreed to them. For other electronic communication, that is, electronic mail, Article 13(2) of Directive 2002/58/EC provides for an opt-out system in cases where the trader obtains from its customers their electronic contact details for email, in the context of the sale of a product or a service. All other practices come under an opt-out system without further qualification, according to Directives 97/7/EC and 2002/65/EC, and communications are allowed if the consumer does not reject them. Member States can however go beyond that level of protection, and a number of Member States have done so generally, that is, in relation to all goods and services. One example is Germany, where an opt-in system applies for cold calling and for unsolicited e-mails.⁹ Another example is Denmark where a general prohibition of unsolicited visits at the consumer's home or workplace applies in addition to cold calling and unsolicited e-mails,¹⁰ with a notable exception for insurance contracts as far as cold calling is concerned. However, since this study is concerned with particularities in the areas of financial services and immovable property, the following sections only deal with those rules that have been introduced in order to protect consumers specifically in these sectors.

Indirectly, information obligations outside the UCPD play an important role in the area of unfair commercial practices as well. The UCPD deals with the relationship between unfair commercial practices law and information obligations in Article 7(5). According to this provision:

“Information requirements established by Community law in relation to commercial communication including advertising or marketing, a non-exhaustive list of which is contained in Annex II, shall be regarded as material.”

Thus, the breach of information obligations that stem from EU law constitutes an unfair commercial practice in the sense of the UCPD provided that the other prerequisites of Articles 7(1) and 7(2) are satisfied: that the (material) information is omitted, taking account of the limitations of the communication medium, or provided in an unclear, unintelligible, ambiguous or untimely manner, and causes or is likely to cause the average consumer to take a transactional decision that he or she would not have taken otherwise.

Relevant legislation on information obligation towards consumers in the area of *financial services* at EU level includes:

- Articles 5 and 6 of the Consumer Credit Directive 2008/48/EC;

⁹ § 7 para. 2 no. 3 of the German Unfair Competition Act.

¹⁰ Act 451/2004 on Certain Consumer Contracts, Denmark country report.

- Articles 3, 4 and 5 of Directive 2002/65/EC concerning the distance marketing of consumer financial services;
- Articles 12 and 13 of the Insurance Mediation Directive 2002/92/EC, dealing in particular with information concerning the intermediary and his status; and
- Articles 36 ff., 41 ff. and 46 f. of the Payment Services Directive 2007/64/EC.

In the area of *immovable property*, we find information obligations in:

- Article 4 of the Timeshare Directive 2008/122/EC; and
- Article 12 of the Energy Efficiency Directive 2010/31/EU.

Again, the mere implementation of these requirements by the Member States is not documented in this study. In contrast, information obligations that go beyond EU standards are mentioned if they are relevant for the law of unfair commercial practices.

3.2 National implementation of the UCPD

This section deals with the national legislation implementing the UCPD and with the enforcement system that Member States have chosen for themselves in order to implement the general obligations spelt out in Articles 11 and 13 of the UCPD. However, it also sets out some general considerations concerning the relationship between unfair commercial practices law and other national legislation, in particular trading laws and contract law, including pre-contractual obligations.

Key findings:

- (1) The technical choices Member States made in order to implement the UCPD vary greatly: Some Member States have implemented it in pre-existing codifications, for example in their acts against unfair competition, in their consumer law codes, in their civil codes or in special existing acts. Other Member States have implemented the UCPD by passing a regulation which essentially copies out the UCPD.
- (2) Few Member States have made explicit use of Article 3(9) UCPD (in the sense of actually including special rules for financial services and/or immovable property in legislation that implements the UCPD). France and Belgium are exceptions to this. They have reacted to the ECJ ruling in *Total Belgium* by abolishing the contested general prohibition of joined offers; but have maintained this prohibition in the area of financial services where this was permissible.
- (3) However, in a number of Member States numerous pre-existing and also new rules can be found that operate as separate regimes from the legislation implementing the UCPD. Such rules may be national public/state regulatory trading laws; rules of professional regulation; and rules belonging to the wider sphere of contract law, in particular pre-contractual information duties and prohibitions of certain terms in standard contracts.
- (4) These rules usually have their own enforcement systems (public law enforcement and/or private law remedies); but in addition to that they can also often be enforced

through the national enforcement system of the UCPD. The most comprehensive system is the financial services regulation in the UK, which simply operates alongside the national implementation of the UCPD and is considered to meet at least the fairness standards of the UCPD.

- (5) Most Member States have entrusted public authorities with the enforcement of the national implementation of the UCPD. Often, however, both public authorities and consumer organisations operate alongside each other; with the consumer organisations being able to bring law-suits in court, and the public authority also being able, in addition, to issue desist orders and fines.
- (6) The UCPD explicitly leaves the decision to introduce individual remedies to the Member States. Individual remedies exist in a majority of Member States, although in some Member States these remedies seem to consist in a complaint to the competent authority which will then take up the case.

3.2.1 National implementation legislations

The Unfair Commercial Practices Directive (UCPD) was adopted in May 2005 and had to be implemented by Member States into national law by 12 June 2007. It was applicable by 12 December 2007. Some Member States were late in implementing the UCPD but all Member States have now implemented the Directive, with Luxembourg and Spain having been the last to transpose the Directive, doing so respectively in April and December 2009.

The technical choices Member States made in order to implement the UCPD vary greatly.¹¹ Some Member States have implemented the UCPD in pre-existing codifications, for example in their acts against unfair competition (Germany,¹² Austria,¹³ Denmark,¹⁴ Spain,¹⁵ Sweden¹⁶), in their consumer law codes (France,¹⁷ Italy,¹⁸

¹¹ All implementation laws – besides the Finnish one and the one from Lithuania – are accessible http://ec.europa.eu/justice/consumer-marketing/unfair-trade/unfair-practices/index_en.htm. The Finnish implementation law can be accessed at <http://www.finlex.fi/fi/laki/alkup/2008/20080561>.

¹² Bekanntmachung der Neufassung des Gesetzes gegen den unlauteren Wettbewerb, BGBl. 2008 I, p. 2949. A consolidated version was published in 2010, BGBl. 2010 I, p. 254.

¹³ 79. Bundesgesetz, mit dem das Bundesgesetz gegen den unlauteren Wettbewerb 1984 – UWG geändert wird, BGBl. I 2007/79, 13.11.2007.

¹⁴ Act 1547/2006 amending the Marketing Practices Act. The act was replaced by the Consolidated Marketing Practices Act 839/2009 as amended by Act 535/2010 implementing the Consumer Credit Directive 2008/48/EC and by Act 621/2011. The black list was implemented by Executive order 1084/2007 on unfair business-to-consumer trade practices.

¹⁵ Ley 29/2009, de 30 de diciembre, por la que se modifica el régimen legal de la competencia desleal y de la publicidad para la mejora de la protección de los consumidores y usuarios.

¹⁶ Regeringen överlämnar denna proposition till riksdagen, Prop. 2007/08:115, of 6 March 2008.

Bulgaria,¹⁹ Czech Republic,²⁰ Malta²¹), in their civil codes (the Netherlands²²) or in special existing acts (Belgium,²³ which implemented the UCPD in the Act on Trade Practices and the Information and Protection of Consumers). Other Member States have implemented the UCPD by passing a regulation which basically copies out the UCPD (UK,²⁴ Portugal,²⁵ Romania,²⁶ Hungary,²⁷ Cyprus,²⁸ Poland,²⁹ Slovenia,³⁰ Slovakia,³¹ Estonia,³² Ireland,³³ Luxembourg,³⁴ Latvia,³⁵ Lithuania,³⁶ Greece,³⁷ and Finland³⁸).

¹⁷ Loi no. 2008-3 du 3 janvier 2008 pour le développement de la concurrence au service des consommateurs and Loi no 2008-776 du 4 août 2008 sur la modernisation de l'économie (articles 83 and 84).

¹⁸ Decreto legislativo 2 Agosto 2007, n. 146.

¹⁹ Law amending the Consumer Protection Law of 8 September 2007.

²⁰ Act no. 36/2008 Coll., amending the Act no. 634/1992 Coll., on protection of consumers, as amended, implemented in 2009.

²¹ Act II of 2008 which amended the Consumer Affairs Act (Chapter 378 of the Laws of Malta). Act II of 2008 introduced Part VII in the Consumer Affairs Act which deals with Unfair Commercial Practices and Illicit Schemes.

²² Wet oneerlijke handelspraktijken (Wet OHP; Unfair Commercial Practices Act 2008), Staatsblad 2008, no. 397.

²³ Loi relative aux pratiques du marché et à la protection du consommateur du 6 avril 2010 (initially the UCPD was implemented in June 2007).

²⁴ The Consumer Protection from Unfair Trading Regulations 2008, SI 2008 No. 1277 of 26 May 2008.

²⁵ Ministério da Economia e da Inovação-Estabelece o regime aplicável às práticas comerciais desleais das empresas nas relações com os consumidores, ocorridas antes, durante ou após uma transacção comercial relativa a um bem ou serviço, transpondo para a ordem jurídica interna a Directiva n.º 2005/29/CE, do Parlamento Europeu e do Conselho, de 11 de Maio, relativa às práticas comerciais desleais das empresas nas relações com os.

²⁶ Law No. 363/2007 on fighting against unfair practices of traders in relations with the consumers.

²⁷ 2008. évi XLVII. Törvény a fogyasztókkal szembeni tisztességtelen kereskedelmi gyakorlat tilalmáról and 2008. évi XLVIII. törvény a gazdasági reklámtevékenység alapvető feltételeiről és egyes korlátairól.

²⁸ Law on the Unfair Commercial Practices from Businesses to Consumers of 18 July 2007.

²⁹ Law on Prevention of Unfair Market Practices of 23 September 2007.

³⁰ Law on the Protection of Consumers against Unfair Commercial Practices of 15 June 2007.

³¹ Act No. 250/2007 Coll. of Laws, on Consumer Protection and on Change of Act of the Slovak National Council No. 372/1990 Coll., on Minor Offences, as amended of 9 May 2007.

³² Act amending the Consumer Protection Act and the Law of Obligations Act of 11 October 2007.

³³ The Consumer Protection Act 2007, No 19 of 2007.

³⁴ Loi du 29 avril 2009 relative aux pratiques commerciales déloyales, A - N° 88 / 30 avril.

³⁵ Negodigas komercprakses aizlieguma likums of 12 December 2007.

³⁶ Law No X-1409 of 21 December 2007.

³⁷ Amendment and completion of Law 2251/1994 "Protection of Consumers," as applies – Incorporation of Directive 2005/29 of the European Parliament and Council.

³⁸ 561/2008 Annettu Helsingissä 29 päivänä elokuuta 2008.

Luxembourg has now adopted a Consumer Code which includes the law on B2C unfair commercial practices.³⁹

Iceland⁴⁰ and Norway⁴¹ have also implemented the UCPD since the UCPD forms part of the *acquis* of the European Economic Area. Like the other Nordic countries, they had encompassing legislation in the area of unfair commercial practices prior to the implementation of the UCPD.

The choice of one or other technique seems to have been influenced by the history of the law governing unfair commercial practices:

“Member States like Germany or Austria which had acts against unfair competition law from as early on as 1909 and 1923 respectively, have transposed the UCPD in those acts. In Member States in which the law governing unfair commercial practices had not been codified before the UCPD, the UCPD was implemented by a regulation. However, some Member States which do have an act against unfair competition as well as a consumer code have still opted for an implementation by regulation.⁴² This decision seems also to be influenced by the idea that an implementation by a regulation just copying out the UCPD ensures the UCPD is implemented correctly and spares the legislature the work of systematically embodying the UCPD in national codes. ... [I]mplementation of the UCPD by a regulation without examination of whether existing laws are in harmony with the Directive does not necessarily ensure a correct transposition of the law.”⁴³

For example, Belgium maintained a prohibition of combined offers that was held to be in breach of the UCPD in the case of *Total Belgium*. Following that judgment, Belgium amended its law.

German law was also found to be in violation of the UCPD. § 4 no. 6 UWG (relating to a prohibition on commercial practices which make the participation of consumers in a lottery conditional on the purchase of goods or the use of services) was declared by the ECJ to be in breach of the UCPD in the case of *Plus Handelsgesellschaft*.⁴⁴ Following

³⁹ Loi du 8 avril 2011 portant introduction d'un Code de la consommation, Mémorial A-69, 1120, in particular Article L. 122-1. to L. 122-8.

⁴⁰ Act no 50/2008, amending Act no 57/2005 on the surveillance of unfair business practices and market transparency (Lög nr. 57/2005, um eftirlit með viðskiptaháttum og markaðssetningu).

⁴¹ The Marketing Control Act (Lov om kontroll med markedsføring og avtalevilkår mv. - markedsføringsloven) implemented in 2009.

⁴² Regulation in this context means subordinate legislation. An example would be the UK implementation by The Consumer Protection from Unfair Trading Regulations 2008, S.I. 2008/1277.

⁴³ See Civic Consulting (2010). State of Play of the implementation of the provisions on advertising in the unfair commercial practices legislation (Study conducted for the IMCO Committee of the European Parliament, lead author Susanne Augenhöfer).

⁴⁴ ECJ, judgment of 14/1/2010, Case C-304/08 *Zentrale zur Bekämpfung unlauteren Wettbewerbs eV v Plus*

this ECJ judgment, the *Bundesgerichtshof* (Federal Supreme Court; BGH) has interpreted § 4 no. 6 UWG in the light of the UCPD in such a way that commercial practices which make the participation of consumers in a lottery conditional on the purchase of goods or the use of services are only unfair if they are in breach of professional diligence in the individual case; which the BGH answered in the negative in the case of *Plus Handelsgesellschaft*.⁴⁵

Other Member States have also reacted to the judgments of the ECJ and abolished *per se* prohibitions that they had initially maintained. For example, Denmark abolished the former *per se* prohibitions against certain discount vouchers and against draws and prize competitions as a direct result of the ECJ ruling in *Total Belgium*.⁴⁶ French law was also amended in order to adjust to the case law of the ECJ.⁴⁷ Austrian law, according to some academics, still contains provisions that are in breach of the UCPD.⁴⁸ These are however not specific to financial services or immovable property and can be neglected for the purposes of this study.

Some Member States have extended the protection that is afforded by the UCPD to natural or legal persons that are not regarded as consumers in terms of Article 2 lit. a) UCPD. For example, Germany is also treating employees as consumers when they purchase goods that they use professionally. France has extended the protection of certain provisions of unfair commercial practices law to legal persons. These extensions, however, are not discussed in this study since they are unrelated to the question as to whether or not the Member States have introduced standards for unfair commercial practices law in the area of financial services and/or immovable property that go beyond the protection of the UCPD. From a European perspective, unfair commercial practices affecting non-consumers (in the terms of Article 2 lit. a) UCPD) are simply outside the scope of the UCPD and therefore within the competence of the Member States. Limitations to the regulatory freedom of the Member States on such issues will only arise to the extent that national provisions are in breach of the Treaty provisions concerning the free movement of goods and services.

3.2.2 The relationship between unfair commercial practices law and other areas of law

We shall see below (see Sections 3.3 and 3.4) that few Member States have made explicit use of Article 3(9) UCPD (in the sense of actually including special rules for financial services and/or immovable property in their legislation that implements the UCPD). France and Belgium are exceptions to this. They have reacted to the ECJ ruling

Warenhandelsgesellschaft mbH, not yet reported.

⁴⁵ See BGH, 5/10/2010, I ZR 4/06, WRP 2011, pp. 557 ff.

⁴⁶ See Act 621/2011 amending the Consolidated Marketing Practices Act 839/2009.

⁴⁷ Law n° 2011-525 of 17 May 2011, France country report.

⁴⁸ See Schuhmacher, W., Das Ende der österreichischen per-se-Verbote von "Geschäftspraktiken" gegenüber Verbrauchern. Anmerkungen zu EuGH 9. 11. 2010, Rs C-540/08 (Mediaprint/Österreich), *Wirtschaftrechtliche Blätter (wbl)*, 2010, pp. 613 ff., at 616.

in *Total Belgium* by abolishing the contested general prohibition of joined offers; but have maintained this prohibition in the area of financial services where this was permissible.⁴⁹

However, these French and Belgian instances aside, what we find in a number of Member States are numerous pre-existing and also new rules that operate as separate regimes from the legislation implementing the UCPD. Such rules may be national public/state regulatory trading laws; rules of professional regulation; and rules belonging to the wider sphere of contract law, in particular pre-contractual information duties and prohibitions of certain terms in standard contracts. These rules usually have their own enforcement systems (public law enforcement and/or private law remedies); but in addition to that they can also often be enforced through the national enforcement system of the UCPD. The most comprehensive system is the financial services regulation in the UK, established by the Financial Services Authority under the Financial Services and Markets Act (FSMA) 2000. This regime simply operates alongside the national implementation of the UCPD and is considered to meet at least the fairness standards of the UCPD.⁵⁰

a) *Trading laws*

Trading laws and unfair commercial practices law have in common that they often prohibit certain activities; e.g. the doorstep selling of certain dangerous products. Such prohibitions usually form part of the public laws of the Member States, and they are enforced by public authorities, frequently at the local level. However, traditional national trading laws often differ from commercial practices law in that often, they do not use 'consumer' terminology as such; referring to 'private persons' rather than to 'consumers'.⁵¹ Also, the sanctions for breach of trading laws are often different from those applicable under unfair commercial practices law. Typical sanctions are fines or the withdrawal of a licence. Certain trading laws have been challenged in the ECJ for alleged violation of the law on free movement of goods or free movement of services.⁵² An example from the area of financial services was the case of *Alpine Investment* where the ECJ dealt with a Dutch prohibition of cold calling that only applied in the area of financial services⁵³

Trading laws can however be linked with unfair commercial practices law. Trading laws often aim at the protection of citizens that are at the same time consumers in the terms of EU consumer law. The breach of trading laws may at the same time constitute an

⁴⁹ See France country report; Article 72 of the Belgian Law on market practices and the protection of consumers of 6/4/2010.

⁵⁰ See UK country report.

⁵¹ See, for example, the Austrian government code of conduct for real estate agents (*Verordnung über Standes- und Ausübungsregeln für Immobilienmakler, IMMV*); see also Austria country report.

⁵² See, for example, ECJ, judgment of 26/5/2005, Case C.20/03 *Criminal proceedings against Marcel Burmanjer and others* [2005] ECR I-4133; ECJ, judgment of 23/2/2006, Case C-441/04 *A-Punkt Schmuckhandels GmbH / Claudia Schmidt*, [2006] ECR I-2093.

⁵³ ECJ, judgment of 10/5/1995, Case C-384/93 *Alpine Investments / Minister van Financiën* [1995] ECR I-1141.

unfair commercial practice in that the trader gains an unfair advantage over his competitors that stick to the rules.

Finally, from a trader's perspective it does not really matter whether the prohibition of an activity that he or she wants to engage in forms part of the law of unfair commercial practices or of (public) trading law. In fact, country reports recognise this overlap. They mention a number of absolute prohibitions or restrictions that can be clearly classified as trading laws; yet the country reports also treat them also as commercial practices rules in that they mention them as examples of national legislative prohibitions not contained in the blacklist of the UCPD.⁵⁴

b) Regulation of professions

Some Member States have regulated certain professions and imposed duties and prohibitions on them. One example that is relevant for this report is the regulation of real estate agents (see below Section 3.4). The respective laws may form part of public law or contain private law rules. They are often enforced by public law means. They can however also be seen as concretising the 'professional diligence' standard from UCPD Article 5(2). Thus, a breach of such professional regulation may at the same time be an unfair commercial practice in terms of Article 5(2) UCPD; provided that the other requirements of Article 5(2) UCPD are met. This possibility has been reported, for example, from Italy.⁵⁵

c) Pre-contractual obligations

At the core of the definition of a 'misleading omission' under Article 7(1) is the idea that the information omitted is 'material'. The UCPD deals with the relationship between this unfair commercial practices law concept and other information obligations under Community law. Article 7(5) provides that:

"Information requirements established by Community law in relation to commercial communication including advertising or marketing, a non-exhaustive list of which is contained in Annex II, shall be regarded as material."

Recital (15) complements this provision by stating the following:

"Where Community law sets out information requirements in relation to commercial communication, advertising and marketing that information is considered as material under this Directive. Member States will be able to retain or add information requirements relating to contract law and having contract law consequences where this is allowed by the minimum clauses in the existing Community law instruments. A non-exhaustive list of such information requirements in the acquis is contained in Annex II. Given the full harmonisation introduced by this Directive only the information required in Community law is considered as material for the purpose of Article 7(5) thereof. Where Member

⁵⁴ For example restrictions on the collection of orders under Austrian law, see Austria country report.

⁵⁵ See Italy country report.

States have introduced information requirements over and above what is specified in Community law, on the basis of minimum clauses, the omission of that extra information will not constitute a misleading omission under this Directive. By contrast Member States will be able, when allowed by the minimum clauses in Community law, to maintain or introduce more stringent provisions in conformity with Community law so as to ensure a higher level of protection of consumers' individual contractual rights.”

Notably, sentence 4 of recital (15) relates to the “full harmonisation” introduced by the UCPD. For financial services and immovable property, however, the UCPD does not provide for full harmonisation. Thus, one could argue that the limitation that is implied in Article 7(5) does not apply to the areas of financial services and immovable property.

At the same time, even if this is correct, some of the consumer contract law directives in these areas are full harmonisation directives themselves, disallowing pre-contractual information obligations beyond those established in the relevant directives. This applies to the Consumer Credit Directive 2008/48/EC and to the Timeshare Directive 2008/122/EC. Provided that the Member States have implemented these directives correctly, the issue of additional information obligations cannot arise in these contexts.

However, other directives in the area of financial services have not harmonised information obligations entirely. One example is Directive 2002/65/EC on the distance marketing of financial services. According to Article 4(2) of that directive, pending further harmonisation, Member States may maintain or introduce more stringent provisions on prior information requirements when the provisions are in conformity with Community law. France, for example, has extended the list of information to be provided.⁵⁶ The same applies to the Energy Efficiency Directive 2010/31/EU.

A special case is Directive 2004/39/EC on markets in financial instruments. The extent to which Directive 2004/39/EC is of relevance to the contractual relationship between the investor and the investment firm is entirely unclear. The Directive itself only talks of harmonisation aiming at mutual recognition of authorisations by the competent authorities. Indeed, it does not seem to make much sense to harmonise rules on, for example, inducements for matters of prudential supervision law whilst leaving it to the Member States to prohibit the identical practices under contract or tort law. As recital (2) of Directive 2004/39/EC prominently confirms, the Directive aims to facilitate cross-border investment services. Thus, where Directives 2004/39/EC and 2006/73/EC contain specific rules on a particular issue, they would imply maximum harmonisation of related private law as well. This is however anything but clear and would have ultimately to be decided by the CJEU.

All Member States have implemented Article 7 on misleading omissions. Some Member States have however not expressly limited their implementing provision to information obligations stemming from EU law or they have availed of an additional provision that brings the breach of other laws into the realm of unfair commercial practices law. The

⁵⁶ See France country report.

former is the case in Poland where the law could be interpreted in such a way that the breach of purely national information obligations constitutes a misleading omission as well. Even though information obligations have been densely regulated at EU level, Polish law does contain additional information obligations the breach of which could therefore be held to misleading omissions. Respective court decisions are however not available yet. Such an extension of Article 7(5) is in contradiction with the full harmonisation approach of that article, and therefore Polish authors favour a restrictive interpretation of the national implementation of Article 7(5) in the light of recital (15) of the UCPD.⁵⁷ This latter approach of a restrictive interpretation of the national implementation of Article 7(5) in the light of recital (15) of the UCPD was actually the approach of the German Federal Supreme Court concerning the similar provision of § 4 no. 11 of the German Unfair Competition Act.⁵⁸

Finally, there are types of financial services that have not yet been regulated by the EU at all. One example is advertisements for mortgage credit. These are not regulated at EU level at the moment,⁵⁹ but Member States have nevertheless introduced or maintained pre-contractual information obligations, the breach of which contravenes national law, in accordance with Article 3(9). Examples are Austria, Germany, Poland and Denmark. This allows Member States to treat the violation of all sorts of pre-contractual information obligations in the fields of financial services and immovable property as misleading omissions.

In other legal systems where the breach of information obligations is not necessarily regarded as an unfair commercial practice, sector-specific pre-contractual information obligations could still be regarded by the courts as concretising what is “material information” in terms of Article 7(1) UCPD. This possibility has been reported from France.⁶⁰

d) Unfair contract terms

Some Member States have also established a link between unfair contract terms law and unfair commercial practices law. In Germany, for instance, courts have regarded the use of unfair contract terms as an unfair commercial practice in terms of § 4 no. 11 UWG.⁶¹ A recent decision of the *Bundesgerichtshof* appears to confirm this approach.⁶² The same applies to Austrian law.⁶³ Unfair contract terms law is of great importance in the area of financial services law, and although it is beyond the scope of this study to analyse the

⁵⁷ See Poland country report.

⁵⁸ See, for example, BGH, 22/4/2009, I ZR 14/07, WRP 2009, at p. 1510; BGH, 31/3/2010, I ZR 34/08, NJW 2011, at pp. 76 ff.

⁵⁹ The Commission has tabled a proposal for a Mortgage Credit Directive, see COM(2011) 142 final.

⁶⁰ See France country report.

⁶¹ See, for example, OLG Hamm, 30/3/2006, 4 U 3/06.

⁶² See BGH, 31/3/2010, I ZR 34/08, NJW 2011, pp. 76 ff.

⁶³ See OGH, 23/2/2010, 4 Ob 99/09a.

relevant case law of the Member States it seems apparent that there is a wide variety of issues that can be brought into the realm of unfair commercial practices law, and therefore be enforced with the mechanisms provided by unfair commercial practices law.

3.2.3 Enforcement of the UCPD

The UCPD gives the Member States considerable leeway in the enforcement of the UCPD. Under Article 11(1) UCPD:

“Member States shall ensure that adequate and effective means exist to combat unfair commercial practices in order to enforce compliance with the provisions of this Directive in the interest of consumers. Such means shall include legal provisions under which persons or organisations regarded under national law as having a legitimate interest in combating unfair commercial practices, including competitors, may: (a) take legal action against such unfair commercial practices; and/or (b) bring such unfair commercial practices before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings.”

Providing such considerable leeway follows the approach of EU consumer law in earlier directives, and it has allowed the Member States to establish or maintain their own specific enforcement systems. The main existing differences are the following: Most Member States have entrusted public authorities with the enforcement of the national implementation of the UCPD. Examples of this are the Nordic countries (Denmark, Sweden, Finland, Norway and Iceland); the UK and Ireland; and most of the Central and Eastern European Member States.⁶⁴ Often, however, both public authorities and consumer organisations operate alongside each other; with the consumer organisations obviously only being able to bring law-suits in court, and the public authority also being able, in addition, to issue desist orders and fines. Bulgaria, Cyprus, Romania, and the Netherlands are examples of such an approach.

The legal position of consumer organisations varies: They may only be able to take legal action if the public authority decides not to do so,⁶⁵ or they may be able to act entirely independently. Indeed, in some cases Member States rely solely or heavily on enforcement of unfair commercial practices law by consumer organisations and by disadvantaged competitors. This is the approach in Germany, Austria and Slovenia.⁶⁶ In France and Spain, both the enforcement authority and consumer organisations can bring law-suits in the civil courts.

An overview of who can bring an action under the national law implementing the UCPD is provided in the following figure, which summarises survey responses from

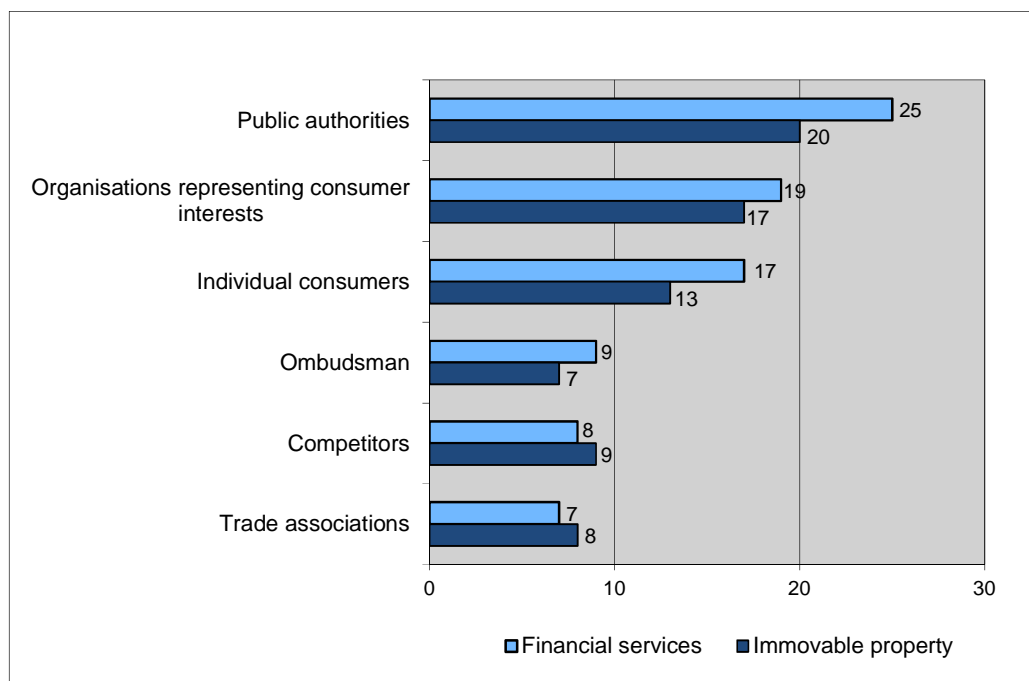
⁶⁴ See also H.-W. Micklitz Rechtsvergleich, in: H.-W. Micklitz, P. Rott, U. Docekal and P. Kolba (eds), *Verbraucherschutz durch Unterlassungsklagen*, Nomos, Baden-Baden, 2007, at pp. 219 ff.

⁶⁵ For example, in Finland.

⁶⁶ See also Micklitz (2007), n. 61, p. 219.

enforcement authorities across the EU, both for the field of financial services and immovable property:

Figure 1: Types of organisation which can bring an action under the national law implementing the UCPD (number of countries in which each type of organisation was reported):



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in financial services (N=28) and immovable property (N=23) (multiple answers possible). No survey response received from the responsible authorities in the field of immovable property in Malta, Portugal, Romania and Slovakia. One authority in the area of financial services did not provide an answer to this question.

The second major distinction between Member States' approaches relates to the use of individual remedies against traders using unfair commercial practices. The UCPD explicitly leaves the decision to introduce individual remedies to the Member States. Individual remedies exist in a majority of Member States, although in some Member States these remedies seem to consist in a complaint to the competent authority which will then take up the case.⁶⁷ In Belgium, the consumer can withdraw from a contract that he or she concluded following an unfair commercial practice.⁶⁸ In contrast, other Member States, in particular Austria and Germany, have chosen not to grant individual consumers individual remedies.⁶⁹

⁶⁷ This is the situation in Latvia and Lithuania.

⁶⁸ See fact sheet Belgium.

⁶⁹ In Germany, the courts do not recognize a claim in tort law either; see BGH, GRUR 1975, 150. The situation in Austrian law is not entirely clear but after a decision of the OGH of 1998 – OGH, 24/2/1998, 4 OB 53/98t - in favour of

It should however be noted that consumers may of course have individual remedies stemming from Community or national contract or tort law. For example, misleading information may lead to the non-conformity of goods with the contract under the Consumer Sales and Guarantees Directive 1999/44/EC. This is because public statements made in advertisements are explicitly included in the assessment of conformity, according to Article 2(2)(d) of the Consumer Sales and Guarantees Directive. Misleading actions may also be regarded, under national law, as a breach of a pre-contractual relationship (*culpa in contrahendo*) or give the right to avoid the contract, if the respective preconditions are met.⁷⁰ The same applies to misleading omissions; and that is most obvious in the case of Article 7(5) UCPD where the misleading omission lies in the breach of an information obligation. Aggressive practices may lead to the consumer's right to avoid the contract on the basis of national law concepts such as duress.

In a number of Member States, competitors can enforce the national implementation of the UCPD, based on the idea that they suffer damage from their competitors engaging in unfair commercial practices. This is for example the case in Austria, the Czech Republic, Germany and Portugal.

Also, business associations have been granted legal standing in Austria, Germany and Greece in order to be able to represent the interests of their members in unfair commercial practices law.

A more recent development is the introduction of collective remedies in consumer law. These can play a role in Member States where individual consumers have remedies available that they can enforce in group actions. Of those Member States that have granted remedies to individual consumers, Denmark, Italy, Portugal, Spain and Sweden also offer the opportunity to bring collective remedies.⁷¹ In other Member States, specific types of collective action have been introduced to strengthen the enforcement of unfair commercial practices law in a way that extends beyond the use of injunctions. In Finland, the consumer ombudsman can bring a class action representing individual consumers, which includes their damage claims under unfair commercial practices law. In France, consumer organisations can claim damages for damage to the collective interests of consumers. Germany has introduced a 'skimming-off' procedure that allows consumer organisations to claim the unlawful profits that a trader has made by using unfair commercial practices; although the funds recovered go to the public purse and not to the consumer organisations. This model is likely to be extended to cartel law claims soon.

It should also be noted that in some Member States a breach of unfair commercial practices law is a criminal offence that can be enforced either by public authorities or by the public prosecution authorities and the criminal courts. This is the case in Belgium and

such a claim this was never taken up again.

⁷⁰ See, for example, the Austrian OGH, 31/8/2010, 4 Ob 65/10b; OGH, 29/3/2011, 10 Ob 10/11k.

⁷¹ For an analysis of their respective collective redress mechanisms see Civic Consulting, *Evaluation of the effectiveness and efficiency of collective redress mechanisms in the European Union*, European Commission, Brussels, 2008.

France. In France, the enforcement authority for unfair commercial practices law can draft reports (*procès verbal*) on unfair commercial practices they observed and send them to the public prosecutor who then decides whether or not to initiate criminal proceedings. They can, however, also seek an injunction in the civil courts. Breaches of unfair commercial practices law are also subject to criminal law sanctions in the UK, subject to the traditional defences based on the “default of another”, “due diligence” and “innocent publication of an advertisement”,⁷² and in Ireland, the Nordic countries and Latvia.

In other Member States, only the most severe unfair commercial practices can be sanctioned by means of criminal law, in particular when they amount to fraud in the terms of criminal law. This is the case in Germany where criminal courts have recently been dealing with so-called subscription traps.⁷³

Finally, the role of alternative dispute resolution varies greatly from one Member State to the next. While ADR plays an important role in countries such as Belgium, the United Kingdom, the Nordic countries, the Netherlands and Spain, its importance is more limited in other countries such as Germany. In the Nordic countries, the ombudsman (or the financial supervisory authorities) can also issue non-binding guidelines that are of great importance in practice.⁷⁴ We also find both ADR systems that have been negotiated between business and consumer organisations; as well as ADR systems that have been established unilaterally by businesses. In a number of Member States, ADR schemes have been set up that specifically address financial services. This is the case in the UK, which has established the Financial Ombudsman Service, (by far the largest ADR scheme in Europe), and in France where the *Autorité des Marchés Financiers* (AMF) offers an ombudsman service. Another example is Germany, where the Banking Ombudsman and the Insurance Ombudsman have gained some importance (although ADR schemes are rather fragmented otherwise).⁷⁵ Some ADR schemes have an even more specific scope such as the Bulgarian Commission for the Settlement of Payment Disputes, dealing with disputes under the Payment Services Directive 2007/64/EC. Portuguese banks are reported to have established a self-regulatory scheme regarding the switching of bank accounts.

In a relatively few Member States, ADR schemes operate in the immovable property sector. In the UK, the Consumers, Estate Agency and Redress Act 2007 requires that

⁷² See UK country report.

⁷³ See P. Rott, *Effective Enforcement of Consumer Law: The Comeback of Public Law and Criminal Law*, in: J. Devenney and M. Kenny (eds), *European Consumer Protection: Theory and Practice in Europe*, Cambridge University Press, Cambridge, 2012, forthcoming.

⁷⁴ See, for example, Standard 2.2 on the marketing of financial services and financial instruments issued by the Finnish Financial Supervisory Authority.

⁷⁵ See Civic Consulting (2011). *Cross-Border Alternative Dispute Resolution in the European Union* (Study conducted for the IMCO Committee of the European Parliament); and Civic Consulting (2009). *Study on the use of Alternative Dispute Resolution in the European Union* (Study conducted for DG SANCO of the European Commission).

estate agents belong to an ombudsman approved by the OFT, and there are currently two approved ombudsmen.⁷⁶ Norway has been reported to have a code of conduct regarding marketing of immovable property; and guidelines on marketing of real estate agent services.

The situation gains additional complexity due to the above-mentioned fact that Member States have introduced or maintained regulatory trading laws that have direct or indirect relevance for the law of unfair commercial practices in the areas of financial services and immovable property. Such trading laws are typically enforced by public authorities by means of public law or criminal law. In particular in the area of financial services law Member States have established special authorities. Administrative models vary significantly between Member States: In some countries, one authority is in charge of supervising financial markets, and another authority supervises the activity of banks and insurance companies.⁷⁷ In other countries, insurance companies are supervised by special authorities that are responsible only for this sector.⁷⁸ In contrast, some countries have established one unified authority for the supervision of banks and financial services providers, insurance companies and securities trading, either as a separate entity,⁷⁹ or under the auspices of the National or Central Bank.⁸⁰

In some Member States, even the enforcement of unfair commercial practices law is divided along these lines; with a special financial markets supervisory authority being responsible for the enforcement of the prohibition of unfair commercial practices in that area, whilst a general consumer law enforcement authority is only competent in other areas. This is the case in Denmark and in the Netherlands,⁸¹ as well as in Lithuania and in Malta. In other cases, there are overlapping responsibilities that have created the risk of either duplicated activities or of both enforcement bodies relying on the other to take action.⁸²

⁷⁶ See UK country report.

⁷⁷ For example in France, where the *Autorité des Marchés Financiers* is in charge of monitoring financial markets, and the *Autorité de Contrôle Prudentiel* monitors the activity of banks and insurance companies as from 2010, see <http://www.banque-france.fr/acp/presentation-de-l-acp/201012-ACP-Overview.pdf>.

⁷⁸ For example, the Portuguese Insurance and Pension Funds Supervisory Authority (*Instituto de Seguros de Portugal*), and the *Commissariat aux Assurances* (Luxembourg).

⁷⁹ An example is the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, or BaFin). BaFin shares supervision with the Bundesbank. See: http://www.bafin.de/cln_228/nn_721604/EN/BaFin/Legalbasis/Bundesbank/bundesbank__node.html?__nnn=true and http://www.bafin.de/cln_228/nn_720486/EN/Companies/companies__node.html?__nnn=true.

⁸⁰ For example, the Central Bank of Ireland has had responsibility for both central banking and financial regulation since 2010.

⁸¹ Only the *Autoriteit Financiële Markten* (AFM; the Netherlands Authority for the Financial Markets) can enforce the national implementation of the UCPD in the area of financial services.

⁸² See in particular Italy country report.

In contrast, the rather rare trading law rules in the area of immovable property law are typically enforced by the local authorities. Only Portugal has been reported to have established a special authority for the sector of real estate; while Ireland is about to adopt legislation in order to set up a Property Services Regulatory Authority. Where trading laws have direct relevance in such a way that a breach of trading legislation is at the same time an unfair commercial practice, this link opens the way to enforce trading laws through the enforcement system of unfair commercial practices law. This means that, depending on the national enforcement system in that area, action can be taken not only by the public authorities; but also potentially by consumer organisations, competitors or individual consumers. This has been considered to be an advantage; since the enforcement system under unfair commercial practices law may be speedier than standard administrative procedures.

3.3 National provisions against unfair commercial practices in financial services

Key findings:

- (1) This study has identified a wealth of rules in the field of financial services that go beyond the standards of the UCPD, or that operate alongside national implementation of the UCPD.
- (2) Commercial practices that are banned by national legislation and that do not form part of the blacklist of the UCPD are reported from close to half of the Member States, namely Austria, Belgium, Bulgaria, Denmark, Finland, France, Lithuania, Poland, Portugal, Slovakia, Spain and the UK. The blacklisted prohibitions vary greatly. Direct selling features prominently among per se prohibitions that do not form part of the blacklist of the UCPD. Similarly, sales promotions and tying have been restricted in some Member States. Another category is the prevention of conflicts of interest. Some Member States have enacted regulations that are meant to protect particularly vulnerable consumers, such as young people. Finally, special practices in the area of banking or insurance have been blacklisted, as have been stricter bans regarding pyramid schemes.
- (3) The separation of misleading actions and misleading omissions is sometimes difficult since sector-specific legislation of the Member States does not necessarily distinguish according to these categories. With regard to misleading actions, 11 Member States have indicated that in addition to applying the national implementation legislation of the UCPD they also apply national legal provisions that are not based on any EU legislation. This was the case with 10 Member States with regard to misleading omissions. In the area of aggressive practices, fewer Member States (6) have reported national rules that go beyond the level of protection of the UCPD. Where these have been reported they often relate to cold-calling or unsolicited emails.
- (4) In many cases, regimes that predated the UCPD were upheld simply because they had been elaborated over a long time on the basis of experience and because they worked well. Often, they are much more detailed than the open-textured provisions of the UCPD that wait to be concretised by case law. Most importantly, they usually

avoid the UCPD's so-called 'transactional decision making' test. This test imposes an additional burden on authorities, consumer organisations, individual consumers or other claimants that attack special commercial practices in court or before other bodies. Those challenging the practice, being satisfied with evidence of non-compliance with the traditional rule, must also establish that the practice is likely to affect the 'transactional decision making' of the average consumer.

- (5) A number of traditional provisions take into consideration the particular risks that consumers are exposed to when they make hasty and imprudent transaction decisions in the context of financial services. This policy is reflected in numerous prohibitions or restrictions of direct selling of financial services where the same practices are allowed otherwise, i.e. in the context of the sale of goods and services other than financial services. Another set of national rules deals with the protection of vulnerable consumers. Member States appear to recognize that a very general obligation not to abuse such vulnerability (such as that contained in the UCPD) is insufficient to protect vulnerable consumers; and that clear and specific rules must exist that prohibit certain practices that typically affect the most vulnerable.
- (6) In other cases, the legislation of the Member States is well in line with developments at EU level but has proceeded faster, for example by extending the MiFID regime to the so-called grey capital market; or by imposing restrictions and/or transparency requirements on financial intermediaries in general
- (7) A number of Member States regard the breach of pre-contractual information obligations as an unfair commercial practice; which extends the national law of unfair commercial practices beyond the scope of the UCPD to include all kinds of purely national information obligations. In other Member States where that link is less explicit, pre-contractual information obligations may be used by the courts to specify what information may be "material information" that the trader must provide under Article 7(1) UCPD.

The Member States' attitudes differ greatly when it comes to dealing with unfair commercial practices law in the area of financial services; and these differences can be largely attributed to the different legal regimes that existed prior to the implementation of the UCPD.

As mentioned above, some Member States had an all-encompassing unfair commercial practices law prior to the implementation of the UCPD, and most of these laws do not seem to have distinguished financial services and immovable property from other commercial activities. This is, for example, true for Germany. In these Member States we can see two different developments. Some of these Member States, such as Germany, continue not to distinguish the sectors of financial services and immovable property from other sectors. Others have introduced distinctions between the financial services/immovable property sectors and other sectors; using the leeway provided by Article 3(9) UCPD, with regard to commercial practices that used to be generally considered unfair under national law but cannot be generally considered unfair any longer, due to the full harmonisation approach of the UCPD. Examples are Belgium and

France where the per se prohibition of joined offers had to be given up after the ECJ judgment in *Total Belgium*. These Member States maintained the per se prohibition for the sector of financial services.

In contrast, the Danish Marketing Practices Act applies only partially to financial services. A number of provisions of the Marketing Practices Act do not apply to financial institutions, which are instead regulated by the Financial Business Act.⁸³ At the same time, the enforcement of unfair commercial practices law is divided between the Consumer Ombudsman and the Financial Market Authority.

Other Member States never had an all-encompassing unfair commercial practices law regime, and the best example would be the UK. There, an entirely separate regime had been drawn up in the area of financial services, and it was decided to maintain it, since it has proven to work well. Thus, although the UK regime implementing the UCPD obviously applies to financial services, that regime is not used in practice for financial services. In such cases it becomes rather difficult to compare the UCPD regime with the 'home-grown'⁸⁴ dedicated financial services regime; because the latter does not follow the legal categories of the former.

A third group of Member States has simply implemented the provisions of the UCPD without special rules for financial services. Romania is an example.

Spain is reported to have introduced a special regime concerning advertisements for financial services after the implementation of the UCPD, with a Ministerial Order of 2010.⁸⁵

Finally, Member States have introduced or maintained legislation that only applies to certain financial services, such as insurance, or that tackles very specific problems that have arisen in commercial practice. One example of such a sector-specific approach would be Bulgaria where legislation is divided along the lines of the various types of financial services. One example of legislation that approaches a specific problem would be the provisions related to the canvassing of pension scheme contracts in Poland.⁸⁶

It should be noted also that consumer protection through unfair commercial practices law (and related areas, such as trading laws), is of course complemented by special rules in contract law; which may consist in special information obligations, formal requirements or restrictions concerning the use of specific contract terms. Some Member States have

⁸³ Consolidated Act 885/2011.

⁸⁴ Note that the term 'home grown' is used to distinguish UK implementation of the UCPD from other regulatory requirements not derived from the UCPD. This national regime involves a mix of rules and requirements which implement the numerous sectoral EU financial services Directives and requirements, together with some additional UK requirements that do not directly implement EU legislation.

⁸⁵ Ministerial Order EHA/1718/2010, of 11 June 2010, on the regulation and control of the advertising of financial services and products.

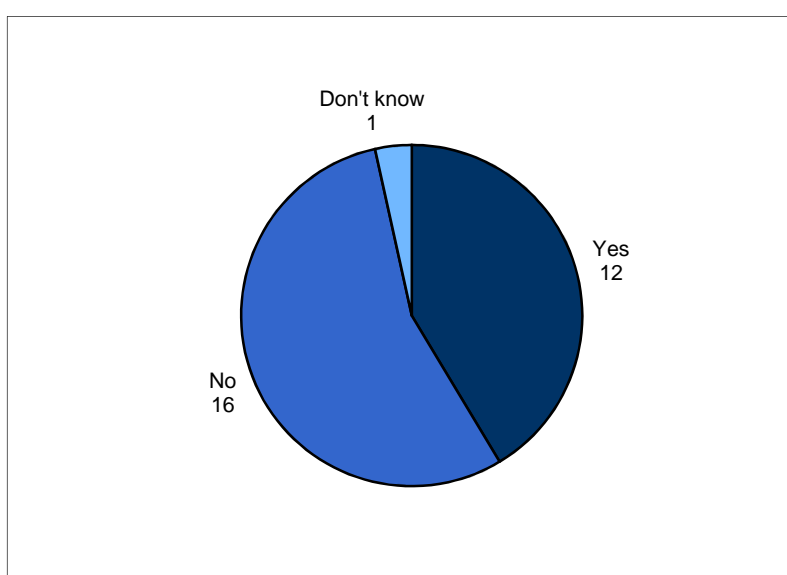
⁸⁶ See Poland country report.

also introduced withdrawal rights for certain financial services.⁸⁷ Failure to inform about these withdrawal rights may again be treated as an unfair commercial practice.

3.3.1 Commercial practices banned by national legislation which are not included in the Black List (Annex I) of the UCPD

Commercial practices that are banned by national legislation and that do not form part of the blacklist of the UCPD are reported from close to half of the Member States, namely Austria, Belgium, Bulgaria, Denmark, Finland, France, Lithuania, Poland, Portugal, Slovakia, Spain and the UK.

Figure 2: Does national legislation ban commercial practices in the area of financial services which are not included in the Black List (Annex I) of the UCPD?



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in financial services (N=29).

The blacklisted prohibitions vary greatly. Direct selling features prominently among per se prohibitions that do not form part of the blacklist of the UCPD (see sub-section a) below). Similarly, sales promotions (b) and tying (c) have been restricted in some Member States. Another category is the prevention of conflicts of interest; a category that has attracted the attention of EU legislation related to the role of intermediaries⁸⁸ but that also comes into play when lenders, in particular banks, lend money for the purpose of the purchase of their own products (d). Some Member States have enacted regulations that are meant to protect particularly vulnerable consumers, such as young

⁸⁷ For securities: France and Italy. For insurance contracts: Germany (§ 8 of the Insurance Contracts Act - *Versicherungsvertragsgesetz*, VVG). A general right to withdraw from insurance contracts is also planned in Austria: see Austria country report.

⁸⁸ See only the Insurance Intermediaries Directive 2002/92/EC.

people but also poor people (e). And finally, special practices in the area of banking services (f) or insurance (g) have been blacklisted, as have been stricter bans regarding pyramid schemes (h).

A full account of the national provisions containing some kind of prohibition or regulation (outside the field of unfair commercial practices law in its narrow sense) was not deemed feasible. This may be best illustrated with reference to the law of the United Kingdom where the Financial Services Authority (FSA) has issued a handbook regulating the market. That handbook subdivides into separate 'sub' books⁸⁹ on such issues as mortgages and home finance;⁹⁰ insurance;⁹¹ banking;⁹² client assets;⁹³ building societies;⁹⁴ collective investment;⁹⁵ credit unions;⁹⁶ and dispute resolution.⁹⁷ This is supported by, in particular, a regulatory guide, 'The Responsibilities of Providers and Distributors for the Fair Treatment of Customers' (RPPD),⁹⁸ and by the general principles for business and the Treating Customers Fairly Outcomes. Overall, hundreds of such rules are reported to exist in the UK. Ireland and Portugal are also reported to have introduced detailed rules in the financial services sector, in particular through secondary legislation. Thus, the following analysis focuses on providing representative examples of rules that go beyond or complement the regime of the UCPD. For more details, please refer to the country fact sheets (Annex I) and to the detailed country reports (Part 2 of this study).

a) Direct selling

As mentioned above, some Member States have adopted stricter rules on cold calling or unsolicited e-mails. It may be worth noting that Austria has introduced the possibility for the Financial Market Authority (*Finanzmarktaufsicht*, FMA) to enforce the prohibition of cold calling and unsolicited e-mails.⁹⁹

⁸⁹ Each of these will tend to contain a large number of rules and sub rules dealing with the relationship from the stage of advertising and promotion, through advice, sales, information disclosure, assessment of suitability, performance, enforcement, dispute resolution etc.

⁹⁰ See <http://fsahandbook.info/FSA/html/handbook/MCOB>.

⁹¹ See <http://fsahandbook.info/FSA/html/handbook/ICOB>S.

⁹² See <http://fsahandbook.info/FSA/html/handbook/BCOB>S.

⁹³ See <http://fsahandbook.info/FSA/html/handbook/CASS>.

⁹⁴ See <http://fsahandbook.info/FSA/html/handbook/BSOC>S.

⁹⁵ See <http://fsahandbook.info/FSA/html/handbook/COLL>.

⁹⁶ See <http://fsahandbook.info/FSA/html/handbook/CRED>.

⁹⁷ See <http://fsahandbook.info/FSA/html/handbook/DISP>.

⁹⁸ See <http://fsahandbook.info/FSA/extra/4720.pdf>.

⁹⁹ §§ 62 and 96 of the Securities Supervision Act 2007 (*Wertpapieraufsichtsgesetz*, WAG).

Some Member States have introduced outright prohibitions on direct selling particularly in the area of financial services where the same practices are allowed with regard to goods and other services.

The Netherlands have traditionally prohibited the doorstep selling of monetary credit.¹⁰⁰ Austrian law contains a prohibition against doorstep selling of mortgage loans¹⁰¹ as well as financial instruments and investments¹⁰² unless the visit was requested by private persons. In France, the doorstep selling of equity release loans is prohibited,¹⁰³ and here there are also restrictions on the doorstep-selling of other financial products.¹⁰⁴

In the Netherlands, unsolicited e-mail communications generally are subject to an opt-out system, whereas an opt-in system applies in the area of financial services.¹⁰⁵

Cold calling is subject to a self-regulatory regime in Greece. The Code of Conduct for the advertising of financial products and services offered by credit institutions specifies that the marketing of financial products or services by telephone is acceptable only within a specific timeframe; that consumer consent is required; and the caller ought to respect the consumer's wishes and not be persistent.¹⁰⁶

In the UK, under the FSA mortgage regime¹⁰⁷ firms are not entitled to make an unsolicited promotion unless the consumer has an established existing relationship with the firm, such that the consumer envisages receiving unsolicited promotions. In order to count as a solicited promotion, the contact must take place only where it has been initiated by the consumer or is in response to an express request from the consumer. Further, it must be clear, in all the circumstances, that credit will be discussed.¹⁰⁸

Insurance and pensions funds are notoriously complex and difficult to understand. This seems to be the reason why a number of Member States restrict direct selling of these types of financial products. For example, Poland has expressly prohibited solicitation for

¹⁰⁰ See Article 6 of the Doorstep Selling Act 1975. In contrast, the doorstep selling of commodity credit is allowed under strict formal requirements, see country report Netherlands.

¹⁰¹ § 4 para 1 no. 9 of the *Verordnung über Standes- und Ausübungsregeln für Immobilienmakler* (IMMV).

¹⁰² § 63 para 1 of the Securities Supervision Act 2007 (*Wertpapieraufsichtsgesetz*, WAG). Moreover, special rules apply under § 63 para 2 WAG to the right of withdrawal, which exists even if the consumer has initiated the business relationship.

¹⁰³ Article L 314-4 of the Code de la consommation.

¹⁰⁴ Article L 341-10 of the Monetary and Financial Code.

¹⁰⁵ See country report Netherlands.

¹⁰⁶ See fact sheet Greece.

¹⁰⁷ See MCOB, <http://fsahandbook.info/FSA/html/handbook/MCOB>, rules 3.7.1 and 3.7.3.

¹⁰⁸ For a detailed commentary on the FSA approach to cold calling (including how it relates to the regime under the Electronic Communications (EU Directive) Regulations 2003), see FSA, Handbook FAQs: Mortgage Conduct of Business Rules-Financial Promotions (including cold calling), available at www.fsa.gov.uk/smallfirms/resources/faqs/mcob_financial.shtml, page last updated, February 18, 2011.

pension funds with effect from 1 January 2012, following misleading practices that have been found in this context.

In the Netherlands, a special rule applies to investment firms. They are not allowed to approach non-professional investors who have not had prior business contact with the investment firms; unless non-professional investor explicitly consented to such contact in advance in writing or by electronic communication.¹⁰⁹

Interestingly, Denmark has adopted special rules for unsolicited telephone calls in the insurance sector. Whilst door-to-door selling of insurance contracts is generally prohibited by § 34b of the Danish Insurance Contracts Act,¹¹⁰ unsolicited telephone selling of insurance is not prohibited *per se*, as an exception from the general prohibition of cold calling in Danish law.

A lesser form of protection from direct selling is the French prohibition on accepting any form of advance payment within the withdrawal period.¹¹¹ EU legislation has introduced such a prohibition only in the context of timeshare contracts;¹¹² but has allowed Member States to retain such a prohibition in Article 9(3) sentence 2 of the new Consumer Rights Directive 2011/83/EU and also in Article 14(7) of the Consumer Credit Directive 2008/48/EC.

b) Sales promotion

Some Member States have reported special prohibitions related to sales promotions. As noted above, Belgium and France have retained their respective prohibitions of combined offers in the area of financial services.¹¹³

Restrictions also apply to advertisements with bonuses and the like. In Bulgaria, the Social Insurance Code contains a prohibition on organising lotteries.¹¹⁴ Bonuses and rebates are prohibited in the marketing of compulsory car insurance.¹¹⁵ Under French law, it is prohibited to advertise consumer credit with any form of inducement such as a “bonus payment” or any kind of “prize”.¹¹⁶

The same type of prohibitions can be found at the stage of the conclusion of the contract. For example, French law disallows the linking of the conclusion of a consumer credit

¹⁰⁹ Article 82 *Besluit Gedragstoezicht financiële ondernemingen Wft (BGFO)*; Financial Supervision Act (Supervision of Financial Enterprises Conduct) Regulations.

¹¹⁰ Consolidated Act 999/2006.

¹¹¹ Article L 341-15 of the Monetary and Financial Code.

¹¹² See Article 9 of Directive 2008/122/EC.

¹¹³ See Article L 312-1-2 of the Monetary and Financial Code for banking services.

¹¹⁴ Article 123i (123и) of the Social Insurance Code.

¹¹⁵ Order 229/2010 of the Vice-chairman of the Financial Services Commission.

¹¹⁶ Article L 311-5(5) of the Code de la consommation.

agreement with an immediate or eventual entitlement to a benefit in kind in the form of goods with a value of more than 80 Euro.¹¹⁷

Bonuses can also come into play when consumers are induced to use a particularly risky or expensive financial service. French law prohibits tying commercial advantages linked to a credit card to the use of revolving credit (a type of credit that does not need to be paid of monthly or in a fixed number of instalments but can be perpetuated).¹¹⁸

c) Tying

Tying is a frequent phenomenon in the financial services sector. Some Member States have reacted by prohibiting tying in the context of certain services that are essential for consumers. For example, Italy has forbidden insurance companies from tying compulsory car insurance liability contracts to other insurance services.¹¹⁹ Tying of banking services is prohibited under French law unless the services concerned can also be purchased individually or cannot be separated.¹²⁰ Prohibitions on tying are also reported from Portugal.¹²¹

d) Other conflicts of interests

The most general rule on conflicts of interests forms part of the general principles in the FSA Handbook in the UK. Under principle 8, a firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and a client.

Denmark has introduced a general prohibition against offers by financial institutions to finance their clients' purchase of shares issued by the bank itself.¹²² Again the provision was a reaction to cases where bank customers not only lost the amount they invested in the bank, but also had to repay the amount borrowed from the same bank in order to finance the investment. According to its preparatory works,¹²³ the law is meant to counteract conflicting interests of a bank (with a direct interest in providing capital resources for the bank); in cases where they are advising customers in connection with loan agreements. It also aims to eliminate the risk that the prospect of strengthening the capital resources of the bank (through sale of shares) may outweigh due consideration of the customers' economic interests.

Restrictions also apply to the linking of credit and credit insurance. Under French law, a bank may not refuse to allow the consumer to use another (cheaper) credit insurance

¹¹⁷ Article L 311-10-1 of the Code de la consommation.

¹¹⁸ Article L 311-17 of the Code de la consommation.

¹¹⁹ Article 170 of the Private Insurance Code.

¹²⁰ Article L 312-1-2(1) of the Monetary and Financial Code.

¹²¹ Decree-Law 51/2007, of 7 March, Decree-Law 133/2009, of 2 June and Decree-Law 171/2008, of 26 August.

¹²² § 46 of the Financial Businesses Act.

¹²³ Lovforslag nr. L 102, Folketinget 2009-10, om statsligt kapitalindskud i kreditinstitutter (Parliamentary Bill 102, 2009-10) comment concerning § 16. (available at: www.folketinget.dk).

provider (i.e. cheaper than the Bank is offering itself) when the level of guarantee is similar. Moreover, the bank is not allowed to modify the conditions of the interest rate of the credit, fixed or variable, (as indicated in the initial credit offer); in return for its acceptance of another credit insurance provider.¹²⁴

Another conflicts of interest issue is the prohibition of ‘churning’. This refers to the duty of the financial service provider who manages the client’s portfolio not to buy and sell stock with such a frequency that the transactions are merely undertaken with the obvious aim of favouring the provider or related third parties (for example, because of commissions due to the provider with each transaction). This is explicitly prohibited under Dutch law.¹²⁵ In other Member States, churning triggers damages under tort law.¹²⁶

e) Protection of vulnerable consumers

Some Member States have prohibited commercial practices with the explicit or implicit aim to protect vulnerable consumers, in particular minors and consumers in need of credit.

One common prohibition relates to usurious credit, a phenomenon that has not been regulated in the Consumer Credit Directive 2008/48/EC. The definition of usurious credit varies between the Member States. For example, under French law, a usurious loan is defined as any contractual loan granted at an annual percentage rate which, at the time of its granting, is more than one third higher than the average percentage rate applied by the credit institutions during the previous quarter for loans of the same type presenting a similar risk factor.¹²⁷ German courts have held in established case law that a credit contract is immoral if there is a striking disproportionality in the bargain and one contracting partner has abused the weakness of the other. The striking disproportionality is usually found where the agreed interest rate exceeds the usual interest rate by 100%. In such a case, it is also rebuttably presumed that the creditor has abused the weakness of the borrower.¹²⁸ In the UK, a new provision on ‘unfair relationships’ was added in 2006, which allows, among other things, the assessment of the fairness of the interest rate in a credit contract (not including first mortgages).¹²⁹ This can also be enforced by the competent authority, the Office of Fair Trading, if the collective interest of consumers is harmed.¹³⁰

¹²⁴ Article L 312(9) of the Code de la consommation.

¹²⁵ Article 83 *Besluit Gedragstoezicht financiële ondernemingen Wft* (BGFO; Financial Supervision Act (Supervision of Financial Enterprises Conduct) Regulations. Cf. C.M. Grundmann-van de Krol (2010). *Koersen door de Wet op het financieel toezicht*. BJu 231-232; 575.

¹²⁶ For Germany see BGH, VI ZR 136/03, 13/7/2004, NJW 2004, p. 3423.

¹²⁷ Article L 313-3 of the Code de la consommation.

¹²⁸ See BGH, III ZR 30/87, 24/3/1988, BGHZ 104, 102, at p. 105; BGH, XI ZR 69/90, 11/12/1990, NJW 1991, p. 834.

¹²⁹ S. 140 A of the Consumer Credit Act 1974.

¹³⁰ See UK country report.

Under French law, it is not permitted to advertise that a loan may be granted without documentary proof of the consumer's financial position, or to suggest in any advertising that the loan gives rise to increased resources or makes an automatic financial reserve available, without any identifiable financial particulars.¹³¹ The point is that these are prospects that would be particularly attractive to those who have difficulties in obtaining a loan under normal circumstances. It is also prohibited to advertise the possibility of not repaying instalments for the first three months, except for specific loans supported by the State ('driving license loan' or loans financing higher education studies).¹³² Again the risk is that such inducements might appeal particularly to those without a current source of income.

Provisions that particularly aim at poor consumers also appear in the context of the financing of housing. Under French law, there is a prohibition on advertising categorising monthly repayments as rental payments or referring, for the calculation of instalments, to social security benefits which are not guaranteed throughout the duration of the contract.¹³³ This provision obviously targets those consumers who live on state welfare.

Some Member States have introduced special rules on the protection of minors in the area of financial services. In principle, minors are of course protected through contract law rules that restrict their ability to conclude contracts. Nevertheless, Austria has introduced a special prohibition on issuing, without prior consent of the legal representative of the minor, ATM cards to minors that can be used outside the bank itself. Moreover, a weekly limit of 400 Euro applies. The prohibition forms part of prudential supervision law; and its violation triggers administrative law sanctions.¹³⁴ In Belgium, business organisations and consumer organisations negotiated a code of conduct regarding the advertising and marketing of banking or insurance products and/or services towards young people; the breach of which would be considered to be an unfair commercial practice.¹³⁵

f) Additional provisions regarding banking (including consumer credit)

As mentioned earlier, a number of Member States have extended the scope of application of the Consumer Credit Directive 2008/48/EC to credit that is excluded under that directive. This also applies to credit advertising. For example, under Italian law, banks and financial Intermediaries must – outside the scope of the Consumer Credit Directive – communicate to their customers the interest rates, the prices and all the economic conditions concerning the operations and the services offered, including any

¹³¹ Article L 311-5(3) of the Code de la consommation.

¹³² Article L 311-5(4) of the Code de la consommation.

¹³³ Article L 312(6) of the Code de la consommation.

¹³⁴ See Austria country report.

¹³⁵ See Fact sheet Belgium.

interest for delayed payments; and indicate, in every advertisement concerning any credit and financial operation offered, the medium annual percentage rate of charge.¹³⁶

In the context of credit for the financing of goods or services, French law forbids the creditor from requiring the consumer to sign one or more prior credit offers for a total amount that is higher than the value payable on credit for the goods purchased or the services supplied.¹³⁷

Payment protection insurance has already been mentioned in the context of conflicts of interest. Payment protection insurance is a more recent phenomenon in the financial market and has caused problems in a number of Member States. In the UK, the FSA has issued guidance recently seeking to improve the fairness of the approach of firms to dealing with complaints about payment protection insurance.¹³⁸

An interesting provision highlighting specific national circumstances is reported from Poland. Several credit consortia had developed in order to circumvent the limitation of Polish law related to the acceptance of funds for the purpose of making credit available, which was only allowed to credit institutions. The system worked in such a way that a trader organised the consortium of around 30 persons who paid a certain amount in. These funds were pooled and used to grant loans to members of the group or to enable the members to purchase certain goods, such as cars. The membership agreements generally provided that the contributed funds could be “withdrawn” only after a new person joined the consortium in the place of the person who wanted to quit. This created a sort of financial pyramid, because those who did not receive the loan or the goods, financed the loan or the purchase of goods for other members of the group. The trader received compensation for “managing” the system. No prudential supervision over such consortia was in place and no capital requirements applied as guarantees for the contributing members of the group. Moreover, the agreements concluded with the members of the group were often very vague, did not make clear the financial risk and misled about the expected benefits; at the same time as creating an impression that every member of the group would receive a loan or goods. The Polish legislator reacted by declaring the establishment of such a consortium an unfair commercial practice; this representing, as our Poland country report points out, a *per se* prohibition.¹³⁹

Another very specific provision can be found in Portuguese law. Reportedly, Portuguese banks obtained significant additional income in the consumer finance sector by using certain inequitable interest rate calculation methods – for example, by always rounding up rates or applying the highest Euro Interbank Offered Rate values in the relevant

¹³⁶ See Article 116(1) TUB. See also Articles 1-8 of the Regulation on Transparency and Fairness adopted by the Bank of Italy on February 2011 for more details.

¹³⁷ Article L 311-20 of the Code de la consommation.

¹³⁸ FSA, 10/12 The assessment and redress of Payment Protection Insurance complaints, August 2010, chapter 3 and Appendix 1, available at www.fsa.gov.uk/pubs/policy/ps10_12.pdf.

¹³⁹ Poland country report.

period. As a reaction to this, special legislation was enacted in order to establish mandatory rules for the calculation of interest on mortgages.¹⁴⁰

Special rules regarding the enforcement of private law rules have been reported from Italy. Under the General Act containing the rules concerning Banks and Credit (TUB), in a number of cases fines are imposed on administrators, directors or employees of banks who either claim payment from customers (not only consumers) where there is no right to do so, or refuse reimbursement of sums they are obliged by law to reimburse.¹⁴¹ This applies regardless of whether such conduct impairs or is likely to impair the average consumer's ability to take a free and informed transactional decision.¹⁴²

g) Additional provisions regarding insurance and pension funds

Insurance law provides another example where a national prohibition was introduced as a reaction to very specific unwanted practices in the respective industry. In this case, Polish car insurers persistently denied their insured consumers VAT after their cars were damaged, even though the consumers had to pay VAT when they had the car repaired; to which the Polish legislator reacted by including an express legal obligation to include VAT in the compensation to the consumer.

In this context, an example from the UK is worth mentioning. The Insurance Handbook provides that insurers should not reject a claim based on consumer non-disclosure of material facts where the consumer could not have been reasonably expected to disclose the facts or where he has not been negligent in not disclosing the facts.¹⁴³ Again, no further test applies under the FSA regime. In other words, insurers are not to refuse a claim in such circumstances per se: not only where such a refusal would amount to a misleading or aggressive practice or a violation of professional diligence within the meaning of the UCPD.

h) Pyramid schemes

Pyramid schemes for promotional purposes are banned by the blacklist of the UCPD. In the Netherlands, they are prohibited altogether, that is, even when not for promotional purposes;¹⁴⁴ which may go beyond that provision of the blacklist.

3.3.2 National legislation regarding misleading actions and omissions

As mentioned above, a number of Member States regard the breach of pre-contractual information obligations as an unfair commercial practice; which extends the national law of unfair commercial practices beyond the scope of the UCPD to include all kinds of purely national information obligations. In other Member States where that link is less

¹⁴⁰ Decree-Law 240/2006.

¹⁴¹ See, for example, Article 67(1)-*septiesdecies* of the Italian Consumer Code; Article 144, par. 3-bis TUB.

¹⁴² See Italy country report.

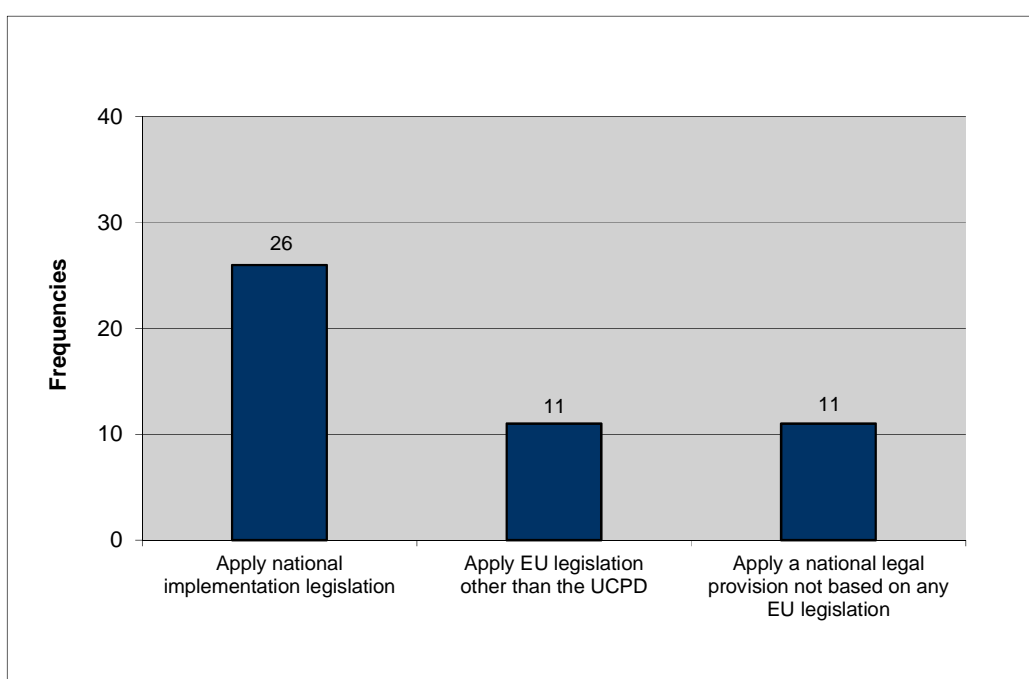
¹⁴³ <http://fsahandbook.info/FSA/html/handbook/ICOBS>, Rule 8.1.2

¹⁴⁴ See the Dutch Gambling Act of 1998.

explicit, pre-contractual information obligations may be used by the courts to specify what information may be “material information” that the trader must provide under Article 7(1) UCPD. Moreover, Member States have introduced information obligations that arise during the performance of contracts on financial services and the breach of which can again amount to an unfair commercial practice.

With regard to misleading actions, 11 of the Member States’ competent authorities have indicated that in addition to applying the national implementation legislation of the UCPD they also apply national legal provisions that are not based on any EU legislation. This is shown in the following figure.

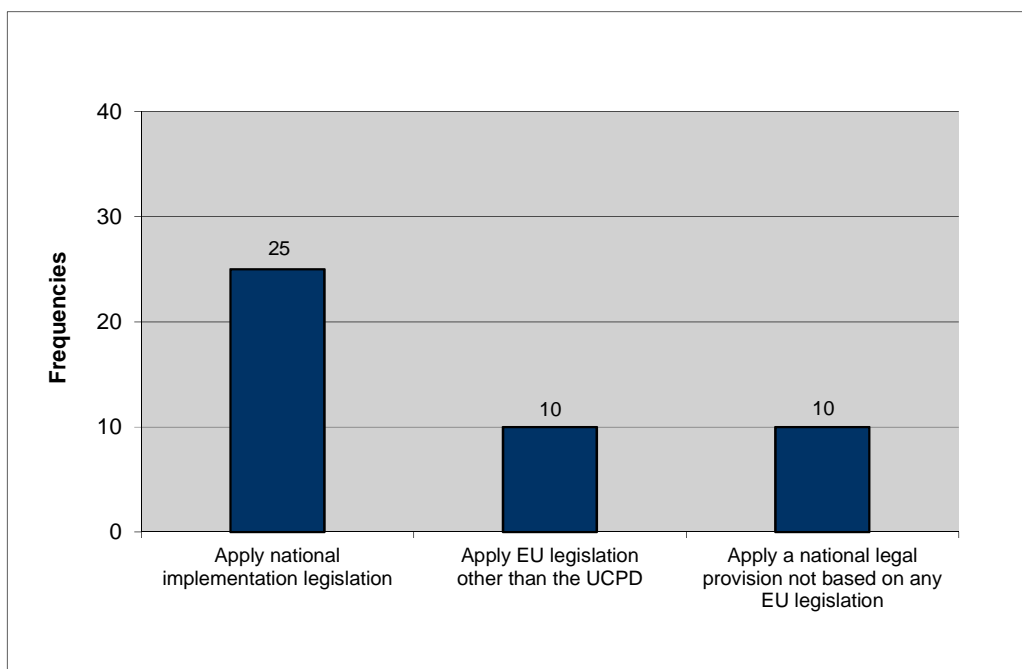
Figure 3: When you are dealing with a problem related to misleading actions in financial services, do you ...



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in financial services (N=27, authorities from Malta and Slovakia did not answer this question, multiple answers possible).

It should be noted here that the separation of misleading actions and misleading omissions is sometimes difficult since sector-specific legislation of the Member States does not necessarily distinguish according to these categories. This is also reflected by the fact that competent authorities have often given the same answers to questions related to misleading actions and misleading omissions, as is obvious from Figure 4. It indicates that with regard to misleading omissions, 10 of the Member States’ competent authorities have indicated that in addition to applying the national implementation legislation of the UCPD they also apply national legal provisions that are not based on any EU legislation.

Figure 4: When you are dealing with a problem related to misleading omissions in financial services, do you ...



Source: Civic Consulting survey on the application of Directive 2005/29/EC in financial services (N=26, authorities from Iceland, Malta and Slovakia did not answer this question, multiple answers possible).

The following table presents in more detail which countries also apply a national legal provision not based on any EU legislation when dealing with problems related to misleading actions and misleading omissions in financial services:

Table 1: Member States that apply a national legal provision not based on any EU legislation when dealing with misleading actions/omissions in financial services

MS	Misleading actions	Misleading omissions
Austria	X	X
Belgium	X	
Bulgaria		
Cyprus		
Czech Republic		
Denmark		
Estonia		
Finland	X	X
France		
Germany	X	
Greece	X	X
Hungary		
Iceland		
Ireland	X	X
Italy		
Latvia	X	X
Lithuania		

Luxembourg		
Malta		
Netherlands	X	X
Norway		
Poland		
Portugal	X	X
Romania		
Slovakia		
Slovenia		
Spain	X	X
Sweden		X
United Kingdom	X	X

Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the UCPD in financial services. An 'X' indicates that the authority marked that they also apply a national legal provision not based on any EU legislation when dealing with a problem related to misleading actions/misleading omissions in financial services.

In the following sub-sections, examples of national legislation regarding misleading actions/omissions in the areas of banking, investment, insurance and financial intermediaries are provided.

a) Banking (including consumer credit)

A number of Member States have extended the scope of consumer credit law beyond the scope of application of Directive 2008/48/EC; for example by not applying the ceiling of 75,000 Euro.¹⁴⁵ Another important extension is the application of the Directive, or of parts of it, to mortgage credit law in many Member States (mortgages are no longer covered by the Consumer Credit Directive, although a new proposal on credit agreements relating to residential property has been tabled).¹⁴⁶ The breach of the related information obligations constitutes an unfair commercial practice under national law, where the link has been established between the breach of information obligations and unfair commercial practices law; which applies to Austria, Bulgaria and Germany. Moreover, Article 7(1) UCPD would apply if, for example, information on the credit costs is incomplete.

Some Member States, including France, have introduced specific information requirements for equity release contracts.¹⁴⁷

Germany has introduced information obligations related to the assignment of secured credit to a third person. This was a reaction to a mass phenomenon of banks assigning credit contracts to (mainly foreign) investors, including hedge funds, as a consequence of the financial crisis; resulting in the consumers being required to choose between the options of termination of the contract or increased interest rates.¹⁴⁸ Under the current

¹⁴⁵ This is the case in Germany, see § 495 para. 2 BGB. The same has been reported from Romania.

¹⁴⁶ See Article 2(2)(a) of Directive 2008/48/EC.

¹⁴⁷ Article 314-3 and 314-5 of the Code de la consommation.

¹⁴⁸ See, for example, K. O. Knops, *Neuregelungen zum Kredithandel durch das Risikobegrenzungsgesetz - Kein großer*

regime, the consumer must be informed of the possibility of assignment of the secured credit to a third person prior to the conclusion of the contract, and he or she must be also informed of the actual assignment.¹⁴⁹ A standard term granting the creditor the right to assign the contract to a third person is invalid unless the consumer is granted the right to terminate the contract in such circumstances.¹⁵⁰

A special duty to warn in the area of consumer credit law has been introduced in the Netherlands.¹⁵¹ In commercials on radio, TV, internet and in print creditors must use a warning pictogram/audio file that states “Beware! Borrowing money costs money” (see following example).

Let op! Geld lenen kost geld 

Advertisements for saving contracts have been subject to litigation recently, which has been attributed to the financial crisis and to attempts by banks to raise new money. However, there are also more complex forms of saving contracts, in particular those with building societies. Here, Austrian law contains information requirements; the breach of which constitute an unfair commercial practice.¹⁵²

Special rules related to advertisement for money exchange services have been reported from Spain.¹⁵³

In the UK, the FSA handbook contains numerous rules that financial service providers have to comply with. The most significant deviation from the regime of the UCPD consists in the fact that the so-called transactional decision making test does not apply. In other words, a practice is considered unfair under the FSA regime if it does not comply with the requirements laid down in the handbook, regardless of whether an average consumer might have been affected in his or her decision-making process.

b) Investment services

At EU level, commercial practices in the area of investment services are subject to Directive 2004/39/EC on markets in financial instruments. This Directive is however incomplete in that it does not cover the whole investment services market, excluding the

Wurf, 'Verbraucher und Recht' 2009, p. 286 ff.

¹⁴⁹ § 493 para. 4 BGB.

¹⁵⁰ § 309 no 10 BGB.

¹⁵¹ Article 53 *Besluit Gedragstoezicht financiële ondernemingen Wft* (BGFO; Financial Supervision Act (Supervision of Financial Enterprises Conduct) Regulations. For rules on calculation and presentation of APR et cetera, see *Uitvoeringsregeling Wft*, article 2-8. Further detailed rules are laid down in the AFM Regulations (*Nadere regeling gedragstoezicht financiële ondernemingen Wft*).

¹⁵² § 3 of the Building Society Act (*Bausparkassengesetz*).

¹⁵³ Article 6 of the Ministerial Order of 16 November 2000 on certain aspects of the legal regime of money exchange establishments and their agents.

so-called grey market.¹⁵⁴ Member States have gone beyond the requirements of Directive 2004/39/EC.

In the Netherlands, advertising standards concerning complex financial products include specific rules on a so-called 'financial product leaflet' (*financiële bijsluiter*). This is a standard product guide, which has to be drawn up in Dutch and consists of a compulsory inclusion of a standardised product risk indicator; particulars of the investment firm; reference to supervision by the *Autoriteit Financiële Markten* (AFM; the Netherlands Authority for the Financial Markets); and availability of a more detailed prospectus.¹⁵⁵ Commercials on radio, TV, internet and in print have to include the standardised pictogram/audio file.



The warning states “Do not run unnecessary risk. Read the Financial Leaflet” and depicts a person carrying a weight (depending on the extent of the risk, the risk-indicating cylinder is nearly empty, half-filled or fully filled, see example above). Germany has also recently introduced the duty to hand out to the consumer leaflets containing essential information on financial investments.¹⁵⁶

In the Netherlands a pictogram (and audio file) has been introduced with effect from January 2012 in order to warn consumers when an investment opportunity that is being offered to them, is not subject to supervisory oversight by the AFM (a so-called ‘Wild West warning’). Advertisements for public offers of stock and investment objects valued over 50,000 Euro should contain the ‘Wild West warning’ which states “Beware! You are investing outside the AFM oversight. No duty to license this activity”.¹⁵⁷

With a law that has been adopted by the German *Bundestag* (the parliament) in October 2011, the information and advice duties of Directive 2004/39/EC on markets in financial instruments (MiFID)¹⁵⁸ are extended to the so-called grey capital market.¹⁵⁹

¹⁵⁴ This is an unofficial name for the unregulated part of the capital market, which is not monitored by the state. Its products are not sold by banks and not traded on the stock exchange. The grey capital market is characterised by high risks, at times leading to a complete loss of investor capital in connection with illegal investment fraud or embezzlement schemes. See http://www.deutsche-bank.de/lexikon/lexikon_de/content/index_e_1166.htm.

¹⁵⁵ Article 4:22 Financial Supervision Act; Article 64/Article 52 *Besluit Gedragstoezicht financiële ondernemingen Wft* (BGFO; Financial Supervision Act (Supervision of Financial Enterprises Conduct) Regulations. Cf. C.M. Grundmann-van de Krol (2010). *Koersen door de Wet op het financieel toezicht*. BJU 224 ff.; 565. Further detailed rules are laid down in the AFM Regulations (*Nadere regeling gedragstoezicht financiële ondernemingen Wft*).

¹⁵⁶ See Anlegerschutz- und Funktionsverbesserungsgesetz of 5/4/2011.

¹⁵⁷ See for further details www.afm.nl.

¹⁵⁸ OJ 2004, L 145/1.

¹⁵⁹ For the bill see BT-DrS. 17/6051 of 6/6/2011.

Other Member States have concretised the broad principles of the MiFID Directive in their national legislation, in particular the provision of Article 19(2), according to which commercial communications shall be fair, clear and not misleading. This latter approach is reported from Italy.¹⁶⁰

c) Insurance

As in the area of banking services, information and advice duties apply in the insurance sector. For example, detailed pre-contractual information duties are reported from France.¹⁶¹ Again, a breach of these duties may amount to an unfair commercial practice.

A special duty related to the possibility of switching to another insurance provider exists in Italian car insurance law. At least 30 days before the annual expiry date of compulsory insurance contracts for motor vehicles and crafts, the insurer is obliged to send to policy holders a communication with the following indications: expiry date of the effects of the contract, procedural rules for the exercise of the withdrawal right in order to avoid the prolongation for another year of the effects of the contract, and new conditions offered for the renewal of the contract.¹⁶²

In the UK, the Insurance Handbook imposes various requirements to provide 'oral' disclosure as to the characteristics, benefits and risks of a policy.¹⁶³ This resembles the requirements of Article 7(1) UCPD but the FSA regime does not use the concept of "material information" and it is at least possible that the reasonably well informed, reasonably observant and circumspect average consumer would be capable of working out for him- or herself at least some of the information about which oral disclosures must be made under the FSA regime.

d) Financial intermediaries

Whilst insurance intermediaries are densely regulated at EU level, credit intermediaries and investment advisors are not. Member States have introduced information obligations. For example, under Austrian law, financial advisors have to fulfil certain information requirements. These requirements include *inter alia* the duty to inform the consumer about the commission to be paid to the financial advisor.¹⁶⁴ Also in the Netherlands, a financial advisor is under a duty to communicate to consumers whether he or she acts as a tied agent of an insurance company or provider of an investment product; so as to be transparent on contractual ties and commission-based advising.¹⁶⁵ In the same way, the forthcoming German law contains stronger regulation of financial

¹⁶⁰ Italy country report.

¹⁶¹ On health insurance see Article L 932-15-1-III of the Social Security Code and Article L 221-18 of the Mutual Insurance Code.

¹⁶² Article 2 of the ISVAP Regulation n. 4 of 9 August 2006.

¹⁶³ <http://fsahandbook.info/FSA/html/handbook/ICOBS>, Rules 4.2 and 6.4.

¹⁶⁴ § 136a of the Trading Order (*Gewerbeordnung*).

¹⁶⁵ Article 4:73 of the Financial Supervision Act 2006.

advisors, including their duty to lay open commissions.¹⁶⁶ Italian law requires insurance intermediaries to identify and prevent – if reasonably possible – conflicts of interest and, where such conflicts exist, to make the policyholder aware of their possible adverse effects. They must also manage such conflicts so as to avoid any harm to policy holders.¹⁶⁷ Under the UK consumer credit regime, it has been decided recently in a case involving “payment protection insurance” that there was an ‘unfair credit relationship’ under section 140A of the Consumer Credit Act 1974 as amended, based on the failure of the trader to disclose (a) that he received a commission for the sale and (b) that the consumer was free to look elsewhere for such insurance.¹⁶⁸

3.3.3 National legislation regarding aggressive practices, or the use of harassment, coercion and undue influence

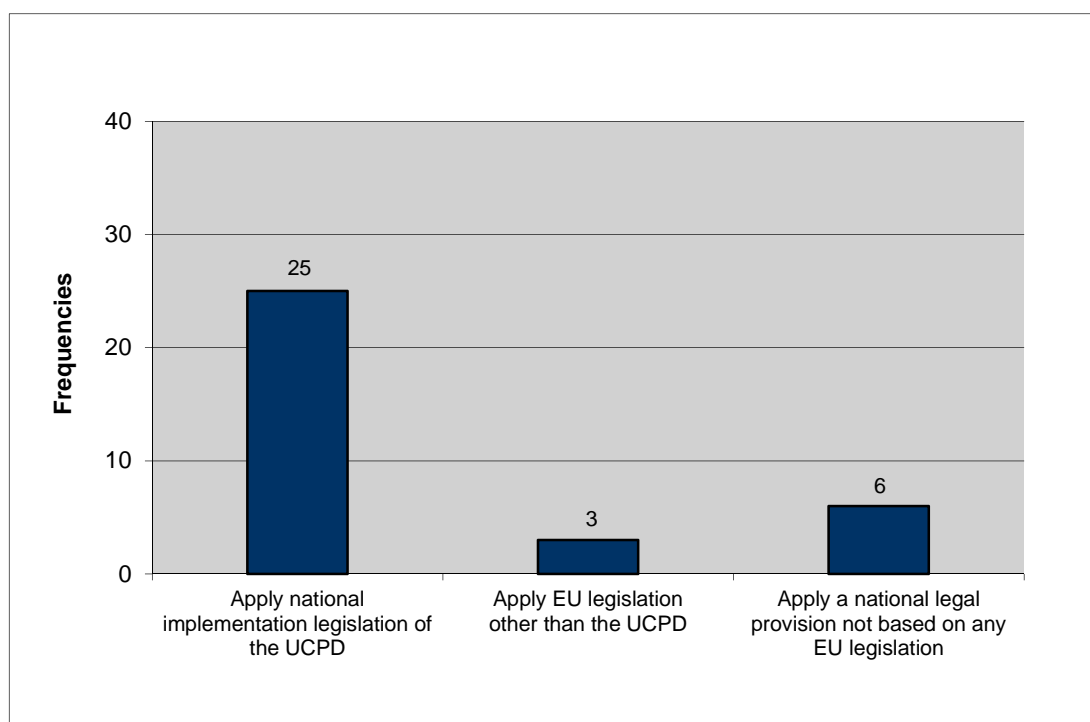
In the area of aggressive practices, fewer Member States have reported national rules that go beyond the level of protection of the UCPD (see figure below), compared to the situation regarding misleading actions and omissions. These are Austria, Belgium, Greece, Ireland, Portugal and the UK.

¹⁶⁶ For the bill see BT-DrS. 17/6051 of 6/6/2011. Factually, this duty has already been established by recent decisions of the civil court in that they have held the failure to lay open commission to be a breach of a pre-contractual obligation, with the result that the investor can claim relief from the contract and full reimbursement of his or her investment; see only BGH, XI ZR 586/07, 12/5/2009, NJW 2009, 2298.

¹⁶⁷ Article 183 of the Private Insurance Code with Articles 4-38 of Regulation n. 35 of 2010 of the *Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo* (IVSAP).

¹⁶⁸ *MBNA Europe Bank Ltd v Thorius Newcastle County Court*, 21 September 2009, [2010] ECC 8.

Figure 5: When you are dealing with a problem related to aggressive practices or use of harassment, coercion and undue influence in financial services, do you ...



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in financial services (N=26, authorities from Lithuania, Malta and Slovakia did not answer this question, multiple answers possible).

It has already been mentioned that some Member States have maintained stricter legislation related to cold calling and unsolicited e-mails than the UCPD requires (relying on the Directive 2002/58/EC on Privacy and Electronic Communications); and that the protection of consumers from cold calling has been complemented by additional contract law mechanisms. These rules, however, usually apply as *per se* prohibitions (i.e. they are not dependent on whether there is a likely impact on consumer decision making); since their protective aim is the private sphere (privacy) rather than the protection of the economic interests of the consumer.

The same applies to restrictions on the direct selling of certain financial products that have therefore already been discussed above as examples of extensions of the UCPD blacklist (see section 3.3.1 above).

In addition to this Greece reported a law which focusses on the aggressive practices of companies when communicating with debtors, while in the UK there are national controls on arrears and possessions, and enforcement action has been taken in relation to cases of high-pressure selling.

3.3.4 Analysis

This overview has provided a wealth of rules in the field of financial services that go beyond the standards of the UCPD, or that operate alongside national implementation of

the UCPD. The reasons for these stricter standards appear to be manifold and shall be grouped hereinafter.

Some rules appear to stem from the idea that the standards of the UCPD are not sufficient in particular related to specific promotions, such as combined offers. It has been reported, for instance, that in Belgium a discussion had taken place as to whether or not higher standards were necessary for financial services than for goods and other services, and it was felt that the greater risks associated with financial services did require such a higher standard.¹⁶⁹

In many cases, regimes that predated the UCPD were upheld simply because they had been elaborated over a long time on the basis of experience and because they worked well. Often, they are much more detailed than the open-textured provisions of the UCPD that wait to be concretised by case law. Most importantly, they usually avoid the UCPD's so-called 'transactional decision making' test. This test imposes an additional burden on authorities, consumer organisations, individual consumers or other claimants that attack special commercial practices in court or before other bodies. Those challenging the practice, being satisfied with evidence of non-compliance with the traditional rule, must now establish, in addition, that the practice is likely to affect the 'transactional decision making' of the average consumer. This problem has been emphasized in a number of country reports.¹⁷⁰

A number of rather traditional provisions take into consideration the particular risks that consumers are exposed to when they make hasty and imprudent transaction decisions in the context of financial services. When it comes to striking the appropriate balance between the marketing interests of the traders and the protection of consumers, this tends to tip the balance in favour of consumer protection in the financial services context (where traders' interests might be allowed to prevail when it comes to the sale of goods and services other than financial services). This policy is reflected in numerous special prohibitions or restrictions of direct selling of financial services where the same practices are allowed otherwise, i.e. in the context of the sale of goods and services other than financial services.

Another set of national rules deals with the protection of vulnerable consumers. Member States appear to recognize that a very general obligation not to abuse such vulnerability (such as that contained in the UCPD) is insufficient to protect vulnerable consumers; and that clear and specific rules must exist that prohibit certain practices that typically affect the most vulnerable.

¹⁶⁹ Belgian and French general prohibitions on combined offers (that continued to apply after the implementation of the UCPD) had to be repealed after the judgment of the ECJ in *Total Belgium* on the meaning and effect of total harmonization under the UCPD. This effect, however, did not concern financial services and immovable property in relation to which Member States can adopt more restrictive provisions than the UCPD by virtue of Article 3(9) of the Directive.

¹⁷⁰ See, in particular, UK country report. See also Italy country report.

In other cases, the legislation of the Member States is well in line with developments at EU level but has proceeded faster, for example by extending the MiFID regime to the so-called grey capital market; or by imposing restrictions and/or transparency requirements on financial intermediaries in general (restrictions or requirements that EU law has only introduced for specific intermediaries, in particular insurance intermediaries).

A number of Member States have linked pre-contractual information obligations and the law of unfair commercial practices. This may serve not only the interest of consumers but also, and perhaps even predominantly, the interest of honest competitors; and the link is usually made in legal systems where competitors can take legal action against unfair commercial practices. However, it has also been used by public authorities and/or by consumer organisations to address the failure to inform consumers in accordance with legal requirements in the collective interest. The additional component here consists in the fact that some areas have not yet been regulated at EU level, or they have only been partly regulated, and the relevant information obligations are of purely national origin. Examples are mortgage credit law and grey capital market law. The distorting effects in unfair commercial practices law would and will of course be mitigated by regulating the respective financial services at EU level; which is for example envisaged under the proposed Mortgage Credit Directive.¹⁷¹

Finally, an additional factor in the areas of banking, investment and insurance law is the stability of the respective systems, that is, the banking system, the capital market and the insurance market. This is the obvious reason for the important role of prudential supervision and public law in these areas; and the additional layer of enforcement mechanisms that exists in a number of Member States. However, it also seems to be the reason for special rules that are meant both to guarantee the consumer's undistorted transactional decision, and also to avoid imprudent expenses on the part of financial service providers that make funds unavailable for their original purposes. Examples can be seen in the prohibition of lotteries in Bulgarian social insurance law and of sales promotions in the Bulgarian compulsory car insurance.¹⁷²

3.4 National provisions against unfair commercial practices in immovable property

Key findings:

- (1) In the area of immovable property, most Member States have not enacted specific legislation dealing with unfair commercial practices. Some Member States have established specific information obligations, either related to advertisements or to the pre-contractual stage, in particular, but not necessarily, related to estate agents.
- (2) Fewer Member States reported practices which are banned nationally but not included in Annex I of the UCPD in immovable property than in financial services – six out of the 25 competent authorities reported such bans. Some of these

¹⁷¹ COM(2011) 142 final.

¹⁷² See Bulgaria country report.

appeared to relate to contract law or the prohibition of cold calling. However, others relate to abuse of the potentially weaker position of the consumer, for example.

- (3) Member States have introduced a variety of special information obligations. Some of them focus on the property and establish specific information obligations related to the property and its circumstances. Others deal with the transaction itself, or regulate the activities of real estate agents. Finally, there are rules regarding construction contracts, and particular information requirements for home insurance.
- (4) National legal provisions regarding aggressive practices in the area of immovable property that are not based on any EU legislation are not common.
- (5) The most interesting sector-specific national legislation perhaps deals with the exploitation of the weaker position of the consumer in special situations; namely the situation of persons seeking accommodation when accommodation is scarce, and the situation of persons seeking to buy property when affordable property is difficult to obtain. Sensitivity to such 'situation-based' vulnerability is reflected in Austrian and Danish law. Danish law applies a mechanism that comes under the law of unfair commercial practices law, namely a prohibition of tying, whilst Austrian law works with a right of withdrawal. The abuse of these types of pressure situations may also be covered by Article 8 UCPD on aggressive practices or by the general clause of Article 5(2) UCPD but the application of these general rules may be difficult in the individual case.
- (6) In an overall perspective, a minority of Member States have established special rules on unfair commercial practices in the area of immovable property. The very detailed information obligations related to the property reflect the fact that the decision to purchase property is probably the most important purchasing decision one makes; which has always been reflected in the law, in particular in more stringent formal requirements than those that normally apply in contract law. These rules are not only very specific, they also seem to go beyond the "material information that the average consumer needs, according to the context, to take an informed transactional decision" as required by Article 7(1) UCPD.

In the area of immovable property, most Member States have not enacted specific legislation dealing with unfair commercial practices. Some Member States have established specific information obligations, either related to advertisements or to the pre-contractual stage, in particular, but not necessarily, related to estate agents.

Some pre-contractual information duties stem from the Timeshare Directive 2008/122/EC. These are relevant as a breach of these information obligations constitutes a misleading omission in the terms of Article 7(5) UCPD. Due to the full harmonisation character of Directive 2008/122/EC, no differences should arise between the Member States.

A more recent development is the requirement of Article 12 of Directive 2010/31/EU on the energy performance of buildings,¹⁷³ which is intended to provide the potential purchaser with information on the energy efficiency of a given building and to state the energy performance indicator of the energy performance certificate of the building in advertisements in commercial media. Unlike the Timeshare Directive, the Energy Efficiency Directive only provides for minimum harmonisation. According to its Article 1 (3), the requirements laid down in Directive 2010/31/EU shall not prevent any Member State from maintaining or introducing more stringent measures. Italy is reported to have taken measures that go beyond the minimum requirements of the Directive.¹⁷⁴

Other information obligations are purely national. Again, they may still be relevant to the law of unfair commercial practices in those Member States that regard any breach of a pre-contractual information requirement as an unfair commercial practice (see above). It then depends on the national law whether the breach of an information obligation automatically constitutes an unfair commercial practice; or if it only does so where it materially distorts or is likely to materially distort the economic behaviour with regard to the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers in the individual case as set out in Article 5(2)(b) UCPD. The position of national laws on this issue is not always clear. Of course there will be individual remedies stemming from the breach of a pre-contractual information obligation; remedies that run in parallel to the unfair commercial practices regime.

Finally, protection is afforded through contract law, and in particular the involvement of a public notary in real property contracts.¹⁷⁵ A breach of such a formal requirement usually makes the contract void. In Germany in 2002, the legislator introduced additional safeguards for consumer contracts after the problems with so-called 'junk-property'; the sale of which had been initiated by doorstep sellers and then quickly formalised by notaries who co-operated with them.¹⁷⁶ According to § 17 para. 2a of the Notarisation Act, consumers shall be given sufficient opportunity to reflect on the contract before the notarisation takes place. In the case of contracts regarding the sale of immovable property, this normally requires that the consumer be provided with the text of the contract two weeks before the notarisation.

Some Member States, such as the Netherlands,¹⁷⁷ have introduced a right of withdrawal from real estate contracts. Austrian law allows the consumer to withdraw from a contract

¹⁷³ OJ 2010, L 153/13.

¹⁷⁴ Italy country report.

¹⁷⁵ See, for example, § 311b of the German Civil Code; Spain country report.

¹⁷⁶ This has, amongst others, triggered a string of ECJ decisions. See ECJ, Case C-481/99 *Georg Heiningen and Helga Heiningen v. Bayerische Hypo- und Vereinsbank AG*, [2001] ECR I-9945; ECJ, Case C-350/03 *Elisabeth Schulte, Wolfgang Schulte v. Deutsche Bausparkasse Badenia AG*, [2005] ECR I-9215; ECJ, Case C-229/04 *Crailsheimer Volksbank eG v. Klaus Conrads, Frank Schulzke und Petra Schulzke-Lösche, Joachim Nitschke*, [2005] ECR I-9273.

¹⁷⁷ See Loos, M., *Le délai de rétractation en droit Néerlandais*, in Terryn, E. (ed.), 'Le droit de rétractation', Larcier,

or a contractual statement within one week if “circumstances which are significant for his consent and which the entrepreneur has represented in the course of the contract negotiations as being highly likely to come to pass are found not to occur at all or only to a substantially lesser degree”. The prospect of tax benefits or public subsidies are particularly important for immovable property, because these are the most probable grounds which would lead to a right to withdraw in this context. In addition, as a violation of any law can result in a violation of § 1 of the Austrian Unfair Competition Act, the violation of this withdrawal rule may also constitute an unfair commercial practice.¹⁷⁸

Other laws require contracts related to the purchase of immovable property, or special types of property, to satisfy certain requirements as to the content of the contract,¹⁷⁹ or they prohibit certain contract terms.¹⁸⁰

It should be noted that such protective instruments of contract law would not be affected in any way by any changes to Article 3(9) UCPD; since the UCPD is without prejudice to contract law and, in particular, to the rules on the validity, formation or effect of a contract, according to its Article 3(2).

Some Member States have set certain prerequisites for exercising the profession of a real estate agent. For example, in Germany, Austria and Poland they must be registered.¹⁸¹ In Poland, they must also have professional insurance.¹⁸² In the UK, estate agents handling residential property are now required to be a member of an approved redress scheme.¹⁸³ In Austria, real estate agents may only draft the contract between the parties if that contract is based on standard forms.¹⁸⁴ In Bulgaria (where the activities of real estate brokers have only been subject to self-regulation by their own association, the Bulgarian National Real Estate Association, NREA),¹⁸⁵ proposals have been made to introduce mandatory regulation. Slovenia has also adopted a law on real estate agents.¹⁸⁶ The UCPD is without prejudice to specific rules governing regulated professions, according to its Article 3(8).

Brussels, 2008, p. 50 ff.

¹⁷⁸ Austria country report.

¹⁷⁹ Poland country report.

¹⁸⁰ See the Belgian Royal Decree on certain clauses in brokerage contracts of real estate agents.

¹⁸¹ Article 179 of the Act of 21 August 1997 on the real estate management, Poland country report.

¹⁸² Poland country report.

¹⁸³ Estate Agents Act 1979 s. 23A, as amended by the Consumers, Estate Agents and Redress Act 2007, c17, s. 53, sch. 6, as from 1st October 2008.

¹⁸⁴ § 117 of the Trading Act (Gewerbeordnung; GewO), see Austria country report.

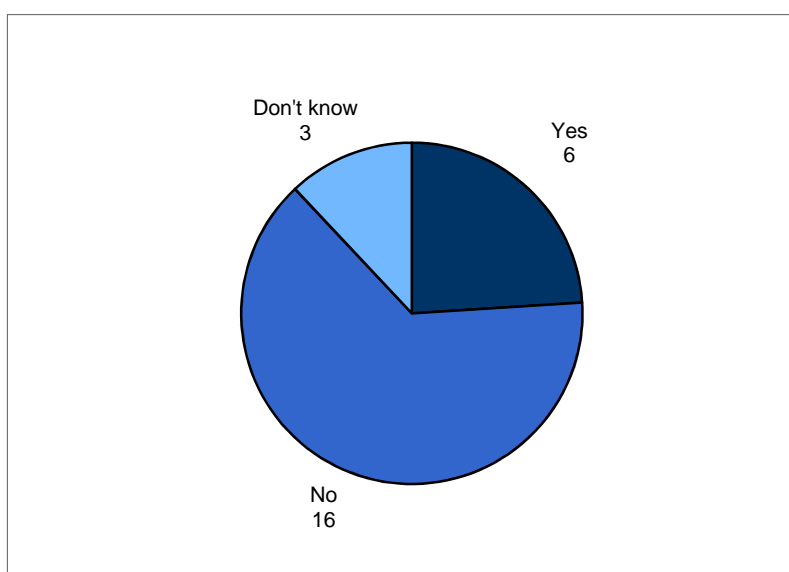
¹⁸⁵ See <http://www.nсни.bg/?show=home&lang=en&PHPSESSID=ff8f2e3c608643d4b37fc0807bc3ab30>

¹⁸⁶ Slovenian Real Estate Agencies Act, see fact sheet Slovenia.

3.4.1 Commercial practices banned by national legislation which are not included in the Black List (Annex I) of the UCPD

This section deals with practices that are banned; and also with special rules on advertising, the breach of which automatically triggers remedies or sanctions. Six out of 25 competent authorities – from Bulgaria, France, Lithuania, Luxembourg, Spain and the United Kingdom – have reported blacklist provisions related to immovable property which are not included in Annex I of the UCPD (see following graph).

Figure 6: Does national legislation ban commercial practices in the area of immovable property which are not included in the Black List (Annex I) of the UCPD?



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in immovable property (N=25). No survey response received from the responsible authorities in Malta, Portugal, Romania and Slovakia.

Some of the national provisions that the competent authorities have mentioned appear, however, to relate to unfair contract terms law, to broad provisions¹⁸⁷ or to the general prohibition of cold calling or unsolicited e-mails;¹⁸⁸ which this study does not consider to be an extension of the blacklist specifically in the area of immovable property.

A particular malpractice is addressed in Austrian law: According to § 4 IMMV, a real estate agent acts against good morals when he or she retains money without legal reason.

The abuse of the weaker position of the consumer or citizen appears to be the reason for the following special prohibitions. Denmark has introduced a prohibition of ‘tying’.

¹⁸⁷ In Bulgaria the Consumer Protection Commission confirmed there reference is to a general clause prohibiting unfair commercial practices.

¹⁸⁸ Luxembourg.

According to § 23 of the Real Estate Transactions Act¹⁸⁹ real estate agents are not allowed to make their services conditional on the seller or buyer buying other services which are not necessary for the proper performance of the agent's core service. The purpose of this prohibition is to prevent the exertion of pressure on the client. It is also to counteract anti-competitive behaviour by real estate agents who may otherwise use their position vis-à-vis the consumer to insist that they purchase other services, such as house insurance or mortgage-credit, from providers belonging to the same 'financial supermarket' as the real estate agent.¹⁹⁰

Another interesting provision (that again serves the particular needs of persons seeking accommodation) is reported from England, Wales and Scotland. Under the Accommodation Agencies Act 1953, it is an offence for any person to demand or accept payment, in the course of running an accommodation agency, for (a) registering the name and requirements of a person seeking a tenancy of a house, (b) supplying particulars to houses to let to those seeking accommodation, or (c) listing a property as to let without the owner's authority. A breach of this provision would not necessarily be treated as an unfair commercial practice, but this is not entirely clear. In any case the provision was maintained so as to prevent agencies from charging people, using up money that was likely to be needed to take up the tenancy and therefore exploiting low-income people desperately seeking a place to live.¹⁹¹

Finally, France has introduced a special prohibition related to timeshare products. It is prohibited to advertise them as a financial investment.¹⁹²

3.4.2 National legislation regarding misleading actions and omissions

With regard to misleading actions in the area of immovable property, six competent authorities have indicated that they also apply national laws that are not based on any EU legislation (see figure below).

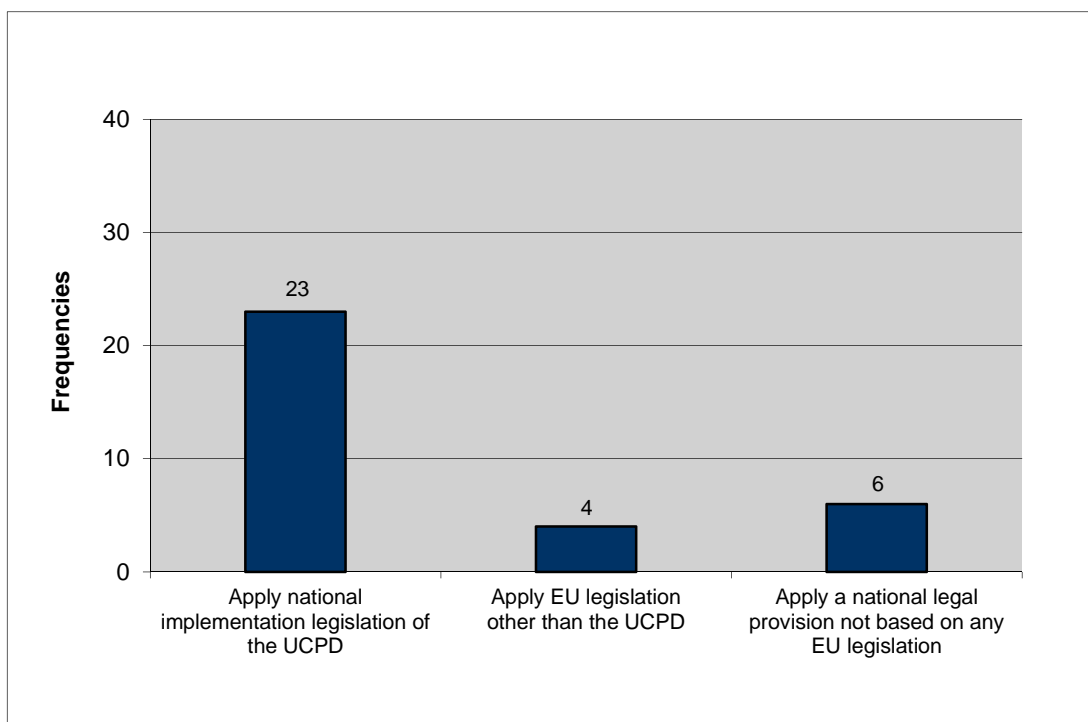
¹⁸⁹ First enacted in 1994, current consolidated version Act 1717/2011, see Denmark country report,

¹⁹⁰ See Edlund, H. H., *Omsætning af fast ejendom*, Thomson, København, 2001, p. 238 f.

¹⁹¹ See <http://webarchive.nationalarchives.gov.uk/20081112140048/http://www.berr.gov.uk/files/file30152.pdf>, chapter 12.

¹⁹² Article L 121-62 of the Code de la consommation.

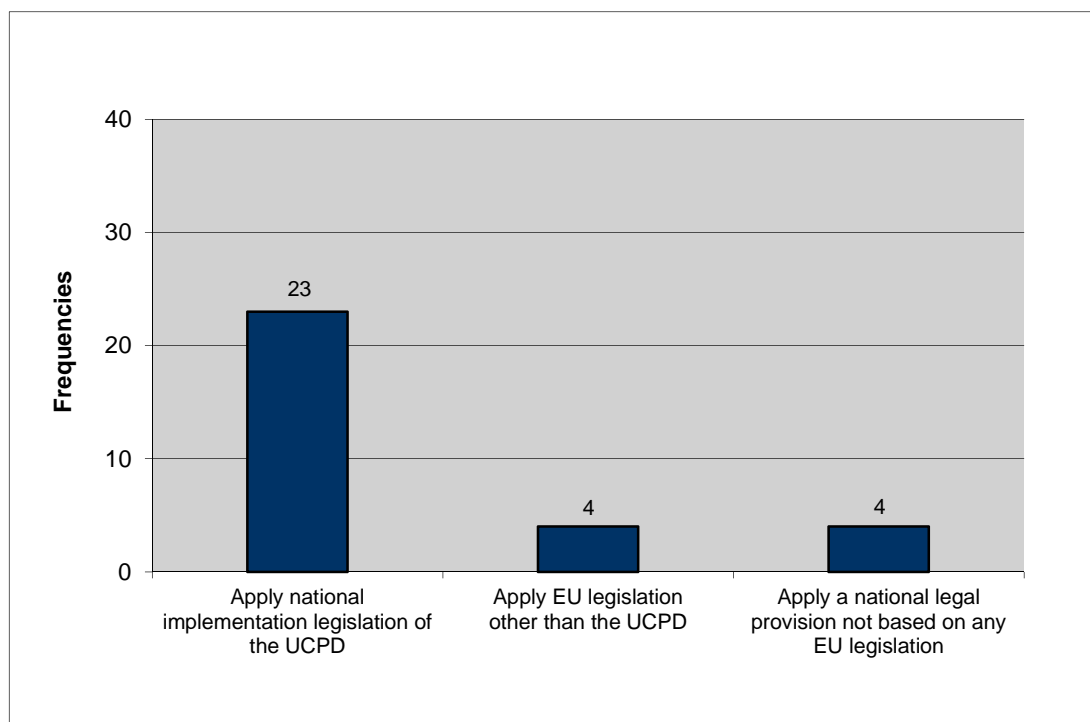
Figure 7: When you are dealing with a problem related to misleading actions in immovable property, do you ...



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in immovable property (N=25, no survey response received from the responsible authorities in Malta, Portugal, Romania and Slovakia, multiple answers possible).

With regard to misleading omissions in the area of immovable property, only four competent authorities have responded to apply national laws that are not derived from EU law (see following figure):

Figure 8: When you are dealing with a problem related to misleading omissions in immovable property, do you ...



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in immovable property (N=25, no survey response received from the responsible authorities in Malta, Portugal, Romania and Slovakia, multiple answers possible).

The following table presents in detail which countries also apply a national legal provision not based on any EU legislation when dealing with problems related to misleading actions and misleading omissions in immovable property:

Table 2: Member States that apply a national legal provision not based on any EU legislation when dealing with misleading actions/omissions in immovable property

MS	Misleading actions	Misleading omissions
Austria		X
Belgium	X	
Bulgaria		
Cyprus		
Czech Republic		
Denmark		
Estonia		
Finland	X	X
France		
Germany		
Greece		
Hungary		
Iceland		
Italy		
Latvia		

Lithuania		
Luxembourg		
Netherlands		
Norway		
Poland		
Slovenia	X	
Spain	X	X
Sweden	X	
United Kingdom	X	X

Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the UCPD in immovable property. An 'X' indicates that the authority also applies a national legal provision not based on any EU legislation when dealing with a problem related to misleading actions/misleading omissions in immovable property. No survey responses received from the responsible enforcement authorities of Malta, Portugal, Slovakia. No answer to this question received from Ireland, which is about to adopt legislation in order to set up a Property Services Regulatory Authority, as the legislation to establish this authority is currently progressing through the Irish Parliament and the authority has yet to start enforcement of that legislation.

Since the special laws do not follow the categories of the UCPD, it is not useful in most cases to classify them as dealing with misleading actions or misleading omissions. Merely in those cases where Member States have introduced pre-contractual information obligations the breach of which can also be considered an unfair commercial practice, is the classification as a misleading omission clear. Due to these difficulties, the following overview looks at the issues that are subject to sector-specific legislation.

In fact, only one rule of UK law relevant in the context of this section can be clearly classified as addressing misleading actions: the rule that estate agents are prohibited from making misleading statements about offers received from other potential buyers.¹⁹³

Otherwise, the Member States have introduced a variety of special information obligations. These special rules have different focal points. Some of them focus on the property and establish specific information obligations related to the property and its circumstances (see sub-section a) below).¹⁹⁴ Others deal with the transaction itself (b), or regulate the activities of real estate agents (c).¹⁹⁵ Finally, there are rules regarding construction contracts (d), and particular information requirements for home insurance (e).

a) Information related to the property

With a view to the selling of property, the UK has maintained an elaborate regime that is similar but not identical to that of the UCPD. Above all, it is much more specific. The Property Misdescriptions Act 1991 requires information provided by an agent in

¹⁹³ Estate Agents Act 1979, as amended by the Consumers Estate Agents and Redress Act 2007.

¹⁹⁴ See for example the Finnish Decree on Required Information in Housing Marketing (130/2001).

¹⁹⁵ See for example the Belgian Royal Decree on certain clauses in brokerage contracts of real estate agents; the Finnish Act on Real Estate and Housing Agency Services (1074/2000); the Slovenian Real Estate Agencies Act.

particulars of sale to be accurate. It was complemented by the Property Misdescriptions (Specified Matters) Order 1992 that lists 33 specific matters,¹⁹⁶ including:

- Location, aspect, outlook;
- Services;
- Measurement and sizes;
- Forms of construction and fitness;
- Repairs, improvements and treatments;
- Conformity to standards;
- History;
- Outgoings and service charge, council tax;
- Planning and building controls; and
- Rights over and in favour of neighbouring land.

Misinformation on the items above is sanctioned by criminal law. The main difference to misleading actions under the UCPD is that the actual or potential influence on the consumer's decision is of no relevance. Nevertheless, an analysis by the UK Department of Business Innovation and Skills has concluded that most cases enforced under the Property Misdescriptions Act could equally have been prosecuted under the UK implementation of the UCPD (the Consumer Protection from Unfair Trading Regulations 2008). Stakeholders contend that a breach of the former is however easier to prove since the actual or potential influence on the consumer's decision is of no relevance, as mentioned above.

Spanish law also provides for detailed information obligations that apply as early as the stage of advertising. Some of these obligations are part of nation-wide legislation, whilst others have been established by the regions that partly enjoy regulatory autonomy. According to the Royal Decree 515/1989, offers, promotions and advertising for the sale or lease of property must take into account the features, conditions and usefulness of the property and must mention if the buildings are under construction or concluded. Necessary information for consumers and, if necessary, for competent authorities, includes:

- Seller or lessor's name or registered name, address and, if necessary, information about registration in the Commercial Registry (*Registro Mercantil*);
- Maps of the area where the property is located and the property itself, as well as a description of the electric, water, gas and heating services, their guarantees and the safety measures of the building;
- Description of the property, building, common areas and accessory services;

¹⁹⁶ SI 1992/2834.

- Materials used to construct the property, building, common areas and accessory services;
- Conditions of use and conservation and instructions on evacuation in case of emergency;
- Information that allows consumers to identify the building in the Property Registry (*Registro de la Propiedad*) or a reference to the lack of registration;
- Full price or rent of the property and accessory services as well as payment methods.

Less encompassing rules exist in Denmark and France. Under § 13 of the Danish Real Estate Transactions Act, a real estate agent must give both parties to the transaction the information necessary for the transaction and its performance. This should include specific information on the possibility to (and need to) obtain a technical report on the physical condition of the building from a chartered surveyor according to specific rules; and specific information on the potential need of both parties to take out insurance covering hidden defects.

French law also requires the seller of immovable property to give the purchaser a structural survey of the building, including its energy performance and the presence of lead or asbestos.¹⁹⁷ Similar information has to be provided to the tenant; and interestingly in this case, the information should cover television reception.¹⁹⁸ Moreover, in French law, special information obligations apply for the rent of furnished premises for holiday purposes. According to Article L 324-2 of the *Code du tourisme*, the offer for rent shall indicate the price and a description of the premises.

In Finland, special information obligations apply to the marketing of apartments.¹⁹⁹

b) Information on the transaction

The first group of provisions deal with price transparency. According to § 5 of the Danish Real Estate Transactions Act, sales advertisements and other marketing materials must state the cash price. In Germany, the Price Indication Regulation (*PreisangabenV; PAngV*) requires traders to indicate the end price as a figure. The courts have clarified that the PAngV applies to immovable property.²⁰⁰ Whilst a breach of the PAngV can be sanctioned with a fine of up to 25,000 Euro, the failure to mention the end price as required by the PAngV is at the same time a misleading omission (under § 5a para. 4 with para. 2 UWG) if the price indication obligation is based on EU law.²⁰¹ In Austria, § 6

¹⁹⁷ Article L 271-4 and 5 of the *Code de la construction et de l'habitation*.

¹⁹⁸ Article 3-1 and 3-2 of the *loi n°89-462 du 6 juillet 1989 tendant à améliorer les rapports locatifs et portant modification de la loi n° 86-1290 du 23 décembre 1986*.

¹⁹⁹ Decree on Information to be provided on the Marketing of Apartments 130/2001.

²⁰⁰ See BGH, 7/7/1983, I ZR 113/81, GRUR 1983, p. 665.

²⁰¹ See BGH, 22/4/2009, I ZR 14/07, WRP 2009, 1510; BGH, 16/7/2009, I ZR 50/07, WRP 2010, 374.

of the Real Estate Agent Ordinance (*Verordnung über Standes- und Ausübungsregeln für Immobilienmakler, IMMV*)²⁰² deals with advertisements by real estate agents. Amongst other things, advertisements have to state clearly the total costs of the transaction and the monthly installments (para 2). If the transaction concerns a rental agreement, the advertisement must also state clearly the details of the rent (para 3).

c) Information on the real estate agent and on the contract with the real estate agent

The next group of provisions is concerned with 'status' transparency. According to § 6 para. 1 of the Austrian IMMV, advertisements have to make it clear if they are published by an agent (para 1). § 7 of the Danish Real Estate Transactions Act requires that real estate agents inform the consumer if the agent has any financial or personal interest in the financing, insurance or other services chosen by the consumer in connection with the transaction. Under French law, estate agents also have to inform their clients when they are in any way related to financial private bodies.²⁰³

In Austria, real estate agents have to give certain information to consumers, be they sellers or buyers. According to § 30b para. KSchG, the real estate agent has to provide the following to the consumer, prior to entering into an agency contract: a written overview prepared with the diligence of a prudent real estate agent from which it can be surmised that he or she acts as a real estate agent and which states any and all costs, including the commission, expected to arise for the consumer from entering into the brokered transaction. The amount of commission shall be stated separately; and any economic or family association shall be pointed out. Whereas the real estate agent may also act as an agent for both sides by virtue of his business practices, the written overview must include a note to this effect. If conditions undergo a material change, the real estate agent shall correct the overview accordingly. A breach of this obligation is sanctioned with a reduction of the commission that has to be paid by the consumer, and the consumer may have a claim for damages.²⁰⁴

Similarly, under UK law the estate agent must provide information in advance about the basis of the business (e.g. sole agency) and must make an estimate of charges and how these are calculated. Moreover, he or she must disclose any connection to people (such as lenders, insurers and removal firms) providing additional services and declare any personal interest in transactions.²⁰⁵

d) Construction contracts

Some Member States avail of legislation that deals specifically with immovable property that is yet to be constructed. Generally speaking, these rules are more recent.

²⁰² Federal Gazette 1996/297; latest amendment by Federal Gazette II no. 2010/268.

²⁰³ Article 4-1 of the Loi n°70-9 du 02-01-1970 as amended by Article 122 of the Loi n°2009-323 du 25 mars 2009.

²⁰⁴ See Kolba, § 30b, in Kosesnik-Wehrle (ed.), *Konsumentenschutzgesetz*, 3. Ed., Manz, Vienna, 2010, no. 27b.

²⁰⁵ Estate Agents Act 1979, as amended by the Consumers Estate Agents and Redress Act 2007.

Again, under Spanish law, encompassing information obligations apply. Interestingly, the list of information obligations to be supplied in situations where the house is yet to be constructed differs from the information obligations that apply to the sale of existing property. The list that applies in situations where the house is yet to be constructed includes, amongst others:

- A copy of the legal authorizations to construct the building, copy of the certification about the town-planning circumstances and copy of the authorization to use the property, common areas and accessory services;
- Rules of the homeowners' association and information about the service and supply contracts concluded by the homeowners' association;
- Information about taxes;
- Information about the type of contract, which will include (a) that consumers will not pay expenses derived from titles that legally correspond to the seller; (b) text of Sections 1280.1 and 1279 of the Spanish Civil Code;²⁰⁶ (c) the right of consumers to choose the Public Notary;
- Date of delivery and stage of construction;
- In first sales, name or registered name and address of the architect and contractor.

In Italy, special information obligations have applied since 2005²⁰⁷ in the case of contracts for the (future) acquisition of the property of buildings whose construction has not been completed yet, or not even started. Moreover, such contracts are only valid if a bank guarantee or insurance is provided for the restitution of the price paid in advance by the purchaser in the event that the seller fails to construct the building. Failure to comply with these requirements is regarded as an unfair commercial practice.²⁰⁸

Poland is also about to introduce a law concerning protection of the purchasers of apartments. This will apply to those who are mostly but not necessarily consumers. Amongst other things, the law will provide for a specific regulation concerning information requirements before the execution of the contract, the content of the contract and its performance, the maintenance of any trust accounts that would be utilized to make payments to the developer, the obligation of a developer to obtain an insurance or bank guarantee for the benefit of the purchaser as security for claims against the developer

²⁰⁶ Section 1279: If the law should require execution of a public deed or another special form for the obligations inherent to a contract to be effective, the contracting parties may compel each other reciprocally to fulfill such form from the moment when consent has been given and the remaining requirements necessary for its validity are present.

Section 1.280.1: The following must be set forth in a public instrument: 1. Acts and contracts whose purpose is the creation, transfer, amendment or extinguishing of rights in rem over immovable property.

²⁰⁷ *Decreto legislativo* n. 122 of 20 June 2005.

²⁰⁸ Italy country report.

that arise before the contract transferring ownership is concluded, and finally the conduct of insolvency proceedings in case the developer is declared bankrupt.²⁰⁹

e) Insurance

Swedish law contains particular information obligations that apply in relation to home insurance.²¹⁰

3.4.3 National legislation regarding aggressive practices, or the use of harassment, coercion and undue influence

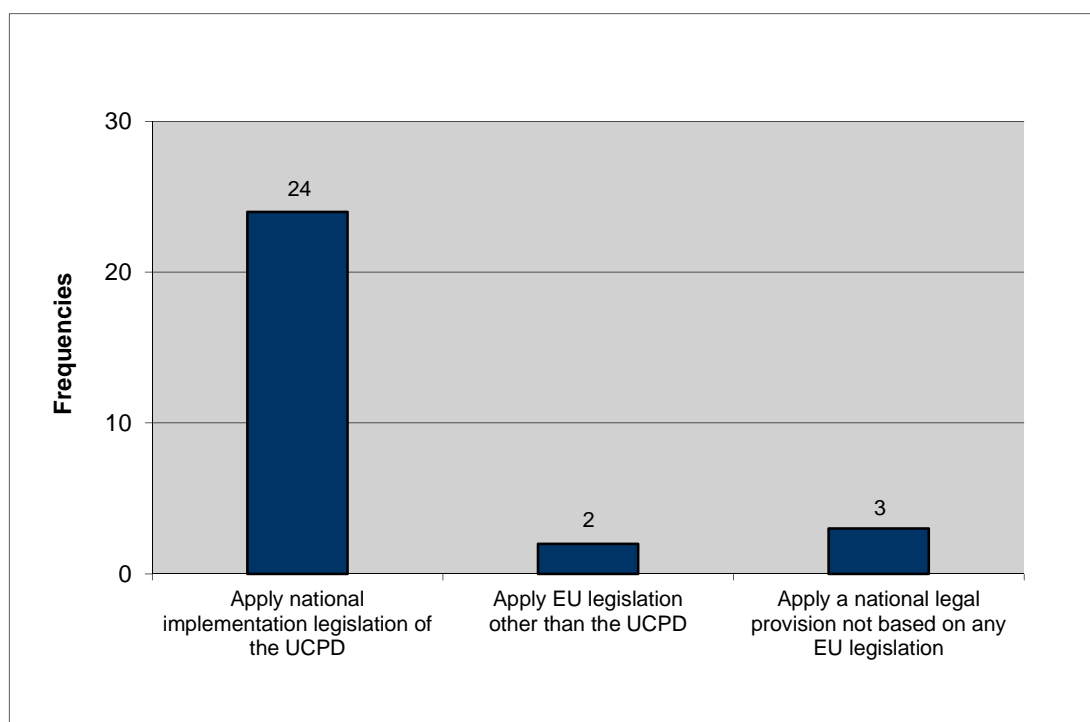
It has already been mentioned that some Member States have maintained stricter legislation related to cold calling and unsolicited e-mails than the UCPD requires, relying on the Directive 2002/58/EC on Privacy and Electronic Communications, and that the protection of consumers from cold calling has been complemented by additional contract law mechanisms. These rules, however, apply generally; they are not specific to immovable property. The same applies to French law, where the abuse of weakness is a criminal offence.

The following figure indicates that authorities responsible for enforcement of the UCPD in immovable property only rarely apply national legal provisions that are not based on any EU legislation.

²⁰⁹ Poland country report.

²¹⁰ See the Swedish Insurance Contract Act.

Figure 9: When you are dealing with a problem related to aggressive practices or use of harassment/coercion and undue influence in immovable property, do you ...



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the UCPD in immovable property (N=25, no survey received from the responsible authorities in Malta, Portugal, Romania and Slovakia, multiple answers possible).

As the figure indicates, national legal provisions regarding aggressive practices in the area of immovable property that are not based on any EU legislation are only reported from three Member States, namely Austria, Spain and the UK. The Austrian special rule relates to mortgage credit which has been considered above. The Spanish and UK competent authorities have not specified their special rules on aggressive practices in the area of immovable property. In fact, the UK competent authority has considered their application as merely theoretical, because, as the responding authority stated: “in practice most immovable property enforcement relates to misleading rather than aggressive practices”.²¹¹

An interesting provision has been reported from Austrian consumer law, aiming at the protection of consumers who are under pressure in terms of finding accommodation and thus vulnerable. § 30a para 1 KSchG²¹² provides for a consumer right to withdraw from

²¹¹ See UK responses to the Civic Consulting survey on the application of Directive 2005/29/EC in immovable property.

²¹² § 30a para 2-4 KSchG states: “(2) The contract may be rescinded at the latest one week after the consumer has furnished his contract statement. If a real estate agent has been involved and the statement of rescission is addressed to such agent, the rescission shall also extend to a real estate agent contract entered into within the scope of the contract statement. In other respects, Section 3 (4) shall apply to the statement of rescission. (3) The period set forth in Para 2 above shall commence only upon the consumer receiving a copy of his contract statement and written instructions on his

his or her contractual statement which aims at “the acquisition of a tenancy right, another usufructuary right or ownership of an apartment, a single-family dwelling or a piece of land suitable for erecting a single-family dwelling on it on the same day that he has inspected the contractual object for the first time, provided that such acquisition was intended to cover an urgent residential need on the part of the consumer or any of his near relatives”. The rule reflects the fact that flat viewing appointments are often used by the flat owners or by estate agents to put time pressure on the potential tenants (“now or never”), in particular when several potential tenants are present at the same time. Lack of information on the right of rescission therefore constitutes an unfair commercial practice.

3.4.4 Analysis

In an overall perspective, a minority of Member States have established special rules on unfair commercial practices in the area of immovable property. Most of the rules mentioned above establish information obligations that would seem to have been established for different reasons. First, the very detailed information obligations related to the property reflect the fact that the decision to purchase property is probably the most important purchasing decision one makes; which has always been reflected in the law, in particular in more stringent formal requirements than those that normally apply in contract law. These rules are not only very specific, they also seem to go beyond the “material information that the average consumer needs, according to the context, to take an informed transactional decision” as required by Article 7(1) UCPD.

The rules on status transparency of real estate agents have to do with the special importance of intermediaries, and they are generally in line with rules on status transparency that we also find in EU legislation, in particular in the Insurance Intermediary Directive 2002/92/EC and in the Consumer Credit Directive 2008/48/EC.²¹³ They are complemented by special prohibitions of unfair commercial practices that occur in that sector and that may be attributed to the potential abuse of the position as intermediary between the parties to a potential contract that perhaps meet for the first time on the day of the conclusion of the contract. These latter practices, in particular misleading statements of real estate agents about offers received are clearly also covered by the UCPD. In contrast, the more recent rules on information obligations (as well as other protective mechanisms related to property that is yet to be built) clearly reflect problems in the construction industry that national legislators react to.

The most interesting sector-specific national legislation perhaps deals with the exploitation of the weaker position of the consumer / citizen in special situations; namely the situation of persons seeking accommodation when accommodation is scarce, and

right of rescission. The right of rescission shall, however, expire at the latest one month after the day of the first inspection. (4) Any agreement on the payment of a deposit, forfeit money or downpayment prior to expiry of the rescission period shall be ineffective”.

²¹³ On which see, for example, Rott, P., *Europäisierung des Rechts der Finanzintermediäre*, ‘Europäisches Wirtschafts- und Steuerrecht’ 2008, pp. 21 ff.

the situation of persons seeking to buy property when affordable property is difficult to obtain. Sensitivity to such ‘situation-based’ vulnerability is reflected in Austrian and Danish law. Danish law applies a mechanism that comes under the law of unfair commercial practices law, namely a prohibition of tying, whilst Austrian law works with a right of withdrawal. The abuse of these types of pressure situations may also be covered by Article 8 UCPD on aggressive practices or by the general clause of Article 5(2) UCPD but the application of these general rules may be difficult in the individual case.

3.5 The concept of ‘consumer’ applied in financial services and immovable property compared to the concept of ‘consumer’ in general

As mentioned above, some Member States have extended the notion of consumers to natural persons who are not treated as consumers in EU law, including persons who are setting up a business. The respective provisions do not fall into the scope of application of the UCPD; they are therefore irrelevant with a view to the potential removal of Article 3(9) UCPD and are not considered here.

In contrast, the focus here is on two questions: have Member States introduced special rules that show a different concept of consumers in the areas of financial services and/or immovable property? And where the same provisions apply to financial services and/or immovable property on the one hand and other goods and services on the other, do national courts apply different concepts when it comes, for example, to misleading advertisement and to the likelihood that a commercial practice will mislead the consumer?

Key findings:

- (1) In financial services, it seems to be generally acknowledged in academic writing that financial literacy of the average consumer is not yet sufficient, and EU legislation has reacted to that by introducing sector-specific pre-contractual obligations that go beyond the mere provision of information. In the case law of national authorities and courts this issue is not dealt with very explicitly. Courts seem to take different approaches.
- (2) No special consumer concept is being formally applied in the sector of immovable property. Case law on unfair commercial practices is generally scarce in this area, which may also be related to the fact that there are generally no specialised authorities or enforcement agencies dealing with immovable property.

3.5.1 The concept of ‘consumer’ in the sector of financial services

It seems to be generally acknowledged in academic writing that financial literacy of the average consumer is not yet sufficient, and EU legislation has reacted to that by introducing sector-specific pre-contractual obligations that go beyond the mere provision of information. One example is the duty to give advice from Article 5 (6) of the Consumer Credit Directive 2008/48/EC.

In the case law of national authorities and courts this issue is not dealt with very explicitly. Courts seem to take different approaches. It was reported that Bulgarian courts take into account the complexity of financial services such as banking services, consumer credit, insurance and supplementary pension insurance.²¹⁴ The Austrian Supreme Court has differentiated between experienced investors and first-time investors and has held that an advertisement that is addressed to both groups is already misleading as it is misleading the first-time investors, relying on the Austrian implementation of Article 5(2) UCPD.²¹⁵ With regard to UK law, the regime of the FSA is at least not geared at the EU law type average consumer and would allow the FSA to consider other aspects such as financial illiteracy, or poverty.

In contrast, other Member States have concluded from the importance of contracts related to financial services that the consumer should pay special attention and can therefore not easily be misled. This has been the approach of some German courts.²¹⁶ For a telling example, the *Landgericht* Frankfurt held that the average consumer only decides on the conclusion of an insurance contract or on an investment after thorough examination of the offer.²¹⁷

It should be noted that the finding may be different when it comes to the contractual relationship between the financial service provider and the consumer. For example, German courts have declared standard terms in contracts related to complex financial products unfair because they were not sufficiently transparent. Spanish courts are also reported to have taken into account the lack of experience of consumers with complicated financial products such as swaps.²¹⁸

3.5.2 The concept of 'consumer' in the sector of immovable property

No special consumer concept is being formally applied in the sector of immovable property.²¹⁹ Case law on unfair commercial practices is generally scarce in this area, which may also be related to the fact that there are generally no specialised authorities or enforcement agencies dealing with immovable property.

It seems, however, that in some countries fraudulent traders target vulnerable consumers, in particular elderly consumers. This was reported from Bulgaria (see

²¹⁴ Bulgaria country report.

²¹⁵ OGH 20/1/2009, 4 Ob 188/08p.

²¹⁶ Germany country report.

²¹⁷ See LG Frankfurt (Regional Court Frankfurt), 4/7/2001, 2/6 O 732/00, unpublished.

²¹⁸ Spain country report.

²¹⁹ This is reflected in the assessments of authorities responsible for enforcing the UCPD in the area of immovable property. Only one authority (from Belgium) indicated that in their country a different concept of 'consumer' is applied. In its answer to the survey, the Belgian authority stated that: "The average consumer only deals a few times in a lifetime with transactions of immovable property. The transaction moreover being very complex, he is the weaker party."

section 4.2 below).²²⁰ Their vulnerability can be dealt with under Article 5(3) UCPD as implemented in the Member States.

Moreover, it is worth recalling the above-mentioned situation-based vulnerabilities of consumers in need of housing that is reflected in Austrian and Danish law. This type of vulnerability is not really considered in Article 5(3) UCPD and may be difficult to be aligned with the concept of an “average consumer”.

3.6 Reasons for the application of national provisions against unfair commercial practices

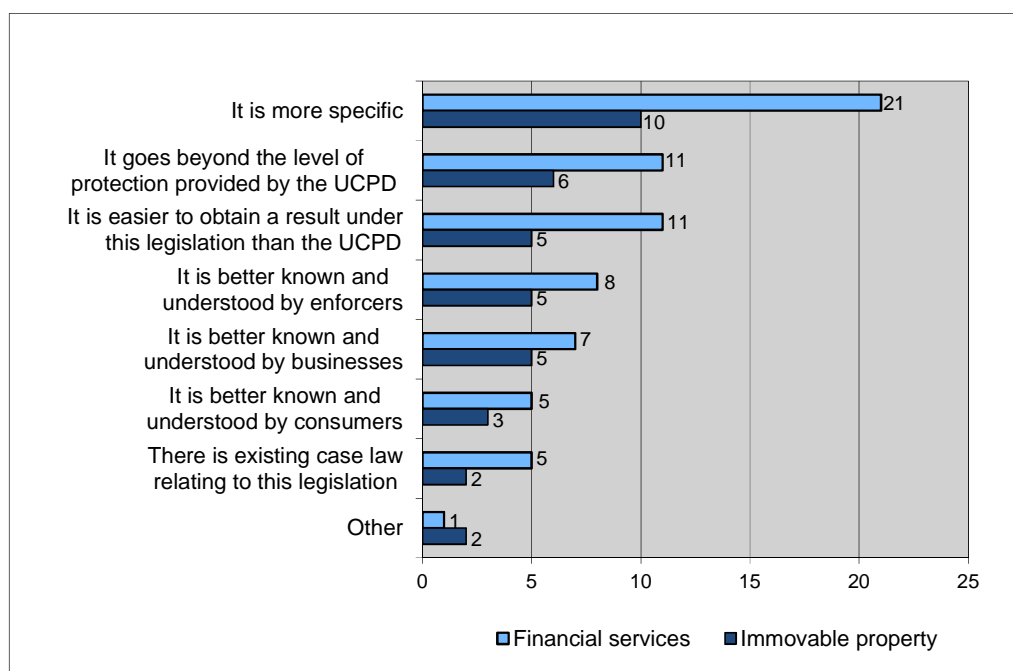
Key findings:

- (1) The reasons for the application of national provisions instead of or in addition to the application of the national implementation of the UCPD are manifold. Key reasons provided are that national legislation is more specific, goes beyond the level of protection provided by the UCPD and results are reported in these cases to be easier to obtain under this legislation than under the UCPD.
- (2) Only a few national provisions clearly exceed the level of protection of the UCPD. The most prominent category consists of restrictions to pressure selling in the area of financial services, and some prohibitions of tying. Another relevant category contains provisions that are meant to protect the weaker or vulnerable party. They exist in the area of financial services as well as in the area of immovable property.
- (3) Otherwise, some Member States’ laws state very specific information obligations. This is particularly significant in the area of financial services but also occurs in the area of immovable property. These information obligations do not necessarily provide for a significantly higher level of protection than the UCPD. However, the specific national information obligations usually apply regardless of their suitability to mislead the consumer, and are therefore easier to handle for authorities, courts, businesses and consumers. Often, they also come under a different enforcement system. Accordingly, the survey has shown a preference for pre-existing rules in those Member States that had information obligations already in place.

The reasons for the application of national provisions instead of or in addition to the application of the national implementation of the UCPD are manifold. This is illustrated by the responses of authorities responsible for enforcement of the Directive in financial services and immovable property (see figure below). Those authorities that reported to apply national provisions not based on any EU legislation when dealing with a problem regarding misleading practices were asked why they are doing so. Key reasons provided are that national legislation is more specific, goes beyond the level of protection provided by the UCPD and results are reported in these cases to be easier to obtain under this legislation than under the UCPD.

²²⁰ Bulgaria country report.

Figure 10: Reasons why national legal provisions are applied when dealing with a problem related to misleading omissions and misleading actions in financial services and immovable property



Source: Civic Consulting survey of authorities and other bodies responsible for enforcement of the Directive in financial services (N=12) and immovable property (N=7). Indicated is the cumulative total of answers for both misleading actions and misleading omissions (multiple answers possible, only those authorities that reported to apply national provisions not based on any EU legislation were asked).

The analysis presented in the previous sections has shown that only a few national provisions clearly exceed the level of protection of the UCPD. The most prominent category consists of restrictions to pressure selling in the area of financial services, and some prohibitions of tying. Another relevant category contains provisions that are meant to protect the weaker or vulnerable party. They exist in the area of financial services as well as in the area of immovable property law. They may, in particular, be vulnerable due to their need of an essential product, such as a bank account, credit or accommodation.

Otherwise, some Member States' laws state very specific information obligations. This is particularly significant in the area of financial services but also occurs in the area of immovable property, and especially with a view to the activities of estate agents (who have not been regulated at EU level yet). These information obligations do not necessarily provide for a significantly higher level of protection than the UCPD. The country reports conclude that incorrect information about the items that financial service providers, traders or real estate agents are required to provide according to special legislation would be likely to be found misleading under the national implementation of the UCPD as well; which has not yet been tested. Indeed, courts from other Member States have occasionally held such incorrect information to be misleading. For example,

according to the German *Bundesgerichtshof*, costs for the services of estate agents must be mentioned if they apply.²²¹ In Austria, this issue forms part of the list of information requirements under § 30b of the Austrian Consumer Protection Act. The competent Italian agency has also regarded the non-mentioning of the estate agent's fee as misleading.²²²

However, the specific national information obligations usually apply regardless of their suitability to mislead the consumer, and they are therefore easier to handle for authorities, courts, businesses and consumers likewise. Often, they also come under a different enforcement system. Accordingly, the survey has shown a preference for pre-existing rules in those Member States that had information obligations already in place. Again, this applies to both the sectors of financial services and immovable property.

²²¹ BGH, 16/11/1989, I ZR 107/87, GRUR 1990, p. 377.

²²² Italy country report.

4 Most common unfair commercial practices

4.1 Most common unfair commercial practices in financial services

Key findings:

- (1) In the area of financial services common unfair commercial practices were documented for 28 of the 29 countries subject to this study. For 115 practices, information was available on the category of the unfair practice. One fifth (20%) of these practices were found in the category 'essential information not included in advertising'. Related practices were reported by authorities and other organisations from 17 countries – more than half of the countries surveyed for this study.
- (2) Common unfair commercial practices regarding financial services also frequently fall into the category 'product was mis-described'. 21 related practices were identified for 14 countries. Many of these practices related to credit.
- (3) Often common unfair commercial practices fall into several legislative categories. Misleading actions and omissions were most often reported together. Individually, 64% of the relevant practices are categorised as being a misleading action, 53% as being a misleading omission. Aggressive practices were less common, as were practices which are on the UCPD blacklist. Practices which are not included on the UCPD blacklist but are banned in the reporting country were reported from Belgium, Cyprus, Denmark, France, Germany and the UK.
- (4) Responding enforcement authorities and other organisations were asked to indicate the type of evidence used to determine that a particular practice in the field of financial services is an unfair commercial practice. For more than half of the documented practices (58%) the evidence is complaints data, followed by decisions of enforcement bodies (36%) and court cases (25%).
- (5) A total of approximately 248,831 complaints concerning common unfair commercial practices in the area of financial services were reported between 2008 and 2010 from 19 countries. This number is substantial and (as also indicated by other sources such as the Consumer Scoreboard) suggests dissatisfaction with financial services throughout the EU, Iceland and Norway. Complaints regarding common unfair commercial practices most frequently relate to 'other loans' (those which excluded secured loans but included consumer credit). The next most frequently chosen products were mortgages, life insurance, credit cards, and stocks, shares, bonds or derivatives.
- (6) Where an unfair commercial practice was identified and action was taken, the most frequent action (excluding the category 'other') was to make an administrative decision (41% of relevant practices). For 27% of relevant practices, guidance for businesses was issued, for 22% the procedure for a judicial decision was initiated, and for 22% a warning about the trader or the practice was issued. Respondents also referred consumers to a relevant enforcement body or to another body such as an ADR scheme.

4.1.1 Background

The importance of financial services to consumers is recognised by the European Commission. A number of initiatives are currently being considered and undertaken to improve confidence in the financial sector, including the following areas:²²³

- Proposals to reform Deposit Guarantee Schemes and Investor Compensation Schemes;
- A legislative proposal on fair practices relating to mortgage credits;
- A consultation on packaged retail investment products (PRIPs);
- Strengthening the depositary framework for UCITS (Units for Collective Investment in Transferable Securities),
- Improvements to financial inclusion, including access to basic bank accounts.

One of the reasons for developing a tight regulatory framework for financial services at European level is their large potential for causing consumer detriment. Research identified deficiencies in the advice given to consumers at the point of sale, leading people to purchase inappropriate products.²²⁴ In 2009 a report published by the European Commission identified the area of retail financial services as of particular concern.²²⁵ It was found that deficiencies in the field of pre-contractual information inhibited consumers from making the most appropriate decisions in relation to financial services, and thus they ended up paying more for services, or buying services they did not need or want, or which may even have been inappropriate for them. Moreover, the first Consumer Scoreboard found that some financial services were problematic because they were particularly opaque in structure and not suited to helping consumers to compare different offers.²²⁶ The sixth Consumer Scoreboard confirms that some financial services continue to underperform throughout the EU. The category 'investments, pensions, securities' showed the greatest improvement but was still performing below average and was ranked lowest on the normalised Market Performance Indicator of 51 consumer markets.²²⁷ Categories 'investments, pensions, securities', 'mortgages', 'current bank accounts', and 'loans and credit cards' were all considered to have a

²²³ European Commission, *Regulating financial services for sustainable growth - A progress report*, Brussels, February 2011, Available at http://ec.europa.eu/internal_market/finances/docs/110209_progress_report_financial_issues_en.pdf.

²²⁴ The European Commission *staff working document on the follow up in retail financial services to the consumer market score-board*, SEC (2009) 1251 final, Brussels, 2009. Available at: http://ec.europa.eu/consumers/rights/docs/swd_retail_fin_services_en.pdf, p. 4.

²²⁵ The European Commission *staff working document on the follow up in retail financial services to the consumer market score-board*, SEC(2009) 1251 final, available at: http://ec.europa.eu/consumers/rights/docs/swd_retail_fin_services_en.pdf.

²²⁶ *The Consumer Markets Scoreboard: Monitoring consumer outcomes in the Single Market*, 1st Edition 2008 and 2nd Edition, Brussels, 2009.

²²⁷ *The Consumer Markets Scoreboard: Making markets work for consumers*, sixth edition, Brussels, October 2011, pp. 4-6.

significant risk of malfunctioning.²²⁸ Furthermore, ‘investments, pensions, securities’ and ‘mortgages’ were considered to be of particular concern when household budget shares are taken into account.²²⁹

4.1.1 Overview of most common unfair commercial practices reported

Civic Consulting received 62 responses from enforcement authorities and other organisations to the online survey on financial services, from all 27 Member States, as well as Iceland and Norway. No common unfair commercial practices were reported from Lithuania in the area of financial services. All the practices discussed here are considered by the reporting authorities and other organisations to be the most common unfair commercial practices they have observed in their country. Responding authorities and other organisations were asked to give information about the most common unfair commercial practices they had encountered, including a description of the practice, the legislative category, the products most complained about, complaints data if available, and any actions taken. After receiving the description of each commercial practice, it was reviewed, edited and complemented with data from other sources, such as interviews with responsible enforcement officials. Where needed, responding organisations were consulted and asked to provide clarification concerning specific aspects. In some cases, additional common unfair commercial practices were identified through our country reports and other documentation received. The draft overview of the most common unfair commercial practices was then communicated to the responsible enforcement authorities in each country from which a response was received. In cases where authorities provided additional comments, these were considered when finalising the overview tables presented in this section and in the related country fact sheets (for more details, see methodological approach, Chapter 2).

a) Category of common unfair commercial practices documented

In the area of financial services common unfair commercial practices were documented for 28 countries. For 115 practices, information is available on the category of the unfair practice. One fifth (20%) of these practices were found in the category ‘essential information not included in advertising’. 18% of practices were described as ‘the product was mis-described’ and 9% involved ‘risks about the product or service not being made clear’. The category ‘other’ was selected for a significant number of practices (17%). The categories ‘the rate or charge was considered to be excessive’, or ‘the trader imposed disproportionate barriers when the consumer wanted to switch or terminate the contract’ were selected least frequently. ‘Costs relating to intermediaries were not transparent’ was not selected at all.

The borders between these categories are not always clearly demarcated and can be quite permeable. When responding to the surveys organisations were asked to select the category which best described the practice they were reporting, however, it should be

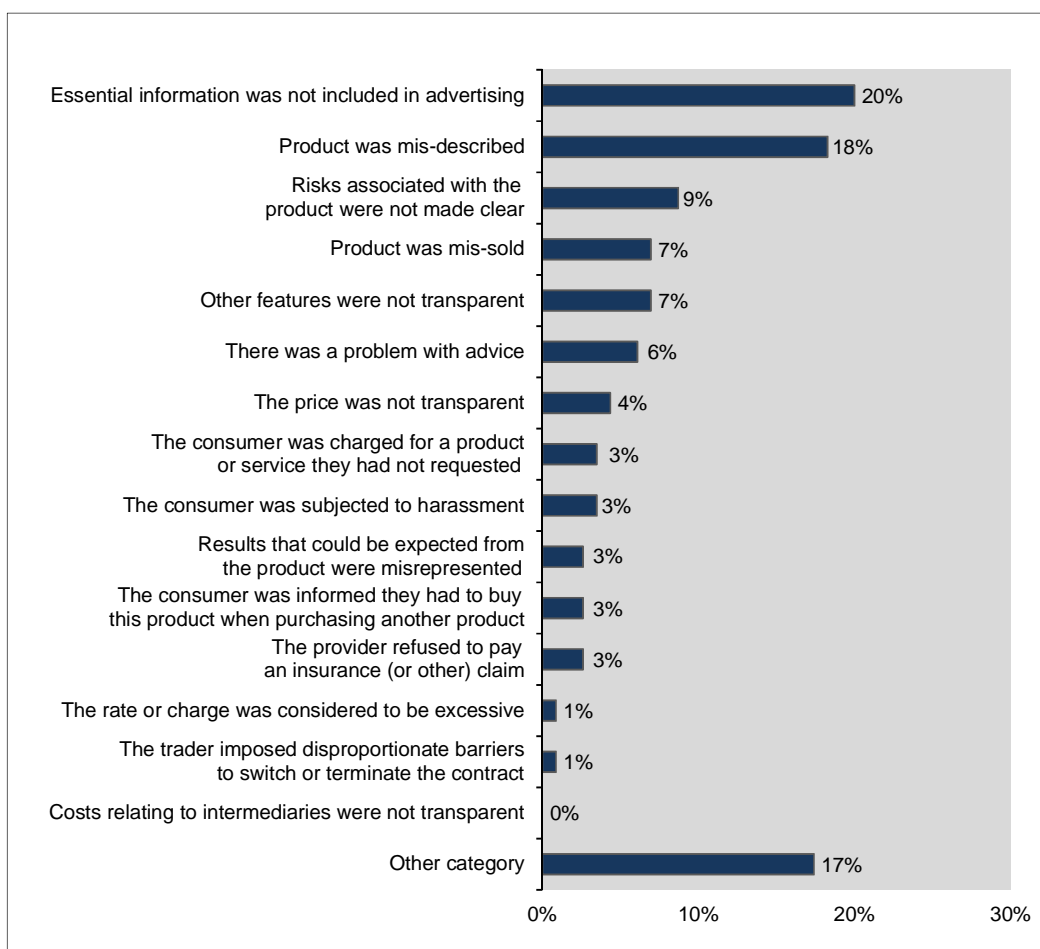
²²⁸ *The Consumer Markets Scoreboard: Making markets work for consumers* (October 2011), p. 31.

²²⁹ *The Consumer Markets Scoreboard: Making markets work for consumers* (October 2011), p. 5.

noted that practices described under different categories may still be similar in some cases. Throughout this report *the category selected by the responding organisation* has been used to group and discuss the reported common unfair commercial practices.

The most frequent categories are described in more detail in the following figure.

Figure 11: Categories to which the reported common unfair commercial practices relate



Source: Civic Consulting database on unfair commercial practices in the field of financial services (N=115, number of practices for which information is available, multiple responses possible).

The table on the next page provides a detailed overview of reported common unfair commercial practices by category and country in the area of financial services:

Table 1: Identified common unfair commercial practices by category and country in the area of financial services

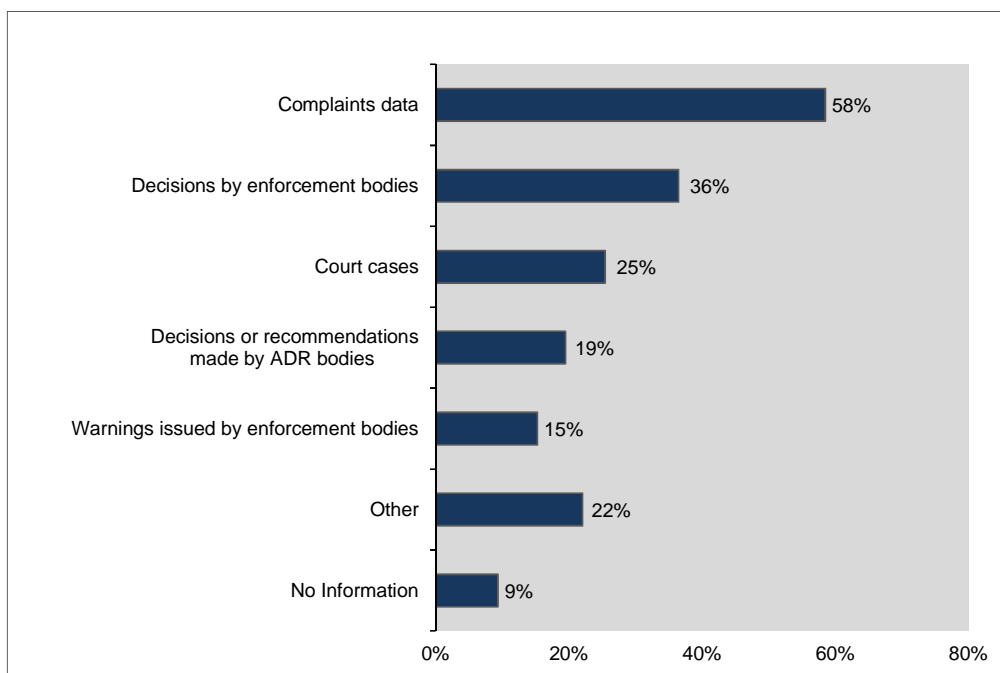
Country	Description														
	Essential information not in advertising	Product mis-described	Risks not made clear	Other features not transparent	Price not transparent	Product mis-sold	Charge for product/service not requested	Problem with advice	Consumer subjected to harassment	Provider refused claim	Tied sale	Results misrepresented	Barriers to switching	Rate considered excessive	Other
Austria			X				X								X
Belgium	X		X		X										X
Bulgaria	X	X		X					X	X					X
Cyprus	X			X											
Czech Republic		X				X									
Germany	X	X	X				X								X
Denmark	X	X						X							
Estonia	X		X	X											
Greece							X					X			
Spain				X											X
Finland	X		X		X										
France		X	X			X					X				
Hungary		X			X										
Ireland															
Iceland	X														
Italy	X						X						X		
Latvia		X													
Lithuania															
Luxembourg	X	X													
Malta						X									
Netherlands	X														X
Norway	X	X													
Poland	X	X								X	X				
Portugal	X	X	X	X						X					
Romania	X														
Sweden	X	X	X	X	X										
Slovenia								X							
Slovakia	X	X		X	X	X		X	X		X				X
United Kingdom		X	X			X		X	X			X		X	X
Number of countries	17	14	9	7	5	5	4	4	3	3	3	2	1	1	8

Source: Civic Consulting database on unfair commercial practices in the field of financial services. Table includes all practices categorised.

b) Evidence

Responding enforcement authorities and other organisations were asked to indicate the type of evidence used to determine that a particular practice in the field of financial services is an unfair commercial practice. For more than half of the documented practices (58%) the evidence is complaints data, followed by decisions of enforcement bodies (36%) and court cases (25%). Only for 9% of documented practices no evidence was indicated.

Figure 12: Evidence to determine that a practice is an unfair commercial practice

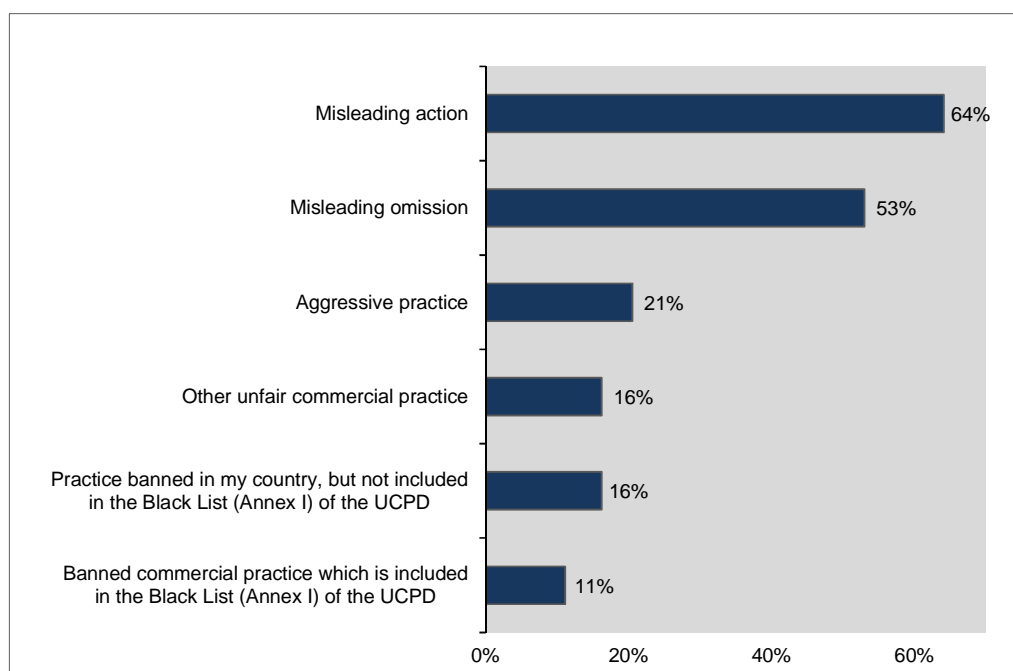


Source: Civic Consulting database on unfair commercial practices in the field of financial services (N=118, multiple responses possible).

c) Legislative category

Often common unfair commercial practices fall into several legislative categories. Misleading actions and omissions were most often reported together. Individually, 64% of the relevant practices are categorised as being a misleading action, 53% as being a misleading omission. Aggressive practices were less common, as were practices which are on the UCPD blacklist. Practices which are not included on the UCPD blacklist but are banned in the reporting country were reported from Belgium, Cyprus, Denmark, France, Germany and the UK.

Figure 13: Legislative category of most common unfair commercial practices reported



Source: Civic Consulting database on unfair commercial practices in the field of financial services (N=117, number of practices for which information is available, multiple categories possible).

d) Consumer loss

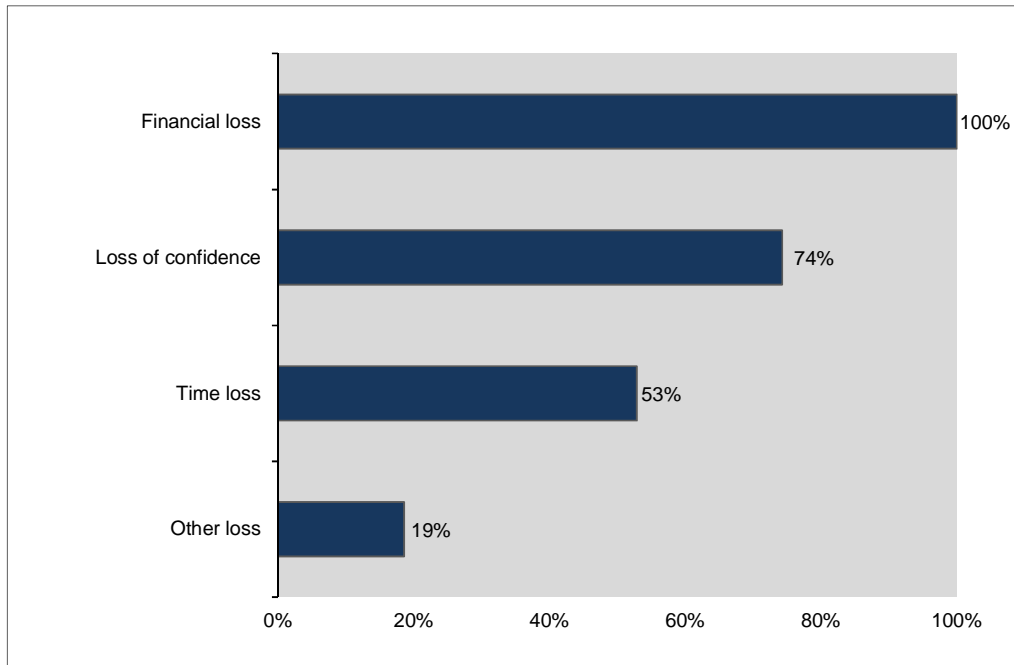
Enforcement authorities and other organisations that identified common unfair commercial practices were asked whether consumer loss was suffered through a particular practice. The type of loss most commonly incurred was considered to be financial loss (this loss was reported for all practices for which relevant information was available). Additional types of loss were: Loss of confidence (74%), time loss (53%) and other loss (19%, see following figure). ‘Other’ losses could be serious in nature and included:

- Loss suffered in relation to the consumer’s rights to housing, with implications on the level of property loss (Ministry of Justice of the Slovak Republic);
- Repossession of the customer’s home (Financial Services Authority, UK); and
- Impact on mental health (Citizens Advice, UK).

It is interesting to note that for one quarter of practices responding authorities and other organisations did not know whether a loss was suffered. This could be for a number of different reasons. The Central Bank of Ireland for example pointed out that while consumers may lose out initially (such as by being over-charged), if the consumers are refunded and the loss is remedied, it may not be accurate to continue to consider this a

loss.²³⁰ However, this would not account for loss of time if consumers have, for example, spent time complaining.

Figure 14: Type of loss reported



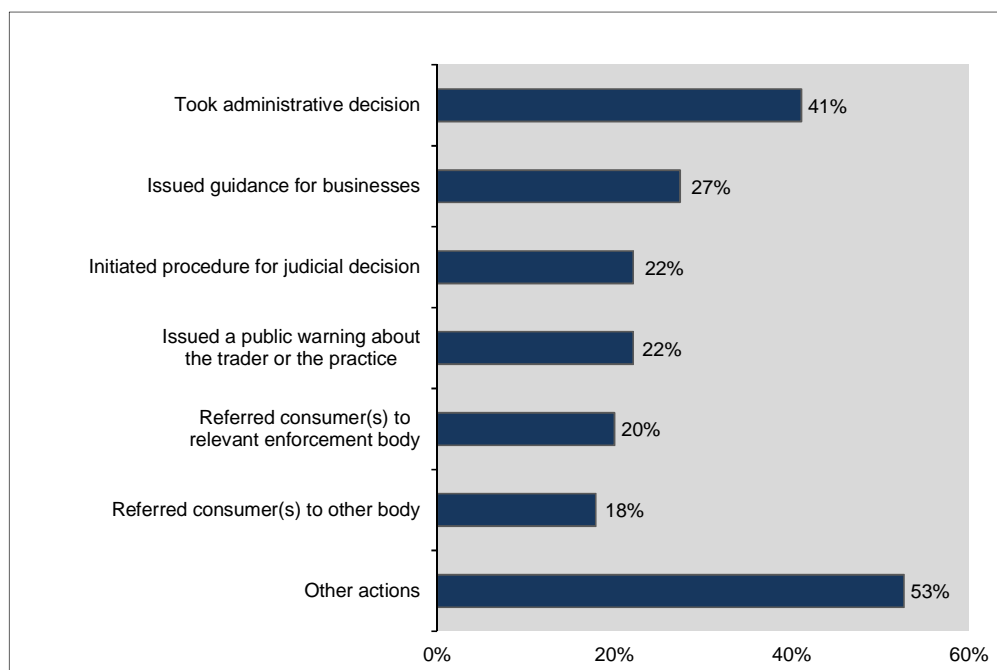
Source: Civic Consulting database on unfair commercial practices in the field of financial services (N=70, number of practices for which relevant information is available, multiple responses possible).

e) Actions taken

Where an unfair commercial practice was identified and action was taken, the most frequent action (excluding the category 'other') was to make an administrative decision (41% of relevant practices). For 27% of relevant practices, guidance for businesses was issued, for 22% the procedure for a judicial decision was initiated, and for 22% a warning about the trader or the practice was issued. Respondents also referred consumers to a relevant enforcement body or to another body such as an ADR scheme (see following figure).

²³⁰ See fact sheet Ireland.

Figure 15: Actions taken by respondents



Source: Civic Consulting database on unfair commercial practices in the field of financial services (N=95, number of practices for which relevant information is available, multiple responses possible).

A significant number of responding authorities and other organisations reported taking other actions (for 53% of relevant practices). These actions included:

- Issuing an official letter to the trader pointing out their shortcomings (Estonia, Consumer Protection Board);
- Issuing warning notices including penalty fines (Germany, Centre for Protection against Unfair Competition);
- Providing mediation or arbitration services (Portugal, Lisbon Arbitration Centre for Consumer Conflicts);
- Lobbying government, regulators and self-regulators to improve protections for consumers (UK, Citizens Advice Bureaux);
- Undertaking market surveillance and reporting findings to the regulator (UK, *Which?*).

f) Complaints

In addition to administrative and judicial decisions taken, the main criteria for assessing a practice have been the number and frequency of consumer complaints to national enforcement agencies. This is a key indicator of dissatisfaction since investment of time and effort is needed for a consumer to make a formal complaint. For 70% of the practices reported in our study in financial services, complaints data is collected.

Complaints data can be interpreted in different ways depending on factors such as the population of the country, the type of organisation gathering the data, and how complaints are categorised, as well as how widespread use of a particular problematic good or service is. In countries such as Germany complaints may be submitted by competitors as well as by consumers. The German Centre for Protection against Unfair Competition receives around 14,000 requests and complaints per year (across all sectors), most of which come from competitors or trade associations.²³¹ Some organisations (such as the Catalan Consumer Agency in Spain) collect complaints for the area of unfair commercial practices, for example, but do not necessarily break the complaints down further, such as by sector or type of practice. Organisations may also collect complaints over different time periods such as operating year or calendar year.

Furthermore, complaints data can also be influenced by factors such as consumer awareness of the existence of a body which collects complaints. There may be a widespread problem but very low levels of recorded complaints because there is no organisation to complain to, there is an organisation but consumers are not aware of it, or there is an organisation and consumers are aware of it, but they do not complain because they do not believe any action will be taken. On the other hand there may be very well established complaint procedures, meaning much higher numbers of complaints are recorded. Other aspects such as media coverage of an issue can also be an influencing factor in raising awareness (see below the UK example of mis-selling of Payment Protection Insurance).

In order to mitigate to some extent against factors such as those described, our survey not only requested quantitative complaints data, but also asked enforcement authorities and other organisations to assess the frequency of complaints as being received 'very frequently', 'rather frequently', 'sometimes' or 'never', to have at least some qualitative assessment where comprehensive complaint data is not available.

Complaints were reported 'very frequently' regarding at least one common unfair commercial practice by responding authorities and other organisations from four Member States: Italy, France, Poland and the UK. Complaints were reported 'rather frequently' regarding at least one common unfair commercial practice in Austria, Belgium, Bulgaria, Finland, France, Greece, Hungary, Iceland, Italy, Latvia, Luxembourg, Poland, Portugal, Sweden and the UK. The frequency of complaints selected by respondents most often was 'sometimes' – this frequency was selected by respondents from 19 countries.

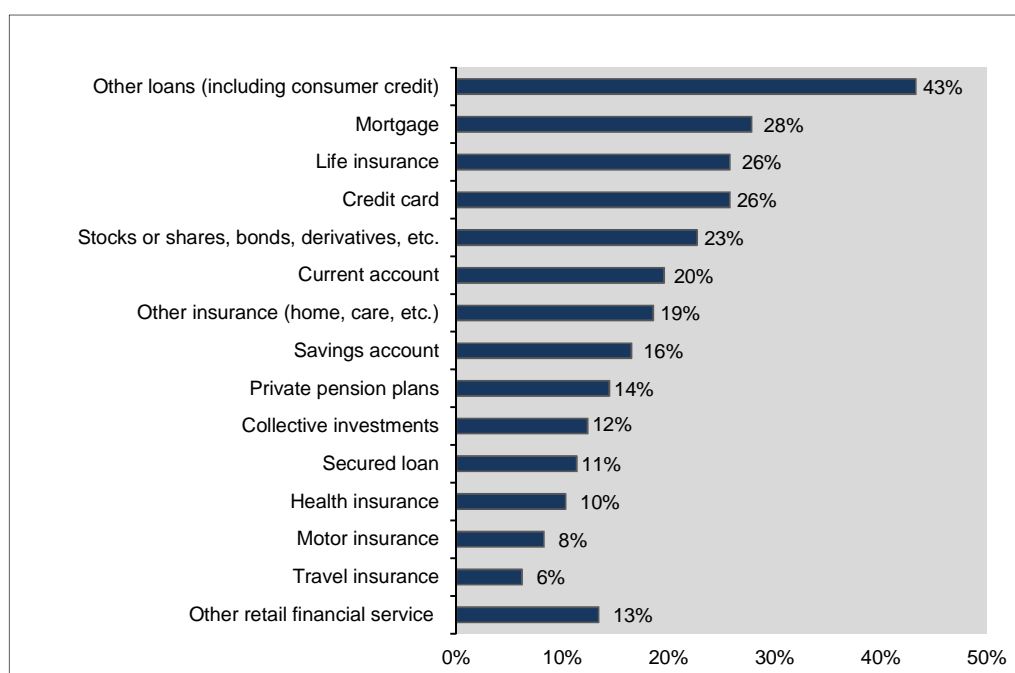
In terms of quantitative data, a total of approximately 248,831 complaints²³² concerning common unfair commercial practices in the area of financial services were reported between 2008 and 2010 from 19 countries. This number is substantial and (as also indicated by other sources such as the Consumer Scoreboard) suggests dissatisfaction with financial services throughout the EU, Iceland and Norway.

²³¹ Interview with the Centre for Protection against Unfair Competition, July 2011.

²³² This total is approximate. Some respondents reported approximate numbers or gave ranges. Where a range was given, the middle value was used to calculate totals.

Complaints regarding common unfair commercial practices most frequently relate to ‘other loans’ (those which excluded secured loans but included consumer credit). The next most frequently chosen products were mortgages, life insurance, credit cards, and stocks, shares, bonds or derivatives. This is consistent with the most recent Consumer Scoreboard which found that investments, pensions and securities, mortgages, current bank accounts, loans and credit cards, and life insurances performed poorly from a consumer perspective.²³³

Figure 16: Product to which complaints about reported common unfair practices most often relate



Source: Civic Consulting database on unfair commercial practices in the field of financial services (N=97, number of practices for which relevant information is available, multiple responses possible).

When considering the categories to which the practice subject to complaint belongs, the following picture emerges: The highest number of complaints was reported in the category ‘product was mis-sold’. A substantial proportion of these complaints were reported by authorities and other responding organisations in the UK. This is due in large part to the problems with mis-selling of Payment Protection Insurance mentioned above. In some cases the insurance sold was not suitable for the consumer, usually because there was very restricted eligibility to claim under it; so the consumer found that he or she was not covered for the sort of things they might have expected to be covered for.²³⁴ In other cases consumers may have been given the impression that they have no choice but to take out the PPI policy when buying the main product. A UK respondent to our

²³³ *The Consumer Markets Scoreboard: Making markets work for consumers* (October 2011), pp 6-7.

²³⁴ UK responses to the Civic Consulting survey on the application of Directive 2005/29/EC in financial services.

survey, the Financial Services Authority (FSA) reported 104,597 complaints relating to this issue in 2010. This was by far the highest number of complaints about an identified practice reported by respondents to our surveys. The data clearly points to a serious problem with mis-selling of PPI in the UK, but the high complaint figures may also be at least partly due to high levels of awareness of the service, as well as extensive media coverage of the issue (including a market investigation by the UK Competition Commission between February 2007 and March 2011;²³⁵ and a judgment handed down by the High Court in April 2011). Media attention included wide publicity on how to complain.²³⁶

According to the UK Financial Services Authority the loss to consumers is estimated to be billions of pounds. However, this cannot be calculated specifically. Firms subject to enforcement decisions by the financial Services Authority are required to compensate consumers directly for any loss suffered. For more information on this practice please also see the UK country report.

A significant number of complaints were also reported by the UK organisation Citizens Advice (53,536 between 2008 and 2010 in the category 'the consumer was subjected to harassment'). These complaints related to aggressive debt collection, particularly in relation to mortgages, secured loans, credit cards, and other loans. Citizens Advice noted that these practices could have a detrimental impact on consumers' mental health, which means they are of particular impact and importance.

Large number of complaints were also reported from other countries:

- The French consumer organisation UFC Que Choisir reported a total of 2,000 complaints in the category 'Product mis-described' (for 2008 only);
- FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation from Belgium reported 1,167 complaints in the category 'Risks not made clear';
- The Icelandic Consumer Agency reported 780 complaints in the category 'Essential information not included in advertising'. This related to misleading omissions in the advertising for consumer credit products and misleading actions in the advertising for insurance products.

²³⁵ See http://www.competition-commission.org.uk/press_rel/2011/march/pdf/13_11_PPI_CC_publishes_final_Order.pdf

²³⁶ See for example: <http://www.bbc.co.uk/news/business-15338464>; <http://www.moneysavingexpert.com/news/reclaim/2011/05/banks-lift-ppi-hold-so-complain-or-risk-missing-out>; and <http://www.which.co.uk/campaigns/personal-finance/the-ppi-campaign/>. For further information on PPI please see the UK country report.

Table 3: Overview of complaints reported by country and by category in the area of financial services 2008 to 2010 (all respondents who provided data on complaints)

Country	Reporting organisation	Description of practice													
		Essential information not in advertising	Product mis-described	Product mis-sold	Problem with advice	Price not transparent	Other features not transparent	Results misrepresented	Risks not made clear	Tied sales	Charge for product/service not requested	Provider refused claim	Consumer subjected to harassment	Barriers to switching	Other category
Belgium	FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation	66				118			1,167						
Bulgaria	Commission for Consumer Protection														7
Cyprus	Competition and Consumer Protection Service	26													
	Cyprus Property Action Group						<260								
Germany	Centre for Protection against Unfair Competition	27						37		13					234
Denmark	Danish Mortgage Credit Complaint Board				60										
Finland	Finnish Financial Supervisory Authority	~20 ^(a)				~8 ^(a)		~10 ^(a)							
France	UFC Que Choisir		2,000 ^(b)												
Hungary	Hungarian Competition Authority		7												
	Hungarian Financial Supervisory Authority ^(g)														
Iceland	Icelandic Consumer Agency	780													
Italy	Competition and Market Authority	330								20 ^(c)				300	
Luxembourg	European Consumer Centre Luxembourg		16												
Latvia	Consumer Rights Protection Centre		~150 ^(d)												
Malta	Malta Financial Services Authority			135											
Norway	Norwegian Consumer Ombudsman	6 ^(e)													
Poland	Konferencja Pracodawców Finansowych	<30													

Country	Reporting organisation	Description of practice													
		Essential information not in advertising	Product mis-described	Product mis-sold	Problem with advice	Price not transparent	Other features not transparent	Results misrepresented	Risks not made clear	Tied sales	Charge for product/service not requested	Provider refused claim	Consumer subjected to harassment	Barriers to switching	Other category
Portugal	Lisbon Arbitration Centre for Consumer Conflicts						7		7						
	Portuguese Insurance and Pension Funds Supervisory Authority											≤30			
Slovakia	Association of Service Users	28													
	Ministry of Economy, Slovak Trade Inspection		12 ^(f)			(f)									
Sweden	National Board for Consumer Disputes							398							
United Kingdom	Citizens Advice			4,104									53,536		
	Financial Services Authority			184,859											
Total number of complaints		~1,313	2,185	189,098	60	126	267	0	~1,619	0	33	≤30	53,536	300	241

Source: Civic Consulting database on unfair commercial practices in the field of financial services.

Notes: (a): Finnish Financial Supervisory Authority data for 2009 and 2010 only. Complaints reported 'sometimes' in 2008.

(b): UFC Que Choisir data for 2008 only. Complaints reported 'very frequently' in 2009 and 2010.

(c): Italy AGCM Data for 2008 and 2009 only.

(d): Latvia Consumer Rights Protection Centre data for 2009 and 2010 only. Complaints reported 'rather frequently' in 2008.

(e): Norway Complaints reported for 2008 and 2010. Complaints reported 'sometimes' in 2009.

(f): The Slovak Ministry of Economy and Slovak Trade Inspection reported a total of 12 complaints relating to a combination of two categories – 'product was mis-described' and 'the price was not transparent'.

(g): Hungarian Financial Supervisory Authority reported 23 complaints 2008 to 2009 (complaints reported 'rather frequently' in 2010). No category selected.

4.1.2 Common unfair commercial practices – essential information not included in advertising

Unfair commercial practices most often reported regarding financial services fall into the category ‘essential information was not included in advertising’. Related practices were reported by authorities and other organisations from 17 countries: Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Germany, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia and Sweden – more than half of the countries surveyed for this study.

The category ‘essential information was not included in advertising’ covers a wide range of common unfair commercial practices:

- Authorities from Belgium, Cyprus and Finland reported that information was not included which made it difficult to gain an accurate idea of the return which could be expected from the product;
- Responding organisations from Italy, Norway, Poland, Romania and Sweden reported a lack of transparency in advertising for consumer credit;
- The enforcement authority from Belgium mentioned that banks did not comply with codes of conduct;
- A consumer organisation from Slovakia reported that products (specifically insurance) were advertised as covering certain aspects, but the advertising omitted to mention particular conditions which could invalidate a claim.

Unsurprisingly, the legislative category most often selected was ‘misleading omission’. This was followed by misleading action.

Related complaints were ‘very frequently’ received by the Italian Competition and Market Authority, and ‘rather frequently’ by the Belgian and Finnish enforcement authorities. The frequency selected most often was ‘sometimes’ which was selected by respondents from eight countries: Cyprus, Finland, Luxembourg, the Netherlands, Norway, Poland, Slovakia and Sweden.

Complaints with a cross-border dimension were reported from a number of countries (see table on the following page). In many cases the number of complaints with a cross-border dimension (as percent of total complaints) was relatively low: up to 10% for some practices reported from Finland, Germany, Poland, Slovakia and Sweden. However, from several countries practices were reported for which the percentage of complaints with a cross-border dimension was high: in 41% to 50% of complaints in Belgium and more than 50% in the Netherlands and Luxembourg.

Authorities and other organisations from nine countries (Bulgaria, Italy, Luxembourg, the Netherlands, Norway, Poland, Romania, Slovakia and Sweden) reported that a consumer loss was suffered. In all cases financial loss was reported. Additionally, in Bulgaria, Romania, Slovakia and Sweden a loss of time was reported, as well as a loss of confidence, and in Poland a loss of time was reported.

In general, responding authorities and other organisations found it difficult to quantify loss. The enforcement authority from Luxembourg, the *Commission de Surveillance du Secteur Financier* (CSSF) concluded “financial loss incurred may theoretically be quantified approximately, although we have not collected any precise data in this field”.²³⁷

Various actions were taken. This included taking an administrative decision in ten cases, initiating the procedure for a judicial decision in seven cases, and issuing guidance for businesses in five cases. Eight authorities and other organisations reported taking ‘other’ actions. These included press releases (Germany), asking the entity concerned to give the consumer a proper compensation (Luxembourg), and using a complaints handling procedure (Poland).

The table on the following page presents further details of documented common unfair commercial practices involving ‘essential information not included in advertising’.

²³⁷ Civic Consulting survey on the application of Directive 2005/29/EC in financial services.

Table 4: Common unfair commercial practices involving ‘essential information not included in advertising’

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Belgium	BE-FS-1	FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation	Essential information was not included in the advertising for certain financial products. Often, this meant consumers were not able to gain an accurate idea of the exact return of the product, as information was insufficient or non-existent as regards to the offer's conditions, charges to be paid, and other aspects. For regulated savings products and specific life insurance products, codes of conducts including a minimum number of advertising rules were developed with the sector. In many cases, banks did not comply with these rules.	Rather frequently (66)	41-50%
Bulgaria	BG-FS-2	Commission for Consumer Protection	Not all information, for example pre-contractual information and contract information, was given to consumers in advance of the sale of a financial product.	Not reported	Not reported
Cyprus	CY-FS-2	Competition and Consumer Protection Service	Essential information, specifically concerning interest rates concerning loans and deposits, as well as restrictions on the minimum amount for deposits, was not included in advertising for the financial product. This applied most often to: saving accounts, credit cards, and other loans.	Sometimes (26)	Not reported
Denmark	DK-FS-1	Danish Bankers Association	Essential information regarding financial products and services was not included in some advertising.	Not reported	Not reported
Estonia	EE-FS-2	The Consumer Protection Board of Estonia	Essential information regarding financial products and services was not included in advertising.	Not reported	Not reported
Finland	FI-FS-1	Consumer Agency and Ombudsman	Essential information was not included in advertising for quick loans.	Rather frequently	Not reported
	FI-FS-2	Financial Supervisory Authority	Essential information was not included in advertising for certain investment products. Some essential information may be missing on expected profit, its calculation and historical development, risks, costs, and terms and conditions. The products this most often relates to include: stocks or shares, bonds, derivatives, collective investments, and structured deposits.	Sometimes (~20 for 2009 to 2010)	6-10%

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Germany	DE-FS-4	Federation of German Consumer Organisations	Advertising for securities implied that these securities were safe products when in fact they were a risky investment.	Not reported	1-5%
	DE-FS-5	Centre for Protection Against Unfair Competition	Consumers were sent letters that stated they should contact their banks and/or insurance companies to check their accounts. The letters suggested that if consumers did not do this, they would suffer a financial loss. However, the letter was a disguised advertisement for a financial product and therefore misleading. This practice most often applied to: life insurance, private pension plans, savings accounts, and current accounts.	27	Not reported
Iceland	IS-FS-1	Icelandic Consumer Agency	Advertising for certain financial products was misleading. There were misleading omissions in the advertising for certain consumer credit products and there were misleading actions in the advertising for certain insurance products.	Rather frequently (780)	Not reported
Italy	IT-FS-1	Competition and Market Authority	Advertising for consumer credit contained misleading information and omissions. Often this related to the total cost of credit not being indicated, or transparently indicated, in advertising.	Very frequently (330)	Not reported
Luxembourg	LU-FS-2	Commission de Surveillance du Secteur Financier	Essential information was not included in advertising for some financial products. This most often related to: stocks or shares, bonds, derivatives, savings accounts, current accounts, mortgages, secured loans, and credit cards.	Sometimes	>50%
Netherlands	NL-FS-2	Authority for the Financial Markets and Department of Finance	Essential information was not included in the advertising of financial products and services. This most often related to: stocks or shares, bonds, derivatives, and other loans (including consumer credit).	Sometimes	>50%
Norway	NO-FS-1	Norwegian Consumer Ombudsman	Credit agreements were advertised without indicating the annual interest rate and other mandatory information.	Sometimes (6 for 2008 and 2010, no data for 2009)	Not reported
Poland	PL-FS-1	Konferencja Pracodawców Finansowych	Essential information was not included in advertising of financial products, most often unsecured loans. In TV advertising, consumers were told they could get "credit for free" or "zero," however these offers were subject to terms such as: offers were not available to all consumers, offers were only for a limited period of time, and/or consumers were charged with some additional fees instead of interest.	Sometimes (<30)	Not reported

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
	PL-FS-2	Transcom WorldWide CMS Poland LLC	Essential information was not included, or not clear enough, in advertising of financial products. Advertising was therefore misleading.	Not reported	Not reported
	PL-FS-5	Office of Competition and Consumer Protection	Essential information was not included in advertising for financial products and/or advertising was misleading. This happened most often in relation to life insurance and savings accounts. For example, one company claimed to offer a savings account with an interest rate of 6%. However, in the end, consumers did not get this rate for the entire length of their contract so the offer was not as attractive as it seemed.	Not reported	1-5%
Portugal	PT-FS-5	Bank of Portugal	Essential information was not included in advertising for certain financial products and/or services.	Not reported	Not reported
Romania	RO-FS-1	European Consumer Centre Romania	Information about additional costs related to the financial service was not provided before consumers signed a contract.	Not reported	Not reported
	RO-FS-2	National Authority for Consumers' Protection	Essential information was not included in advertising for certain financial products. This was most often related to: mortgages, credit cards, and other loans (including consumer credit).	Not reported	Not reported
Slovakia	SK-FS-1	Association of Service Users	Essential information about financial products and services was not included in advertising. For example, an insurance company mentioned fire insurance in their advertising but did not mention certain conditions for this insurance. The consumer later found out that the company will only cover fire damage if the consumer has an inspection certificate for their chimney.	Sometimes (28)	1-5%
Sweden	SE-FS-2	Swedish Consumer Agency	Certain expressions were used to market quick loans which ended up meaning that essential information was not included in advertising for the product.	Sometimes	6-10%
	SE-FS-6	Swedish Consumer Agency	Essential information was not included in the advertising for certain financial products, most often stocks, shares, bonds, derivatives, and savings accounts. Specifically, there was a lack of information relating to the deposit guarantee.	Sometimes	1-5%

Source: Civic Consulting database on unfair commercial practices in the field of financial services.

Note: The description and categorisation of the unfair commercial practices listed here are presented as reported by the relevant organisation.

4.1.3 Common unfair commercial practices – product was mis-described

Common unfair commercial practices regarding financial services frequently fall into the category 'product was mis-described'. 21 related practices were identified for 14 countries: Bulgaria, Czech Republic, Denmark, Germany, France, Hungary, Latvia, Luxembourg, Norway, Poland, Portugal, Slovakia, Sweden and the UK. Many practices related to credit:

- The Federation of German Consumer Organisations reported consumers being offered a misleading 'bargain' for consumer credit, while the Hungarian Competition Authority reported that advertising may state that the consumer will receive a loan within a short period of time when this is not the case;
- In Norway consumers were offered loans which were said to be available very quickly (for example "within five minutes"). This can play on behavioural biases, leading consumers in some cases to apply for credit they either did not need or were not able to repay;
- In Latvia banks sometimes misrepresented the conditions under which consumers may end a loan;
- In contrast to the majority of respondents, who reported problems relating to advertising or accessing credit, the UK Office of Fair Trading reported misleading debt management, consolidation and advice, occurring after consumers had taken out loans.

Common unfair commercial practices were also reported regarding other essential products such as life insurance, savings and investments, pensions, and mortgages.

Reported practices most often fall into the legislative categories of misleading actions and misleading omissions. Aggressive practices were also reported by authorities from Luxembourg and Slovakia, where consumers were in some cases threatened or subjected to unfair influence.

Complaints were received 'very frequently' by authorities and other organisations from France and Poland, and 'rather frequently' by organisations in Latvia, Luxembourg, Portugal and the UK. Complaints were 'sometimes' received by responding authorities and other organisations from Hungary, Sweden and Slovakia.

A cross-border dimension was reported by the European Consumer Centre Luxembourg, who commented "these complaints are always cross-border (consumer in Luxembourg and trader abroad)".²³⁸ It seems that in these cases consumers from Luxembourg are invited to sign contracts in places such as restaurants, gas stations and hotels at the border.

For 14 of the practices listed a consumer loss was reported. In all cases this was financial loss. Time loss and loss of confidence were also reported. In some cases loss is quantifiable. For example, French consumer organisation *UFC Que Choisir* reported

²³⁸ Civic Consulting database on unfair commercial practices in the field of financial services.

15 million Euro in compensation for the 2,000 consumers who complained about mortgage credit being mis-described in 2008.²³⁹ The Danish FSA commented on loss:

“If we take a practical example, during the financial crisis we had a Danish bank marketing investment products towards consumers. A lot of consumers bought them and were afterwards very disappointed about the gain that they actually got out of the product. A lot of people experienced huge losses on account of these products. Then afterwards because of the bad press about this they lost a lot of customers and a lot of confidence with consumers, due to their marketing of this product.”²⁴⁰

Responding authorities and other organisations reported taking different combinations of actions. An administrative decision was taken in eight countries (Czech Republic, Denmark, Hungary, Latvia, Norway, Poland, Slovakia and the UK). Respondents from France, Poland and Sweden initiated the procedure for a judicial decision, while four responding authorities issued guidance for businesses (Norwegian Consumer Ombudsman, Polish Office of Competition and Consumer Protection, Bank of Portugal, and UK Office of Fair Trading). In France, Poland and Slovakia consumers were referred to a relevant enforcement body. Organisations from Denmark, Luxembourg, Poland and Slovakia referred consumers to another body such as an ADR scheme. The European Consumer Centre Luxembourg, the Slovak Ministry of Justice and the UK Office of Fair Trading issued a warning about the trader or the practice. Enforcement authorities from Denmark, Latvia, Slovakia, Sweden and the UK all reported taking ‘other’ actions. These included:

- The Danish FSA published the administrative decisions made;
- The Latvian Consumer Rights Protection Center took voluntary actions;
- The Swedish National Board for Consumer Disputes recommended a solution to the dispute;
- UK consumer organisation *Which?* surveyed products and promotions and provided evidence to the regulator.

The table on the following page presents further details of documented common unfair commercial practices where ‘product was mis-described’.

²³⁹ Civic Consulting survey on unfair commercial practices in the field of financial services.

²⁴⁰ Civic Consulting database on unfair commercial practices in the field of financial services.

Table 5: Common unfair commercial practices where 'product was mis-described'

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Bulgaria	BG-FS-3	Civic Consulting Bulgaria Report	Consumers were provided with misleading information, or did not receive any information, about the annual rate and the cost of the credit.	Not reported	0%
	BG-FS-4	Civic Consulting country report Bulgaria	Misleading omissions in marketing on radio, TV, and in the press. This specifically relates to a bank account that was advertised as a "salary account" and whose advertising included statements like "we guarantee a 5% increase of your salary!" This advertising created the impression that this higher than normal interest rate would apply for the whole sum of the monthly deposit, but in reality it applied only for part of it and under special conditions which were not clearly stated.	Not reported	0%
	BG-FS-5	Civic Consulting country report Bulgaria	A bank presented the conditions for credit in a misleading fashion. In their advertisements, the bank described the marketed credit rate as being tied to established market indexes (such as EURIBOR) but with a "bonus" increase. Consumers were given the impression that this increase was stable, while in fact it was flexible—the bank changed it regularly depending on market conditions. In the end, this credit offer was therefore far less attractive than initially presented.	Not reported	0%
	BG-FS-9	Civic Consulting country report Bulgaria	Some elderly people were forced into signing pension plan contracts and/or were misled about the basic terms and conditions of the pension plans.	Not reported	Not reported
Czech Republic	CZ-FS-1	European Consumer Centre Czech Republic	Misleading information was provided about consumer credit products.	Not Reported	Not reported
	CZ-FS-2	Czech Trade Inspection Authority	Misleading information was provided about consumer credit products.	Not reported	Not reported
Denmark	DK-FS-2	Danish FSA	Financial products and services were mis-described in advertising.	Not reported	Not reported
France	FR-FS-5	UFC-Que Choisir	Mortgage credit was mis-described: uncapped variable rates were sold as capped variable rates.	Very frequently (2000 in 2008)	Not reported

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Germany	DE-FS-2	Federation of German Consumer Organisations	Consumers were offered a misleading bargain for credit contracts with a low interest loan.	Not reported	Not reported
Hungary	HU-FS-2	Hungarian Competition Authority	Financial products, most often current accounts, mortgages, and other loans (including consumer credit), were mis-described. For example, a company states that the consumer will absolutely receive a loan in a given, short time period, but this does not happen. Or, a company advertises a certain interest rate but does not indicate its conditions.	Sometimes (7)	Not reported
Latvia	LV-FS-1	Consumer Rights Protection Center	Banks sent letters to consumers that mis-represented their products, in that they withheld relevant information regarding how consumers could end their agreement/contract with the bank. This most often applied to: private pension plans, mortgages, credit cards, and other loans (including consumer credit).	Rather frequently (~150 for 2009 to 2010)	Not reported
Luxembourg	LU-FS-1	European Consumer Centre Luxembourg	Financial products, most often life insurance, health insurance, and credit cards, are mis-described in advertising. On top of this, traders invited consumers to sign contracts for these products in restaurants, gas stations, hotels, and other places at the border (normally where the consumers are in Luxembourg and the traders are based abroad). The traders threaten consumers on the phone and do not properly inform consumers about the real costs (which are normally higher) and consequences of the contract.	Rather frequently (16)	>50%
Norway	NO-FS-2	Norwegian Consumer Ombudsman	Credit cards and personal credits were advertised in ways that appealed to consumers' spontaneity, for instance offering loans "within 5 minutes." This led to consumers applying for loans they did not need or did not have ability to repay.	Not reported	Not reported
Poland	PL-FS-4	Polish Financial Supervision Authority	Financial products were mis-described in advertising, misleading consumers.	Very frequently	Not reported
Portugal	PT-FS-3	Bank of Portugal	Some financial products were mis-described, constituting a breach of pre-contractual information duties. Namely, certain financial service providers failed to provide consumers with adequate, complete, clear, and accurate information prior to the conclusion of a deposit or credit agreement in order to enable consumers to make informed decisions.	Rather frequently	Not reported
Sweden	SE-FS-3	National Board for Consumer Disputes	There were unclear contract terms in the sale of some financial products, most often related to the sale of life, health, motor, travel, and other insurance.	Sometimes	Not reported

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
	SE-FS-7	Swedish Consumer Agency	The marketing for certain financial products did not correspond to the product and pre-contractual information (the product was mis-described). Most often this related to life insurance, health insurance, and collective investments.	Sometimes	Not reported
Slovakia	SK-FS-2	Ministry of Economy of the Slovak Republic, Slovak Trade Inspection	Consumer credit was sold in a misleading or unfair manner. For example, not all information and/or misleading information was provided about the credit.	Sometimes (12)	Not reported
	SK-FS-7	Ministry of Justice of the Slovak Republic	Consumers were subjected to unfair influence to buy products and were provided with insufficient information about these products before signing a contract. Often, consumers were only told about the advantages and positive qualities of a product. They were not properly informed about the legal obligations related to signing the contract for said product; how to correctly use the product; and other relevant information.	Not reported	~0.1%
United Kingdom	UK-FS-7	Office of Fair Trading	Traders engaged in misleading debt management, consolidation, and advice.	Rather frequently	Not reported
	UK-FS-11	Which?	Savings and investment products were mis-sold.	Not reported	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of financial services.

Note: The description and categorisation of the unfair commercial practices listed here are presented as reported by the relevant organisation.

4.1.4 Common unfair commercial practices – risks associated with the product were not made clear

Common unfair commercial practices reported regarding financial services also frequently fall into the category ‘risks associated with the product were not made clear’. 10 related practices were documented for nine countries: Austria, Belgium, Estonia, Finland, France, Germany, Portugal, Sweden and the UK. The reported practices frequently relate to stocks, shares, bonds and derivatives, collective investments and private pension plans. For example:

- In some cases products were presented as having higher interest rates and lower risks than they actually had;
- In Belgium, Finland and Portugal risks such as the potential loss of capital were underplayed;
- The Consumer Protection Board of Estonia reported that risks relating to currency exchange were not always made clear.

The UK Financial Services Authority reported that consumers on occasion enter into ‘sale and rent back’ agreements. This is where “firms buy homes from individuals, usually at a discount, and then allow those individuals to stay on in the property as tenants”.²⁴¹ Firms reportedly did not fully explain the risks and misled consumers. This problem illustrates the interaction which can occur between financial services and immovable property, and is also shown under common unfair practices reported in the area of immovable property in the UK fact sheet.

The enforcement authority from Belgium reported that risks associated with structured products from Lehman Brothers were not made clear. This included misrepresenting them to consumers, for instance by saying there was 100% guaranteed capital at maturity; by not mentioning any risk of Lehman Brothers going bankrupt; by saying that there could be a very high profit; and in some cases by presenting them as savings products. This is very similar to a problem with Lehman Brothers bonds which was reported by the Greek General Secretariat of Consumer Affairs (see practice EL-FS-1 in Section 4.1.5):

“Citibank consumers bought Lehman Brothers bonds and did not have associated risks disclosed to them. In March 2009, Greece's General Secretariat of Consumer Affairs imposed a fine of one billion Euro on Citibank PLC for adopting commercial practices which substantially distorted the economic behaviour of an identifiable group of consumers vulnerable to these practices (Lehman Brothers Case).”²⁴²

²⁴¹ *Sale and rent back, an OFT Market Study*, Office of Fair Trading, London, October 2008, p. 4.

²⁴² See the Greece fact sheet.

The most common unfair commercial practices reported under 'risks associated with the product were not made clear' are most frequently categorised as misleading omissions and misleading actions.

Complaints were reported 'rather frequently' by the responding authorities from Austria, Belgium and the UK. The majority of organisations reported receiving complaints 'sometimes' (Estonia, Finland, France, Germany, Portugal and Sweden). Only from four countries (Austria, Belgium, Finland and Sweden) organisations reported complaints with a cross-border dimension.

Consumer loss was reported in Austria, Belgium, France, Portugal, Sweden and the UK. All these bodies reported financial loss. Additionally, five organisations reported loss of confidence and three reported loss of time. The Lisbon Arbitration Centre for Consumer Conflicts said for example that the "consumer had a material damage, besides the time spent in filing the complaint and subsequent loss of confidence in the financial service".²⁴³ The Hellenic Consumer Ombudsman commented that the Greek case, referred to above, was "one of the biggest cases in Greece last year. It made a huge public impact, because there were a great number of consumers involved in this case".²⁴⁴ The potential financial detriment from cases such as these, where risks are not made clear or are misrepresented, are clearly substantial. Over 200 million Euro of structured products from Lehman Brothers are reported as being sold to Belgian consumers between 2008 and 2010, while a fine of one billion Euro was reported by the Greek enforcement authority. According to the Hellenic Consumer Ombudsman this represented 75% of the money lost by consumers in Greece relating to this practice.²⁴⁵

Various actions were reported, including taking an administrative decision, initiating the procedure for a judicial decision and issuing guidance for businesses. Six respondents reported taking 'other' actions. These often involved dispute resolution, and included:

- Making recommendations on how the dispute should be resolved (National Board for Consumer Disputes, Sweden);
- Mediation and arbitration of the complaint (Lisbon Arbitration Centre for Consumer Conflicts, Portugal);
- Giving advice/non-judicial interventions (Federal Ministry of Labour, Social Affairs and Consumer Protection, Austria).

The table on the following page presents further details of documented common unfair commercial practices that involve 'risks associated with the product were not made clear'.

²⁴³ Civic Consulting database on unfair commercial practices in the field of financial services.

²⁴⁴ Interview with the Hellenic Consumer Ombudsman, May 2011.

²⁴⁵ Interview with the Hellenic Consumer Ombudsman, May 2011.

Table 6: Common unfair commercial practices involving ‘risks associated with the product were not made clear’

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Austria	AT-FS-1	Federal Ministry of Labour, Social Affairs and Consumer Protection	Some financial products (most often stocks and shares, bonds, derivatives) were presented as having higher interest rates and lower risks than they actually had. Other products (such as consumer credit) were sometimes shown as having a lower interest rate than they actually had once other charges were taken into account.	Rather frequently for stocks and shares, bonds, derivatives Sometimes for consumer credit	1-5%
Belgium	BE-FS-3	FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation	Financial institutions in Belgium did not make the risks associated with structured products from Lehman Brothers clear. This included misrepresenting them to consumers, for instance by saying there was 100% guaranteed capital at maturity; by not mentioning any risk of Lehman Brothers going bankrupt; by saying that there could be a very high profit; and in some cases by presenting them as savings products. Over 200 million Euro of structured products were sold to Belgian consumers between 2008 and 2010.	Rather frequently (1167)	1-5%
Estonia	EE-FS-3	Consumer Protection Board of Estonia	Risks associated with financial products were not made clear. This most often related to other loans (including consumer credit) and to currency exchange.	Sometimes	Not reported
Finland	FI-FS-3	Finnish Financial Supervisory Authority	It is observed that increased clarity is needed in the use of the term "capital guarantee" and in the presentation of risk in general, as well as in the risk associated with the issuer's repayment capacity in order for them to be understood by investors. The products these issues most often relate to include: stocks or shares, bonds, derivatives, collective investments, and index-linked bonds.	Sometimes (~10 for 2009 to 2010)	6-10%
France	FR-FS-2	General Directorate for Fair Trading, Consumer Affairs and Fraud Control	Financial products, most often "other" insurance (home, care, etc.), current accounts, and credit cards, were mis-advertised. This often meant that the risks associated with the product were not clear.	Sometimes	Not reported
Germany	DE-FS-7	Centre for Protection Against Unfair Competition	During the financial crisis, banks advertised that consumers' money would be 100% safe with them, although "100% security" is a misleading term for the sale of financial products.	Sometimes (37)	Not reported

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Portugal	PT-FS-1	Lisbon Arbitration Centre for Consumer Conflicts	Risks associated with certain financial products were not made clear, for example the potential loss of capital invested. This most often related to: stocks or shares, bonds, derivatives, private pension plans, and other loans (including consumer credit).	Sometimes (7)	Not reported
Sweden	SE-FS-1	National Board for Consumer Disputes	The risks associated with certain financial products - most often stocks, shares, bonds, derivatives, and collective investments - were not made sufficiently clear.	Sometimes (398)	Not reported
	SE-FS-5	Swedish Consumer Agency	In marketing, the risks associated with certain financial products were not made clear. Most often, this related to: stocks or shares, bonds, derivatives, collective investments, private pension plans, and savings accounts.	Sometimes	6-10%
United Kingdom	UK-FS-13	Financial Services Authority	Consumers in stressful financial situations, perhaps facing repossession or other debt related difficulties, suffered through entering into a sale and rent back agreement when other solutions would be more suitable. Firms did not fully explain the risks and misled consumers by applying excessive charges late in the process (when the consumer could not pull out) or through promises of retained equity which the consumer actually loses under a complex contract. Consumers have also lost out on long term security of tenure.	Rather frequently	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of financial services.

Note: The description and categorisation of the unfair commercial practices listed here are presented as reported by the relevant organisation.

4.1.5 Other common unfair commercial practices in the area of financial services

a) Practices reported in the category 'other' unfair commercial practices

Common unfair commercial practices falling into the category 'other' were documented for eight countries (Austria, Belgium, Bulgaria, Germany, Spain, the Netherlands, Slovakia and the UK). These included:

- In Austria, Belgium, Bulgaria, Germany and the UK consumers received unsolicited calls, faxes or emails advertising financial products. In countries such as Germany and Austria such 'cold calling' is prohibited by national legislation;
- Problems which related to intermediaries such as salespeople (in Austria, Germany and Slovakia). In Austria for example, brokers and salespeople were reported as not being qualified to sell their products, while in Germany salespeople were working without being registered with the relevant authority.

Other practices reported included investment firms transferring investments without the knowledge of their clients (Bulgaria), banks attempting to hide information about rising fees by sending information about this to consumers disguised as advertising (Spain), traders providing a different product from that which the consumer requested (Slovakia), and firms not adhering to commitments contained in voluntary codes of conduct (UK).

Reported practices most often fall into the legislative categories banned practice (Germany and the UK) and aggressive practice (Austria, Belgium, Spain, the Netherlands, Slovakia, and the UK).

Complaints were received 'rather frequently' by respondents from Bulgaria and the UK, and 'sometimes' by respondents from Bulgaria, Germany and Spain.

Respondents from the UK and Slovakia considered that consumers suffered losses due to these practices. These were most likely to be financial losses and loss of confidence. All organisations which reported that loss was suffered also reported 'other' losses in addition.

Actions taken included referring consumers to the relevant enforcement body (Slovakia and the UK), referring consumers to other bodies such as ADR schemes (UK), taking an administrative decision (Germany and the UK), initiating the procedure for a judicial decision (Germany), issuing guidance for businesses (Spain and the UK), and issuing a warning about the trader or the practice (Spain, Slovakia and the UK). Other actions taken included issuing a warning notice including penalty fine, and lobbying government, regulators, self-regulators to improve consumer protection measures.

The table on the following page presents further details of practices reported in the category 'other' unfair commercial practices.

Table 7: Common unfair commercial practices reported in the category 'other'

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Austria	AT-FS-3	Federal Ministry of Economy, Family and Youth	Aggressive practices were used in the sale of financial services.	Not reported	Not reported
	AT-FS-4	Federal Ministry of Economy, Family and Youth	Insurance brokers and salespeople were not qualified to sell their products.	Not reported	Not reported
	AT-FS-5	Federal Ministry of Economy, Family and Youth	'Cold calling' was used in the sale of financial services. This is prohibited under § 107 of the Telecommunications Act 2003	Not reported	Not reported
Belgium	BE-FS-2	FPS Economy, SMEs, Self-Employed and Energy	Since 2010, many consumers have received advertisements by fax from a foreign company about investments and shares without having given their consent and without having any possibility to opt out.	Not reported	Not reported
Bulgaria	BG-FS-1	Commission for consumer protection	Unsolicited phone calls were made to consumers' cell phones in the attempt to sell financial products, for example insurance products.	Sometimes (7 for 2009 to 2010)	Not reported
	BG-FS-8	Civic Consulting Bulgaria Report	Insurance companies were reluctant to adequately and competently reimburse their clients. For example, claims were processed slowly, compensation was refused, and there were disagreements as to the level of compensation	Rather frequently	0%
	BG-FS-7	Civic Consulting Bulgaria Report	Investment firms transferred their clients' investments without their knowledge.	Rather frequently	0%
Germany	DE-FS-1	Centre for Protection against Unfair Competition	Consumers received unsolicited phone calls, emails, and faxes. These related most often to the following financial products: life insurance, health insurance, other insurance (home, care, etc.), stocks or shares, bonds, derivatives, collective investments, private pension plans, and credit cards.	Sometimes (125)	Not reported

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
	DE-FS-3	Federation of German Consumer Organisations	Consumers were sent credit cards applications that they did not ask for.	Not reported	Not reported
	DE-FS-6	Centre for Protection against Unfair Competition	Insurance salespeople were caught working without the necessary registration at the authorised body.	Sometimes (31)	Not reported
	DE-FS-9	Centre for Protection against Unfair Competition	Advertising for a financial product, investment, and/or company misleadingly stated that said entity was approved and controlled by the German government's responsible inspection authority (BaFin).	Sometimes (23)	Not reported
	DE-FS-10	Centre for Protection against Unfair Competition	The imprint text of companies (legally required information on websites and correspondence that gives details such as registered address, tax numbers, copyright information, trademark information, and contact details) in financial services contained misleading omissions and/or false information. This occurred most often for companies that sell: health insurance, other insurance (home, care), stocks or shares, bonds, derivatives, collective investments, private pension plans, savings accounts, and current accounts.	Sometimes (55)	Not reported
	DE-FS-11	Centre for Protection against Unfair Competition	Companies misleadingly stated, in advertising, that they were a bank or insurance company.	Sometimes	Not reported
Spain	ES-FS-1	Consumers' Union of Spain	The rate or charge for certain financial products was considered to be excessive, there was a lack of transparency about bank fees, and there were problems with advice given about certain financial products. For example, banks attempted to conceal rising fees by sending information about this to consumers disguised as advertising.	Sometimes	Not reported
Netherlands	NL-FS-1	Authority for Financial Markets and the Department of Finance	Aggressive practices were used in the sale of financial products and services.	Not reported	Not reported

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Slovakia	SK-FS-6	Ministry of Justice of the Slovak Republic	Traders misled consumers about the true intention of a contract for financial products. Specifically, consumers signed a contract to be able to receive a loan but received life insurance instead. In many consumer complaints about this issue, the consumer never received a loan, suggesting that the vendors never actually intended to provide this service.	Not reported	~0.1%
	SK-FS-8	Ministry of Justice of the Slovak Republic	Suppliers of financial products instructed their sales representatives to convince consumers to designate themselves contractually as businesses. As the UCPD only applies to consumer-to-business transactions, and not business-to-business transactions, this practice exempts consumers from being protected by consumer rights legislation and therefore pushes consumers into a position with no adequate legal protection.	Not reported	~0.1%
United Kingdom	UK-FS-5	Citizens Advice	Consumers were cold called for credit services, including unsecured credit, credit brokerage, claims management, and debt management services.	Not reported	Not reported
	UK-FS-6	Financial Services Authority	There was unfair treatment and failure to lend responsibly with respect to mortgage customers in arrears or with payment difficulties.	Rather frequently	Not reported
	UK-FS-12	Citizens Advice	Failure by firms to keep to commitments in voluntary codes of guidance, which is related to many unfair commercial practices.	Not reported	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of financial services.

Note: The description and categorisation of the unfair commercial practices listed here are presented as reported by the relevant organisation.

b) Other specified categories of common unfair commercial practices

As stated before, most common unfair commercial practices reported as part of this study related to the four categories that were described in detail in the preceding sub-sections: 'Essential information was not included in advertising', 'product was mis-described', risks associated with the product were not made clear' and 'other'. This is how the reported practices were classified by responding organisations. However, less frequently, common unfair commercial practices were also reported in the following categories:

- Product was mis-sold;
- There was a problem with advice;
- The price was not transparent;
- Other features were not transparent;
- Results that could be expected from the product were misrepresented;
- The consumer was informed they had to buy this product when they were purchasing another product;
- The rate or charge was considered to be excessive;
- The consumer was charged for a product or service they had not requested;
- The provider refused to pay an insurance (or other) claim;
- The consumer was subjected to harassment;
- The trader imposed disproportionate barriers when the consumer wanted to switch or terminate the contract.

These practices involved a wide range of aspects, including:

- In the Czech Republic job applicants were made to sign a contract for life insurance;
- In France there was tying of products and services associated with bank accounts and in Belgium there were also joint offers (in consumer credit), violating bans in these countries;
- In Denmark, Malta, Slovakia, Slovenia, and the UK there were failings in advice given;
- Consumers were charged for a product or service they had not requested in Austria, Germany, Greece and Italy;
- In Portugal and Poland insurance providers sometimes refused to pay a claim;
- The Finnish Financial Supervisory Authority reported that fee structures are not always transparent; and
- In Italy barriers to switching were imposed.

By far the most common legislative categories chosen by responding organisations for these documented practices were misleading actions, followed by misleading omissions.

When complaints were reported their frequency was reported as 'sometimes' in the majority of cases. In terms of quantitative data, the Citizens Advice organisation in the UK reported the highest number of complaints about a single practice - 53,536 between 2008 and 2010 in the category 'the consumer was subjected to harassment'. These complaints related to aggressive debt collection, particularly in relation to mortgages, secured loans, credit cards, and other loans. Citizens Advice noted that these practices could have a detrimental impact on consumers' mental health.

The Central Bank of Ireland reported a breach of national legislation (the Consumer Protection Code). In this case a bank failed to act with due diligence and to employ effective checks and controls, resulting in 373,105 customer accounts being overcharged a total of 16,997,321 Euro. The Central Bank reprimanded the firm and required it to pay a monetary penalty of 750,000 Euro. This breach does not refer to consumer complaints – the bank was required to identify those consumers affected and refund the money.

The majority of respondents did not indicate receiving complaints with a cross-border dimension. In Belgium, Denmark and Finland organisations received for a reported practice up to 20% of complaints with a cross-border dimension. These related to information and advice being unclear, and joint offers in consumer credit.

Responding authorities and other organisations took a wide variety of actions, including: Taking an administrative decision, referring consumers to the relevant enforcement body, referring consumers to another relevant body (such as an ADR scheme or an ombudsman), initiating the procedure for a judicial decision, issuing guidance for businesses, and issuing a warning about the trader or the practice.

Other actions were also taken. For example, the Danish FSA published the administrative decisions made, while the Finnish Financial Supervisory Authority will prepare guidelines for the presentation of expenses related to savings products and long-term savings contracts.

The table on the following page presents further details of other specified categories of common unfair commercial practices.

Table 8: Other specified categories of common unfair commercial practices relating to financial services

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Product mis-sold					
Czech Republic	CZ-FS-3	European Consumer Centre Czech Republic	Job applicants were sometimes made to sign up for life insurance.	Not reported	Not reported
France	FR-FS-3	UFC-Que Choisir	Packages related to current accounts were mis-sold and/or tied. Banks systematically sell these packages when a bank account is opened. However, most of the services inside the package are useless for the consumer, for example bank cheques, which are seldom used, or the "bank review," a magazine about the bank.	Very frequently	Not reported
	FR-FS-4	UFC-Que Choisir	Banks mis-sold cards to consumers. For example, banks sold debit cards with no security to prevent low-income consumers going overdrawn, causing these consumers to incur overdraft fees. Banks also sold "average consumers" premium cards that are totally unadapted for their needs.	Sometimes	Not reported
Malta	MT-FS-1	Malta Financial Services Authority	Consumers were given bad advice and sold a financial product that was not suitable to them. This occurred most often in relation to collective investments.	Sometimes (135)	Not reported
Slovakia	SK-FS-7	Ministry of Justice of the Slovak Republic	Consumers were subjected to unfair influence to buy products and were provided with insufficient information about these products before signing a contract. Often, consumers were only told about the advantages and positive qualities of a product. They were not properly informed about the legal obligations related to signing the contract for said product; how to correctly use the product; and other relevant information.	Not reported	~0.1%
United Kingdom	UK-FS-1	Citizens Advice	Credit was lent irresponsibly and mis-sold. Most often, this related to: mortgages, secured loans, credit cards, and other loans (including consumer credit).	Very frequently (4,104)	Not reported
	UK-FS-2	The Financial Services Authority	Failings in relation to the advised sales of payment protection insurance (PPI) which meant that the products were mis-sold.	Very frequently (184,859)	Not reported

	UK-FS-4	Which?	Payment protection insurance was mis-sold. This includes problems with advice, that the price was not transparent, that other features were not transparent, that consumers were informed they had to buy the product when they were purchasing another product, as well as other issues.	Not reported	Not reported
Problem with advice					
Denmark	DK-FS-3	Danish Mortgage Credit Complaint Board	The advice and information given about some financial products, most often mortgage products, can be problematic and/or lacking.	Sometimes (60)	1-5%
	DK-FS-4	Danish FSA	Some advice given around the purchase of financial products was not sufficient and/or balanced. In one example, advice given around the purchasing of investment products did not adequately explain the disadvantages of the products; it focused only on the advantages. The consumer therefore did not have a fair basis on which to make decisions.	Not reported	Not reported
Slovakia	SK-FS-3	Ministry of Justice of the Slovak Republic	Consumers were assured by traders that they could sign a contract despite being involved in a judicial proceeding. This was true even though in order to sign said contract, consumers needed to certify that they were not involved in any judicial proceedings.	Not reported	~0.1%
	SK-FS-7	Ministry of Justice of the Slovak Republic	Consumers were subjected to unfair influence to buy products and were provided with insufficient information about these products before signing a contract. Often, consumers were only told about the advantages and positive qualities of a product. They were not properly informed about the legal obligations related to signing the contract for said product; how to correctly use the product; and other relevant information.	Not reported	~0.1%
Slovenia	SI-FS-1	Market Inspectorate Of Republic Of Slovenia	There was a problem with advice given about consumer credit, which violated the consumer credit act.	Sometimes	Not reported
United Kingdom	UK-FS-10	Financial Services Authority	Traders failed to give customers suitable advice when selling investment products. Most often, this related to: stocks or shares, bonds, derivatives, collective investments, structured products, and private pension plans.	Rather frequently	Not reported
	UK-FS-16	Financial Services Authority	Some traders failed to give appropriate advice in relation to pensions-switching.	Rather frequently	Not reported
Price not transparent					
Belgium	BE-FS-4	FPS Economy, SMEs, Self-Employed and Energy	Joint offers in consumer credit which prevented the price from being transparent.	Rather frequently (118)	11-20%

Finland	FI-FS-4	Finnish Financial Supervisory Authority	The price of certain financial products and their fee structures were not made transparent. This most often related to private pension plans, mortgages, unit-linked insurance, and bound long-term savings. For example, the price of a unit-linked insurance product did not always include the prices of the associated investment basket and the products contained in it.	Sometimes (~8 for 2009 to 2010)	6-10%
Hungary	HU-FS-1	Hungarian Competition Authority	Certain mortgage plans and other loan products (including consumer credit) did not make their prices transparent. The products were described as "free" or "without charge" when in fact customers did have to pay a fee or the vendor changed the terms and conditions of the product later to introduce charges.	Sometimes	Not reported
Slovakia	SK-FS-2	Ministry of Economy of The Slovak Republic, Slovak Trade Inspection	Consumer credit was sold in a misleading or unfair manner. For example, not all information and/or misleading information was provided about the credit.	Sometimes (12)	Not reported
Sweden	SE-FS-4	Swedish Consumer Agency	The price of certain credit score services was not transparent.	Rather frequently	Not reported
Other features not transparent					
Bulgaria	BG-FS-6	Civic Consulting Bulgaria Report	A bank delayed publishing standard contract terms.	Not reported	0%
Cyprus	CY-FS-1	Cyprus Property Action Group	Some banks, when consumers applied for home loans, neglected to tell the consumers that developers already had mortgages from the same bank on the same land on which the consumers' property stood to be built. If a developer defaults in their payments, the bank has a priority claim over the land and, under local law, everything built on it. Consequently, even if a consumer was duly paying their own mortgage, they still stood to lose their property if the developer defaulted and the bank repossessed the land.	<260	Not reported
Estonia	EE-FS-1	Consumer Protection Board of Estonia	Features (other than price) relating to the financial product were not made clear.	Not reported	Not reported
Portugal	PT-FS-4	Lisbon Arbitration Centre for Consumer Conflicts	Some consumers were led to subscribe to a new financial product in order to allegedly lower the rate of their mortgages, leading them to pay for a product they did not need.	Sometimes (7)	Not reported

Slovakia	SK-FS-5	Ministry of Justice of the Slovak Republic	Traders used a very small font size in contracts, as well as in general contract terms and conditions. The contract was thus difficult to read, making it hard for consumers to adequately familiarize themselves with the contract.	Not reported	-0.1%
	SK-FS-7	Ministry of Justice of the Slovak Republic	Consumers were subjected to unfair influence to buy products and were provided with insufficient information about these products before signing a contract. Often, consumers were only told about the advantages and positive qualities of a product. They were not properly informed about the legal obligations related to signing the contract for said product; how to correctly use the product; and other relevant information.	Not reported	-0.1%
Spain	ES-FS-2	Catalan Consumer Agency	There was a lack of information as well as misleading information presented to consumers regarding mortgages and other kinds of loans including consumer credit. In the case of mortgages, often this issue related to swap products and floor clauses. Banks encouraged consumers to agree to flat rate swap products (to protect them from interest rate fluctuation) when the consumer made a mortgage or credit agreement with them, even though the banks were aware that interest rates were going to decrease. Floor clauses are interest buffers so there is a minimum and maximum of interest that can be charged. Again, in this case, the banks were aware that interest rates would decline.	Sometimes	Not reported
Sweden	SE-FS-8	Swedish Consumer Agency	Since pre-contractual information related to insurance products vary on the market, there was sometimes a problem with transparency. Some traders provided too little information and others provided too much.	Sometimes	Not reported
Results misrepresented					
Greece	EL-FS-1	General Secretariat of Consumer Affairs	Citibank consumers bought Lehman Brothers bonds and did not have associated risks disclosed to them. In March 2009, Greece's General Secretariat of Consumer Affairs imposed a fine of 1 billion Euro on Citibank PLC for adopting commercial practices which substantially distorted the economic behaviour of an identifiable group of consumers vulnerable to these practices (Lehman Brothers Case).	Rather frequently	Not reported
United Kingdom	UK-FS-14	Which?	The results that could be expected from "cautious funds" were misrepresented. A cautious fund is a fund in which (i) a minimum of 30% is invested in fixed interest investments and cash and (ii) a maximum is invested in shares. At least 50% of assets in a cautious fund must be held in Pound or Euro.	Not reported	Not reported
	UK-FS-15	Financial Services Authority	There was misleading use of terms, such as "guaranteed." Most commonly, the sale of structured deposits were described as "guaranteed" where no third-party guarantee existed.	Rather frequently	Not reported

Tied sale					
France	FR-FS-1	UFC-Que Choisir	Financial products are sold tied to other products. This takes place most often with "other" insurances. For example, credit insurance is tied to consumer credit or mortgage credit, or credit card insurance is tied to credit cards.	Rather frequently	Not reported
Poland	PL-FS-3	Polish Financial Supervision Authority	Consumers were informed they had to buy a product when they were purchasing another product. This happened, for example, when people looking to buy bank credit were told that they also had to buy an insurance product (normally payment protection insurance).	Not reported	Not reported
Slovakia	SK-FS-4	Ministry of Justice of the Slovak Republic	Consumers were told by traders that in order to qualify for a loan, they would have to buy life insurance from a certain insurance company—even though the consumers already had life insurance.	Not reported	~0.1%
Rate considered excessive					
United Kingdom	UK-FS-8	Which?	There were excessive auxiliary charges on certain financial products.	Not reported	Not reported
Charge for product/service not requested					
Austria	AT-FS-2	Federal Ministry of Economy, Family and Youth	Misleading advertising was used in the sale of financial services.	Not reported	Not reported
Germany	DE-FS-8	Centre for Protection against Unfair Competition	Consumers received letters from their insurance company stating that changes to their plan would occur unless the consumer did something to stop this.	Sometimes (13)	Not reported
Greece	EL-FS-2	Hellenic Bank Association	Credit cards were issued and sent via post to consumers, even though these consumers made no relevant prior application. A number of these credit cards came with yearly charges and if the consumer did not promptly cancel the card, they were charged for its use irrespective of whether the card was actually used in transactions.	Not reported	Not reported
Italy	IT-FS-3	Competition and Market Authority	Consumers applying for consumer credit also received a revolving credit card (which they did not expect to get) in addition to their loan. Revolving credit means that rather than paying the full balance at the end of each month, the balance can be rolled forward and paid in instalments. This tends to incur more or higher charges. In addition to this, in some cases the loan was conditional on also receiving the revolving credit cards.	Sometimes (20 for 2008 to 2009)	Not reported
Provider refused claim					

Bulgaria	BG-FS-8	Civic Consulting Bulgaria Report	Insurance companies were reluctant to adequately and competently reimburse their clients. For example, claims were processed slowly, compensation was refused, and there were disagreements as to the level of compensation.	Rather frequently	0%
Poland	PL-FS-6	Office of Competition and Consumer Protection	Certain life insurance providers refused to pay an insurance claim, which was related to misleading information concerning the insurer's liability. In general, the terms of life insurance cover heart attacks. However, in the provisions of some providers, the definition of a heart attack was not the same as the medical definition. In order for the customer to claim compensation for their heart attack, it had to be a specific kind of heart attack.	Rather frequently	Not reported
Portugal	PT-FS-2	Portuguese Insurance and Pension Funds Supervisory Authority	Sometimes, insurers refuse to pay a claim. This is an aggressive practice that compels the consumer who wants to apply for compensation under an insurance policy to produce documents which cannot be reasonably considered relevant to establish the validity of the request. Moreover, some providers fail systematically to respond to pertinent correspondence in order to dissuade consumers from exercising their contractual rights.	Sometimes (≤30)	Not reported
Consumer subjected to harassment					
Bulgaria	BG-FS-9	Civic Consulting Bulgaria Report	Some elderly people were forced into signing pension plan contracts and/or were misled about the basic terms and conditions of the pension plans.	Not reported	Not reported
Slovakia	SK-FS-9	Ministry of Justice of the Slovak Republic	Some creditors, and the debt collection companies hired by them, have used inappropriate ways to collect financial claims. This includes threatening consumers that their names will be announced in local media or that their names will be printed on leaflets distributed in their home areas; frequent visits by debt collectors to consumers' homes; annoying consumers with frequent phone calls; sending consumers threatening mobile messages; and other practices.	Not reported	~0.1%
United Kingdom	UK-FS-3	Office of Fair Trading	Traders engaged in aggressive debt collection. Most often this related to "other loans" including consumer credit.	Rather frequently	Not reported
	UK-FS-9	Citizens Advice	There were aggressive debt collection and enforcement practices. Most often this related to: mortgages, secured loans, credit cards, and other loans (including consumer credit).	Very frequently (53,536)	Not reported

Barriers to switching					
Italy	IT-FS-2	Competition and Market Authority	Some banks imposed disproportionate barriers when consumers wanted to switch to a new bank. Under Italian law, consumers should be able to switch from one bank to another without incurring extra costs. However, banks imposed fees relating to switching, for example by charging consumers to close down a current account.	Rather frequently (300)	Not reported
No category selected					
Ireland	IE-FS-1	Central Bank of Ireland	A mortgage firm failed to act with due diligence, which constituted breaches of the Consumer Protection Code and Consumer Credit Act. Specifically, for example, it failed to provide consumers with details of all charges, including third party charges prior to providing a service. Note that while it may appear that a firm which has breached the Irish Consumer Protection Code could be considered to have engaged in an unfair practice under the UCPD, the actions taken in these cases were taken under the Code provisions rather than under the national implementation legislation of the UCPD.	Not reported	Not reported
Ireland	IE-FS-2	Central Bank of Ireland	A bank failed to act with due diligence and to employ effective checks and controls, which constituted breaches of the Consumer Protection Code. Specifically, it applied interest to consumer credit card accounts in error. These breaches occurred during the period July 2007 to October 2009 and resulted in 373,105 customer accounts being overcharged a total of 16,997,321 Euro. The Central Bank reprimanded the firm and required it to pay a monetary penalty of 750,000 Euro. Affected consumers were also refunded. The Central Bank of Ireland has marked "Don't know" if loss was suffered since the consumers were ultimately refunded. Note that while it may appear that a firm which has breached the Irish Consumer Protection Code could be considered to have engaged in an unfair practice under the UCPD, the actions taken in these cases were taken under the Code provisions rather than under the national implementation legislation of the UCPD.	Not reported	Not reported
Hungary	HU-FS-3	Hungarian Financial Supervisory Authority	Financial products, most often current accounts, mortgages, and other loans (including consumer credit), were misdescribed. In the case of motor insurance products (third party liability) and home insurance, some of these misdescriptions led to UCP cases.	Rather frequently (23 for 2009 to 2010)	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of financial services. Note: The description and categorisation of the unfair commercial practices listed here are presented as reported by the relevant organisation.

4.2 Most common unfair commercial practices in immovable property

Key findings:

- (1) In the area of immovable property common unfair commercial practices were reported from 23 countries (a total of 50 practices were documented). Reported unfair commercial practices most commonly related to buying property (66%).
- (2) The most frequent category of unfair commercial practices identified was 'essential information not included in advertising'. This category applied to 27% of the relevant reported practices (average of all sectors). Other common problems were grouped into three areas: problems with agents; misleading information on costs; and withholding of title deeds.
- (3) Most of the relevant practices identified are categorised as being a misleading omission (60%). This was closely followed by misleading actions (56%). Aggressive practices were less common (26%), as were practices on the UCPD blacklist (16%). Often, common unfair commercial practices fall under several legislative categories, such as misleading omissions and misleading actions.
- (4) A total of approximately 17,661 complaints were reported by authorities and other responding organisations between 2008 and 2010 related to the documented unfair commercial practices in the area of immovable property.
- (5) Of those responding authorities and other organisations that identified an unfair commercial practice and took action, the most frequent action was to make an administrative decision (53% of relevant practices). This was followed by 31% of relevant practices where a public warning about either the trader or the practice was issued. Respondents who used public warnings said they tended to find this effective.

4.2.1 Background

Eurostat data shows that nearly three quarters (71%) of the EU population lived in owner-occupied dwellings in 2010, 18% lived in rented accommodation and 11% in reduced-rent or free accommodation.²⁴⁶ The highest proportion of owner-occupiers were found in Romania, Lithuania, Slovakia and Hungary.

Renting tends to be more common in countries such as Germany (which has the highest proportion of renters in the EU),²⁴⁷ Austria, France, the Netherlands, Denmark and Belgium.²⁴⁸ This may be because tenancies are longer term in countries such as Germany and Belgium. Under German law it is not permissible to set a minimum

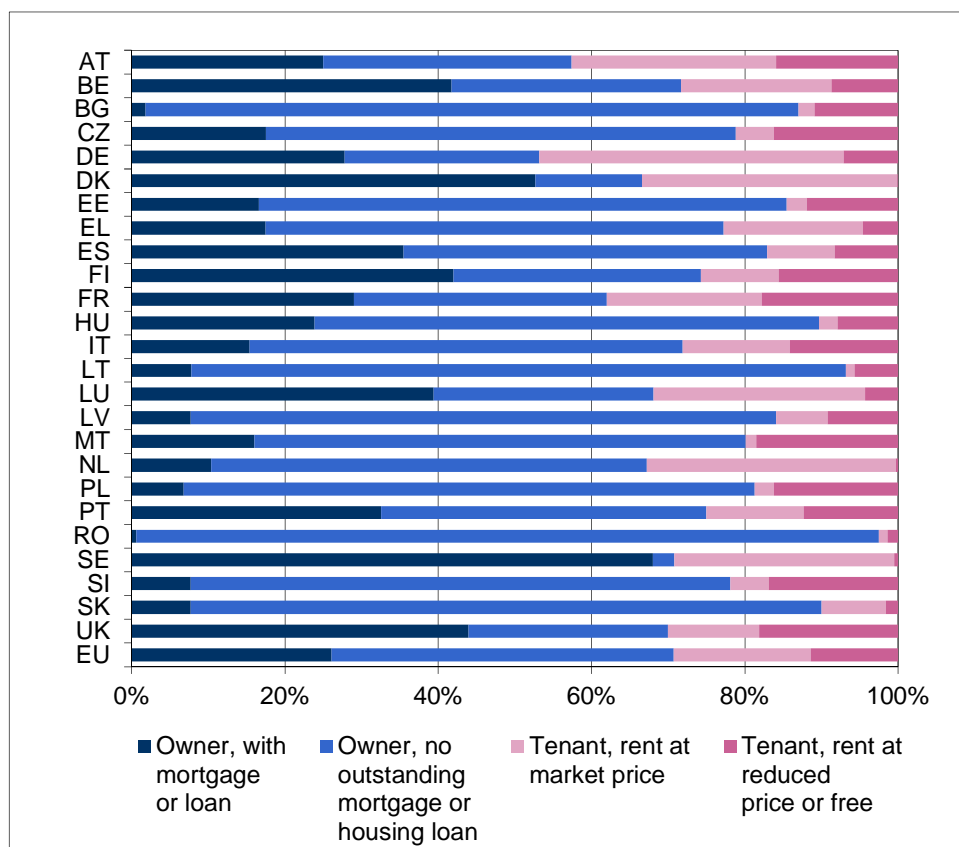
²⁴⁶ See http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Housing_statistics.

²⁴⁷ Royal Institution of Chartered Surveyors, *European Housing Review*, London, 2011, p.32.

²⁴⁸ See http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Housing_statistics.

duration for a tenancy.²⁴⁹ In Belgium tenancy duration is nine years unless specified otherwise in the contract.²⁵⁰ In other countries, such as the UK, tenancies are shorter, which gives less stability to the tenant.²⁵¹

Figure 17: Tenure status



Source: Graph compiled by Civic Consulting on the basis of Eurostat Housing Statistics, 2010. No data is available for Cyprus and Ireland.

Buying a property has a high potential for consumer detriment, given that this is likely to be one of the (if not the) most high value transactions consumers will make over the course of their life. A consumer may buy a property several times throughout his or her life, for example buying a first property, trading up to a larger one, before changing to a smaller property in retirement. Data for England and Wales, for example, shows that in

²⁴⁹ § 575 and § 575A German Civil Code (*Bürgerliches Gesetzbuch*). It is however possible for landlords to impose a maximum duration if an acceptable reason is provided in the original contract.

²⁵⁰ Article 3(1) Belgian rental law (*huurwet/loi sur les loyers*). See http://justitie.belgium.be/nl/binaries/De%20huurwet%2C%2012de%20editie_tcm265-138431.pdf.

²⁵¹ Rugg J. and Rhodes D., *The Private Rented Sector: it's contribution and potential*, Centre for Housing Policy, the University of York, para 3.5.

2007-2008 the average length of time owners remained in the same house was 10 years.²⁵²

The complexity of buying a property is further reflected in the fact that the transaction typically involves a number of other actors such as solicitors or notaries, estate agents, and technical specialists such as surveyors. On the one hand buyers may be lacking in experience (in particular in the case of first time buyers) and thus be placed in a position where they find it difficult to access all relevant information and make an informed decision, as when agents omit information from advertising for example. On the other hand, the use of professionals such as notaries provides a certain level of protection to consumers.

Purchasing property in other countries appears to be relatively infrequent currently, and this is supported by a fairly low number of practices with a significant cross-border dimension reported in this study. A recent Eurobarometer found that only 3% of respondents owned property abroad (not including timesharing).²⁵³

Other studies show that dissatisfaction with property services in general is to be found throughout the EU, with real estate services scoring second lowest in the services section of the sixth Consumer Scoreboard, and second lowest overall in terms of trust.²⁵⁴ Looking at individual countries, real estate services scored lowest in the services category in Austria, the Czech Republic and the United Kingdom,²⁵⁵ and overall was considered to be a market with a serious risk of malfunctioning.²⁵⁶

4.2.2 Overview of most common unfair commercial practices reported

Civic Consulting received 35 responses from enforcement authorities and other organisations to the online survey on immovable property, from 26 countries. The Slovak Ministry of Justice did not complete an online questionnaire but submitted written information which was also used in the analysis, and no responses were received from Malta and Romania in the area of immovable property. Greece, Iceland and Latvia responded to the survey but did not report any unfair commercial practices occurring in the area of immovable property.

All practices discussed here are considered by the responding authorities and other organisations to be the *most common unfair commercial practices* they have observed in their country. We have asked the authorities and other organisations to include a description of the practice, the legislative category, the sectors most complained about, complaints data if available, and any actions taken. After receiving the description of

²⁵² Data from Communities & Local Government, Survey of English Housing, 2007-2008, Table S251: Length of stay at previous address by previous tenure (household reference persons resident less than 3 years at current address).

²⁵³ European Commission/TNS Opinion and Social, *Special Eurobarometer 346*, Brussels, April 2011, p33, p39, p102.

²⁵⁴ *The Consumer Markets Scoreboard: Making markets work for consumers* (October 2011), p. 7 and p. 11.

²⁵⁵ *The Consumer Markets Scoreboard: Making markets work for consumers* (October 2011), Annex II 'National rankings of markets'.

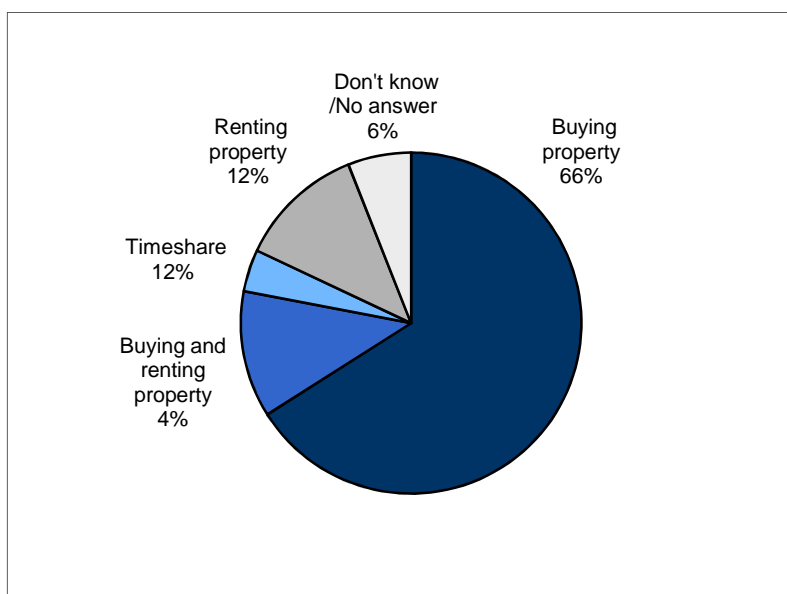
²⁵⁶ *The Consumer Markets Scoreboard: Making markets work for consumers* (October 2011), p 31.

each commercial practice, it was reviewed, edited and complemented with data from other sources, such as interviews with responsible enforcement officials. Where needed, responding organisations were consulted and asked to provide clarification concerning specific aspects. In some cases, additional common unfair commercial practices were identified through our country reports and other documentation received. The draft overview of the most common unfair commercial practices was then communicated to the responsible enforcement authorities in each country from which a response was received. In cases where authorities provided additional comments, these were considered when finalising the overview tables presented in this section and in the related country fact sheets (for more details, see methodological approach, Chapter 2).

a) Sector and category of common unfair commercial practices documented

In the area of immovable property common unfair commercial practices were reported from 23 countries (a total of 50 practices were documented). Reported unfair commercial practices most commonly related to buying property (66%), see the following figure.

Figure 18: Sectors to which the reported common unfair commercial practices relate



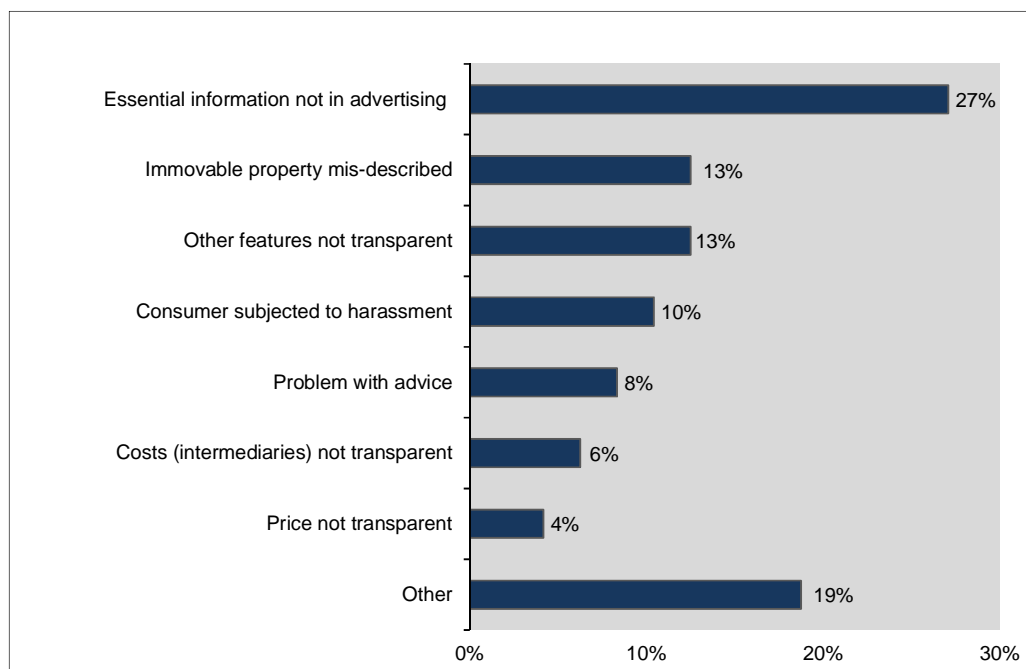
Source: Civic Consulting database on unfair commercial practices in the field of immovable property (N=50).

This higher proportion of unfair commercial practices relating to buying reflects the higher percentage of owner-occupiers compared to renters, and possibly the higher amounts at stake. Reported common unfair commercial practices related to renting property and timeshare less frequently (12% each).

The most frequent category of unfair commercial practices identified was ‘essential information not included in advertising’. This category applied to 27% of the relevant reported practices (average of all sectors). This was followed by the categories ‘immovable property being mis-described’ and ‘other features (than price) were not

transparent'. An overview of the categories to which the documented common unfair commercial practices relate is provided in the following figure:

Figure 19: Categories to which the reported common unfair commercial practices relate



Source: Civic Consulting database on unfair commercial practices in the field of immovable property (N=48, for 2 practices no category was indicated).

The table on the next page provides a detailed overview of reported common unfair commercial practices by category and country in the area of immovable property:

Table 9: Reported common unfair commercial practices by category and country in the area of immovable property

Country	Buying property								Rentals		Timeshare	
	Essential information not in advertising	Other features not transparent	Immovable property mis-described	Costs (intermediaries) not transparent	Consumer subjected to harassment	Problem with advice	Price not transparent	Other	Essential information not in advertising	Other	Essential information not in advertising	Other
Austria												
Belgium	X				X	X						
Bulgaria	X*		X					X*				
Cyprus	X				X	X	X					
Czech Republic												X
Germany	X			X			X		X			
Denmark	X	X										
Estonia	X											
Greece												
Spain			X									
Finland							X					
France									X			
Hungary		X		X						X		
Ireland												
Iceland												
Italy	X											
Latvia												
Lithuania											X	
Luxembourg												X
Malta												
The Netherlands								X				
Norway	X*							X*				
Poland	X	X						X				
Portugal												X
Romania												
Sweden		X										
Slovenia			X									
Slovakia							X					
United Kingdom		X	X	X			X		X			
Number of countries	9	5	4	3	2	2	1	5	3	3	2	3

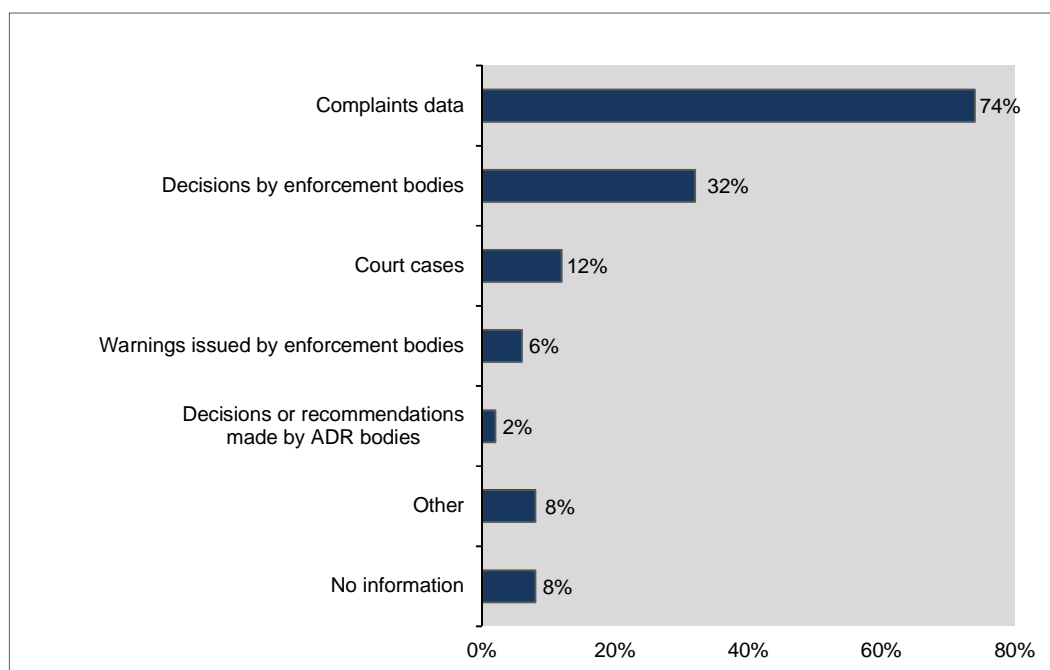
Source: Civic Consulting database on unfair commercial practices in the field of immovable property. Note: All categories shown for buying property. Most frequently selected category shown for rentals and timeshare, and all other reported practices combined under the heading 'other'. Respondents who did not select a sector excluded.

*The enforcement authorities from Bulgaria and Norway selected 'essential information not included in advertising' for both buying property and renting property (BG-IP-2 and NO-IP-1).

b) Evidence

Responding enforcement authorities and other organisations were asked to indicate the type of evidence used to determine that a particular practice in the field of immovable property is an unfair commercial practice. For 74% of the documented practices the evidence is complaints data, followed by decisions of enforcement bodies (32%). Court cases and other evidence are less relevant, compared to evidence used in the area of financial services (see above). Only for 8% of documented practices no evidence was indicated.

Figure 20: Evidence to determine that a practice is an unfair commercial practice



Source: Civic Consulting database on unfair commercial practices in the field of immovable property (N=50).

c) Legislative category

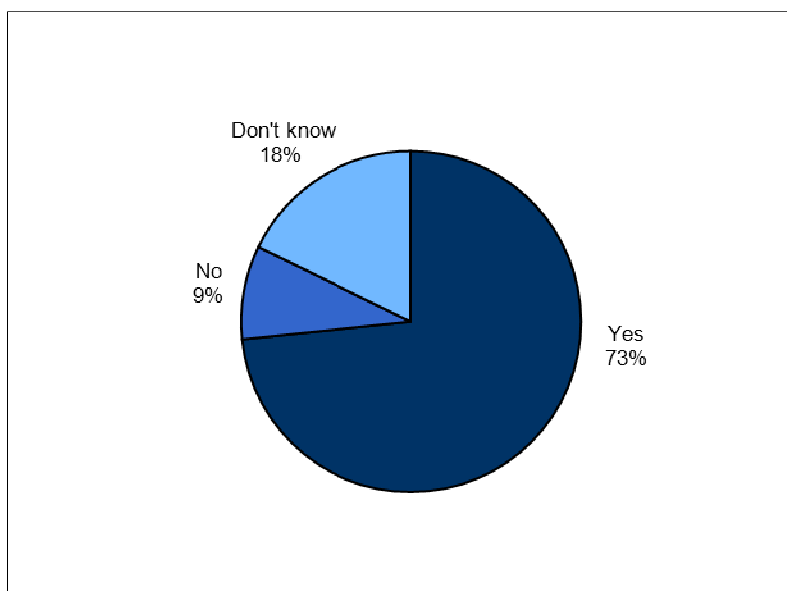
Most of the relevant practices identified are categorised as being a misleading omission (60%). This was closely followed by misleading actions (56%). Aggressive practices were less common (26%), as were practices on the UCPD blacklist (16%). Often, common unfair commercial practices fall under several legislative categories, such as misleading omissions and misleading actions.

d) Consumer loss

Enforcement authorities and other organisations that identified common unfair commercial practices were asked whether consumer loss was suffered through a

particular practice. For 73% of unfair commercial practices for which respondents provided an assessment, this question was answered 'yes' (see the following graph).

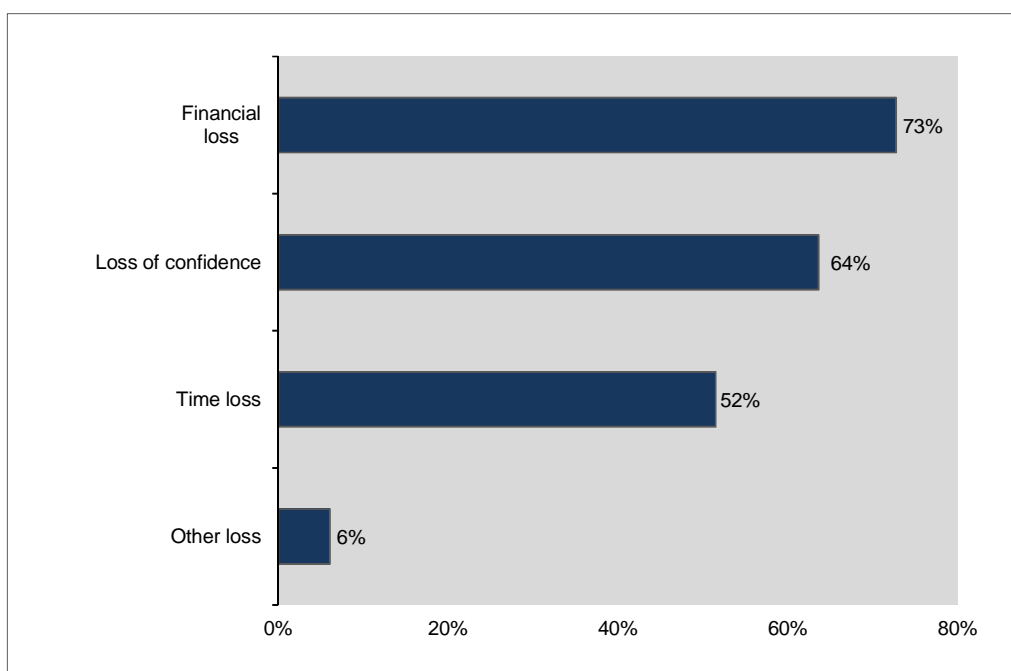
Figure 21: Consumer loss suffered due to common unfair commercial practices in the field of immovable property



Source: Civic Consulting database on unfair commercial practices in the field of immovable property (N=45, number of practices for which relevant information is available).

The type of loss reported was most often financial loss, followed by loss of consumer confidence and loss of time (see the following figure). Monetary estimates of loss were not always available, but wherever estimates were provided by authorities or stakeholders, they have been included in the report.

Figure 22: Type of consumer loss suffered due to common unfair commercial practices in the field of immovable property



Source: Civic Consulting database on unfair commercial practices in the field of immovable property (N=33, number of practices for which relevant information is available, multiple responses possible).

Enforcement authorities and organisations responding to the survey generally tended to find it difficult to quantify loss. Financial loss is generally more likely to be calculable – for example where costs are not included in the price advertised it may be possible to calculate these extra costs. The European Consumer Centre Luxembourg reported that consumers had proof of advances paid in relation to a reported common unfair commercial practice. A Spanish enforcement authority, the Catalan Consumer Agency, reported that loss could be quantified in some cases using expert reports (such as architectural and technical reports on buildings).

Loss of time and loss of confidence in a sector, especially the latter, are likely to be more difficult to quantify. However, their importance should not be underestimated, since as some interviewees pointed out, loss of confidence can have an impact on future decisions:

“What’s also quite useful is also to think about loss of confidence, and how that impacts people’s future decisions. If you have a really negative experience trying to invest your money, would you do it again or would you go down a much more conservative route to try to invest the money or do you ultimately just end up putting it under your bed because you don’t trust anybody. That isn’t a good result either for the market or the individual consumer.”²⁵⁷

²⁵⁷ Interview with Office of Fair Trading, April 2011.

e) *Actions taken*

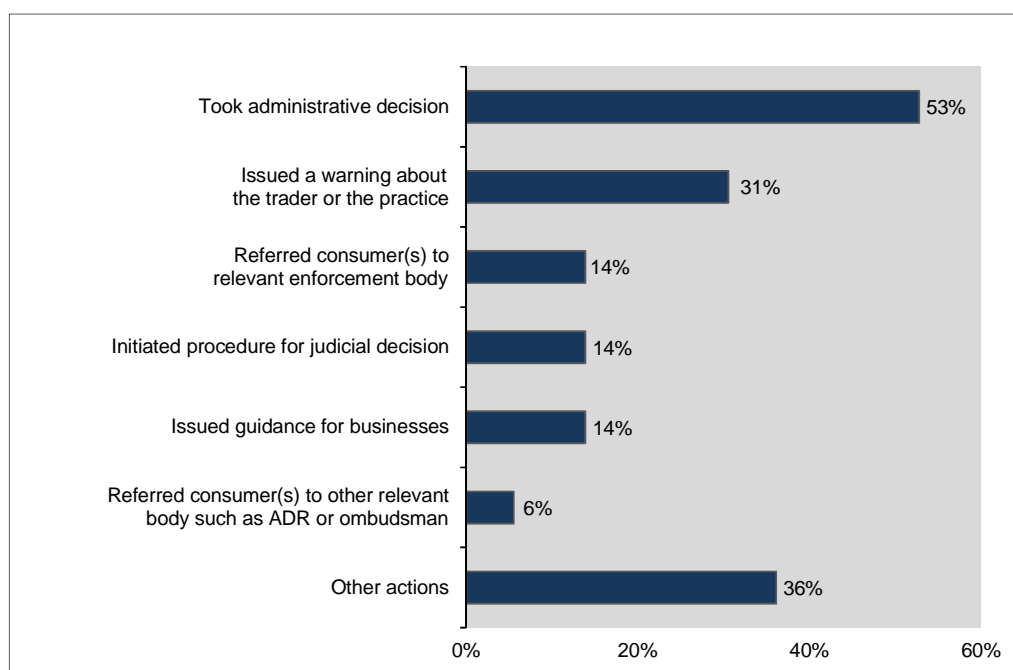
Of those responding authorities and other organisations who identified an unfair commercial practice and took action, the most frequent action was to make an administrative decision (53% of relevant practices). This was followed by 31% of relevant practices where a public warning about either the trader or the practice was issued. Respondents who used public warnings said they tended to find this effective. For example the Lithuanian State Consumer Rights Protection Authority explained that they use ADR procedures, and the decisions (including the trader's name) are published on the authority's website. This was said to be effective for reputable traders who want to maintain a credible presence as they are concerned about the effect on their business. However, it was noted that it is not as effective for rogue traders, who are unlikely to care about possible adverse publicity.²⁵⁸ In other Member States, such as Denmark, attention is also focussed on informing sectors, other traders and consumers about the practice itself, in addition to publicising individual non-compliant traders. Information about unfair practices is sent to all subscribers in the form of a newsletter in order to raise awareness. Subscribers include consumers, advisers, and traders, as well as a large number of journalists and news agencies..²⁵⁹

Other actions taken by respondents included initiating procedures for a judicial decision, issuing guidance for businesses, and in some cases referring consumers to the relevant enforcement body.

²⁵⁸ Interview with State Consumer Rights Protection Authority Lithuania, July 2011.

²⁵⁹ Interview with Danish Consumer Ombudsman, July 2011.

Figure 23: Actions taken by enforcement authorities and other organisations



Source: Civic Consulting database on unfair commercial practices in the field of immovable property (N=36, number of practices for which relevant information is available, multiple responses possible).

f) Complaints

A main criterion for assessing the relevance of an unfair commercial practice is the number and frequency of complaints to enforcement bodies and other responding organisations. A total of approximately 17,661²⁶⁰ complaints were reported by authorities and other responding organisations between 2008 and 2010 related to the documented unfair commercial practices in the area of immovable property (see Table 10 below). As only 15 responding authorities and stakeholder organisations could provide complaints data, the number of complaints related to the documented common unfair commercial practices in the area of immovable property is likely to be significantly higher across the EU.

In several cases very high numbers of complaints were reported. In the UK 7,610 complaints were reported by the Office of Fair Trading for the years 2009 and 2010 in the category 'other'. This total can be broken down into three types of complaints, all of which related to agents, including sub-standard service by lettings agents, sub-standard service by estate agents, and estate agents not behaving in an acceptable manner, for example by not passing on offers.

In Cyprus approximately 5,420 complaints were reported by the Cyprus Property Action Group for the years 2007 to 2010 in the category 'problems with advice'. This relates to

²⁶⁰ Some respondents reported approximate numbers or ranges. In the latter case the middle value was included in the calculation.

title deeds for properties being withheld in circumstances where the buyer had paid for the property in full.

For more information about these complaints please see the following sections.

Table 10: Overview of complaints reported by category and country related to documented unfair commercial practices in the area of immovable property 2008 to 2010 (all respondents who provided complaints data)

Country	Reporting organisation	Buying property							Rentals		Timeshare		
		Essential information not in advertising	Immovable property mis-described	Problem with advice	Price not transparent	Other features not transparent	Costs (intermediaries) not transparent	Consumer subjected to harassment	Other	Essential information not in advertising	Other	Essential information not in advertising	Other
Belgium	FPS Economy, SMEs, Self-Employed and Energy	16		7				6					
Cyprus	Cyprus Property Action Group			~5420 ^(a)				<1650 ^(b)					
Czech Rep.	European Consumer Centre												
Germany	Centre for Protection against Unfair Competition	45-60					45-60		~30		30-45		
Hungary	Hungarian Authority for Consumer Protection										2 ^(c)		
	Hungarian Competition Authority					2	2						
Italy	Competition and Market Authority	<30											
Lithuania	State Consumer Rights Protection Authority										5 ^(c)		
Luxembourg	European Consumer Centre											23	
Netherlands	Netherlands Consumer Authority								~60 ^(f)				
Norway	Consumer Ombudsman	~104 ^(f)											
Portugal	Lisbon Arbitration Centre for Consumer Conflicts											31	
Sweden	Swedish Consumer Agency					8 ^(d)							
United Kingdom	Property Ombudsman		185				428						
	Office of Fair Trading		1901 ^(e)						4330 ^(e)		3280 ^(e)		
Total number of complaints		~202	2086	5427	0	10	482	1656	~4360	~60	~3317	7	54

Source: Civic Consulting survey, May 2011. All categories shown for buying property. Most frequently selected category shown for rentals and timeshare, and all other reported complaint categories combined under the heading 'other'. Where ranges were given the total was calculated based on the middle value of a range.

(a): Relates to practices CY-IP-1 and CY-IP-2. The category 'other' was also selected for CY-IP-1, but complaints have only been categorised under 'problem with advice'. CY-IP-1 complaints also include 2007.

(b): Relates to practices CY-IP-3 and CY-IP-4. The category 'other' was also selected for these practices, but complaints have only been categorised under 'the consumer was subjected to harassment'.

(c): Data for 2009 and 2010 only. Complaints were reported 'sometimes' for 2008.

(d): Swedish Consumer Agency data for 2010 only. Complaints were reported 'sometimes' for 2008 and 2009.

(e): Office of Fair Trading data for 2009 and 2010 only. Complaints were reported 'very frequently' and 'rather frequently' in 2008.

(f): 104 complaints were reported relating to buying property and renting property combined. Number of complaints is shown under the category buying property.

4.2.3 Common unfair commercial practices – buying property

As stated before, two thirds of common unfair commercial practices reported in the area of immovable property related to buying property. Here, (excluding the category 'other'), the category most often used to describe the practice was 'essential information not included in advertising'. This category is described in more detail below.

Following this, the remaining sub-sections analyse the other common unfair commercial practices reported for buying property. These relate to the categories immovable property mis-described; problems with advice; price not being transparent; other features not being transparent; costs (intermediaries) not being transparent; consumer was subjected to harassment; and other practices.

Further analysis of these categories makes clear that the common unfair commercial practices reported can be grouped into three problem areas:

- Problems with agents;
- Misleading information on costs; and
- Withholding of title deeds.

The related sub-sections are therefore structured according to these categories.

a) Essential information not included in advertising

Common unfair commercial practices falling into the category 'essential information not included in advertising' were documented for nine countries (Belgium, Bulgaria, Cyprus, Denmark, Estonia, Germany, Italy, Norway and Poland). These practices centered on inaccurate information being given in order to attract potential buyers to look at properties, taxes such as VAT or other taxes not being included in the price, or agents not making clear that they are professionals who stand to profit from a sale. Reported practices include:

- In Cyprus, Bulgaria and Poland information about taxes was omitted;
- In Estonia, Italy and Norway the cost of the property was not represented transparently. Responding authorities from Estonia and Norway also mentioned the use of bait advertising where prices were set deliberately low in order to attract consumers to view the property. These properties were then found to be more expensive than what was stated in the advertising;
- In Denmark, brokers were reported to make misleading use of 'was/now' prices in order to speed up the sale of immovable properties. Brokers stated that a certain immovable property is on the market now for less than it used to be, in order to give the buyer the impression they were getting a bargain. However, this 'was' price is not considered relevant because this is not actually something the buyer is saving.

The most common legislative categories of the documented practices were misleading actions (seven) and/or omissions (six), followed by banned commercial practices which are included on the UCPD blacklist (three).

The majority of responding authorities and other organisations stated they have 'sometimes' received complaints regarding practices falling into the category 'essential information not included in advertising'. In terms of quantitative data, the Centre for Protection against Unfair Competition in Germany reported 45 to 60 relevant complaints between 2008 and 2010; the responding authority from Italy reported less than 30 and the responding authority from Belgium reported 16. The most complaints in this category were reported by the Norwegian Consumer Ombudsman, who reported a total of 104 complaints between 2008 and 2010. But because this organisation did not differentiate between buying property and rentals, not all complaints may be relevant for the practice discussed here.

Only one authority, the FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation from Belgium, indicated that it had received complaints with a cross-border dimension, namely concerning advertising which contained misleading omissions (BE-IP-1, see table on the following page).

For five of the listed practices a consumer loss was reported; most frequently loss of time and loss of confidence. However, responding authorities and other organisations were not able to quantify these losses.

Responding authorities and other organisations took various actions, including taking an administrative decision (Denmark, Italy, Norway, Poland), initiating a procedure for a judicial decision (Germany), issuing guidance or warnings (Norway and Poland) and referring consumers to a relevant enforcement body (Belgium), or to a body such as an ADR or ombudsman scheme (Norway). The Danish Consumer Ombudsman reported taking 'other' actions: The ombudsman issued a warning to the trader and a press release.

The table on the following page presents further details of documented common unfair commercial practices in the category 'essential information not included in advertising' (when buying a property).

Table 11: Common unfair commercial practices involving 'essential information not included in advertising' when buying a property

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Belgium	BE-IP-1	FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation	Advertising for real estate for sale and for rent contained misleading omissions.	Sometimes (16)	11-20%
Bulgaria	BG-IP-2	Commission for Consumer Protection	Misleading, incomplete, or inaccurate information was given in the sale and rental of immovable properties. For example, contract terms were written in small print, information requirements were not fulfilled, or information about taxes was not given.	Not reported	Not reported
Cyprus	CY-IP-5	Competition and Consumer Protection Service	Essential information was not included in advertising for certain immovable properties, namely the price was given without VAT.	Never	Not reported
Denmark	DK-IP-1	Danish Consumer Ombudsman	Brokers misleadingly used "was / now" prices to speed up the sale of immovable properties. Specifically, they stated that a certain immovable property is on the market now for less than it used to be, in order to give the buyer the impression they were getting a bargain. However, this "was" price is not considered relevant because this is not actually something the buyer is saving, but rather reflects stagnation in the market.	Sometimes	Not reported
Germany	DE-IP-2	Centre for Protection against Unfair Competition	In the rental and buying of houses, some estate agents have misled consumers by either not stating they are agents (which they are required to do by law) or by advertising the property with only a telephone number. This can give consumers the impression they are not dealing with professional agents but with private persons, which is actually not the case.	Sometimes (45-60)	Not reported
Estonia	EE-IP-1	The Consumer Protection Board of Estonia	Essential information was not included in advertising for the immovable property. This can mean either bait advertising, falsely stating information about the period of time the property is available for, or not transparently representing the costs of a property.	Sometimes	Not reported
Italy	IT-IP-1	Competition and Market Authority	Advertising regarding immovable property was misleading in some cases. For example, sometimes the cost of the property included in the advertising was not the real one. Sometimes the location of the property that was given was not accurate.	Sometimes (<30)	Not reported

Norway	NO-IP-1	Consumer Ombudsman	Essential information was not included in the advertising for immovable property and often the advertised 'estimate' prices were set deliberately too low in order to attract a higher number of potential buyers. Most often, this related to buying and renting property.	Sometimes (~104)	Not reported
Poland	PL-IP-3	Office of Competition and Consumer Protection	Developers advertised the price of immovable property before taxes, instead of after taxes, therefore misleading consumers. Consumers had to verify the information given in the invitation to purchase and after they found out that the information was unreliable, they lost confidence in the trader.	Sometimes	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of immovable property.

Note: The description and categorisation of the unfair commercial practices listed here are presented as reported by the relevant organisation.

b) Problems with agents

Common unfair commercial practices regarding buying property frequently relate to problems with agents. Relevant practices were reported from four countries, namely Belgium, Germany, Slovenia and the United Kingdom. These reported problems included aggressive practices where consumers were harassed or intimidated by agents; fees or commissions were not made clear, or agents were not clear about their status; and mis-description of properties by agents. Reported examples include:

- In Belgium consumers were reportedly being intimidated into signing exclusive contracts with an agent, while the Market Inspectorate of the Republic of Slovenia reported pressure being placed on consumers to conclude a contract;
- For Germany, the Centre for Protection against Unfair Competition reported that agents do not always make clear to consumers their status as an agent. This is often to do with the information not being included in advertising for properties (the practice is therefore listed in the table in the previous subsection, DE-IP-2). From the UK, *Which?* and the Office of Fair Trading reported that agents sometimes do not disclose a personal interest in a property sale; namely that they may in some way personally benefit from that sale;
- For Germany, the Centre for Protection against Unfair Competition also reported a lack of transparency around the cost of the agent's commission, which is typically 3% to 7%. Estate agents failing to fully clarify their fees was also reported by the UK Property Ombudsman;
- Additionally, the UK Property Ombudsman reported agents misrepresenting aspects such as the size of rooms, or single rather than double glazing, or access across shared land.

These common unfair commercial practices were most often categorised as misleading actions and misleading omissions, followed by aggressive practices. The UK Office of Fair Trading identified a practice which is banned in the UK but is not on the UCPD blacklist (UK-IP-3, see Table 12 below). The Office of Fair Trading can ban estate agents or impose undertakings on them if they breach the Estate Agency Act.²⁶¹ For more information on this ban see the UK country report.

Mostly, responding authorities and other organisations stated they have 'sometimes' received complaints relating to problems with agents. From the UK however, the Office of Fair Trading and the Property Ombudsman, reported a significant number of complaints related to practices involving problems with agents: A total of more than 6,844 complaints between 2008 and 2010 were reported by these respondents. Again, complaints with a cross-border dimension regarding practices involving problems with agents were reported only by one authority, the enforcement authority from Belgium.

²⁶¹ UK response to Civic Consulting survey on the application of Directive 2005/29/EC in immovable property, May 2011.

Most responding authorities and other organisations reported a consumer loss due to these practices. Authorities reported financial loss, time loss and loss of confidence, but were not able to quantify the loss suffered. The UK Property Ombudsman reported aggravation, distress and inconvenience being caused to consumers. The Property Ombudsman can assess the level of compensation due for this aggravation, distress and inconvenience suffered as a result of agents' shortcomings on an individual case-by-case basis, but also underlined that this is sometimes very difficult because the aim is to compensate the consumer rather than trying to sanction the agent using a punitive fine. The Property Ombudsman commented:

“There’s a very thin line between trying to compensate someone for aggravation and trying to punish the agent. If you take the example that under the code of practice an offer made on a property must be relayed to the seller, and it must be then confirmed in writing. Well if they don’t confirm it in writing, but have told the person, they’ve breached the code of practice but they haven’t caused any aggravation. So I’m not going to award anything because that would be a penalty simply for not carrying out an administrative action.”²⁶²

Quantitative assessments were available for some practices from the Office of Fair Trading in the UK. It estimated the total spending associated with complaints regarding misleading claims and omissions by estate agents at 111 million GBP in 2009 and 17 million GBP in 2010 (UK-IP-3, see Table 12 below). The estimated spending linked to complaints regarding sub-standard service by estate agents when buying properties was 2.5 million GBP in 2009 and 2.9 million GBP in 2010 (UK-IP-7); the estimated spending linked to complaints concerning estate agents that behaved unacceptably in their business practices was 2.5 million GBP in 2009 and 5.3 million GBP in 2010 (UK-IP-8). The Office of Fair Trading pointed out that the numbers relate to the total value of the reported transactions in which the unfair practices took place. It is not an attempt to quantify the resulting consumer detriment, which is likely to be much lower.

Responding authorities and other organisations took various actions regarding these unfair commercial practices, including initiating the procedure for a judicial decision, issuing guidance for businesses, and issuing warnings. The enforcement authority from Belgium drew attention to the difficulties of proving that consumers have been intimidated by agents – the enforcement service requires evidence, yet any intimidating behaviour is more likely to be verbal and is therefore difficult to prove. The Belgian authority has had some success when cases have gone to court, but these cases tended to relate to contractual issues, for example where the contract had not been drawn up correctly. But for these type of cases the legal basis is not necessarily unfair commercial practices legislation.²⁶³

The table on the following page presents further details of documented common unfair commercial practices that involve problems with agents when buying a property.

²⁶² Interview with the UK Property Ombudsman, July 2011.

²⁶³ Interview with FPS Economy, SMEs, Self-Employed and Energy, DG Regulation of the market, July 2011.

Table 12: Common unfair commercial practices involving problems with agents when buying a property

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Belgium	BE-IP-3	FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation	There were aggressive practices reported in the real estate field. For example, consumers were intimidated into signing an exclusive contract with an agent when attempting to sell their properties.	Sometimes (6)	11-20%
Germany	DE-IP-1	Centre for Protection against Unfair Competition	Some advertising about the prices of houses either does not mention or does not have transparency around the cost of the estate agent's commission (normally between 3-7% of the price of the house). The fact that there is an additional cost is always supposed to be at least mentioned in advertising.	Sometimes (45-60)	Not reported
Slovenia	SI-IP-1	Market Inspectorate of Republic of Slovenia	Consumers were subjected to harassment by estate agents. For example, real estate agencies tried to pressure third party consumers to conclude a contract prior to viewing a property.	Sometimes (2008 to 2009 only)	Not reported
United Kingdom	UK-IP-1	Property Ombudsman	Traders misdescribed aspects of some properties. For example, they misrepresented the size of rooms or something that was single glazed as double glazed. Another example is regarding access across shared land; traders said, for instance, that a driveway belonged to the potential buyer's property without mentioning that somebody else has access to it, or that the driveway actually belongs to somebody else though the potential buyer has access to it.	Sometimes (185)	Not reported
	UK-IP-3	Office of Fair Trading	There were misleading claims and omissions by estate agents.	Very frequently (1,901 for 2009 to 2010 only)	Not reported

	UK-IP-4	Property Ombudsman	Estate agents failed to properly clarify the fee basis. In the UK, agents charge a percentage of the sales price or a fixed fee. Both are perfectly acceptable ways of charging a fee, but most people think that if, for example, they sell their house for 50,000 Pound less than the asking price that they will pay a lower fee. However, this is not always the case. People don't realise this either because they don't read the contract or the contract is not clear. Sometimes, when the negotiator was with the seller doing a market appraisal of the property, they said they would put the house on the market at 200,000 Pound and charge the seller 2%. The seller then heard they will pay 2% of the fee, but what the negotiator really meant was that they will charge 2% of 200,000 Pound. Under the code of practice, they are required to make it very clear whether they are charging on a percentage basis and what an example fee might be, or if it's on a fixed fee basis what exactly this would be.	Sometimes (428)	Not reported
	UK-IP-5	Which?	Estate agents failed to fully disclose the reasons why they were recommending a particular purchaser (for example, because they have an existing relationship). Often this manifests itself by the seller accepting a lower offer than the property is actually worth.	Not reported	Not reported
	UK-IP-7	Office of Fair Trading	There was sub-standard service by estate agents when buying properties.	Very frequently (2,826 for 2009 to 2010 only)	Not reported
	UK-IP-8	Office of Fair Trading	Estate agents behaved unacceptably in their business practices. For example, there have been complaints regarding not passing on offers and agents personally benefitting from properties.	Very frequently (1,504 for 2009 to 2010 only)	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of immovable property.

Note: The descriptions of the unfair commercial practices listed here are presented as reported by the relevant organisation.

c) Misleading information on costs

Unfair commercial practices regarding misleading information on costs were reported by enforcement bodies from five countries (Belgium, Denmark, Finland, Hungary, and Poland).

Common unfair commercial practices included overestimating property values (to attract sellers), underestimating property values (to attract buyers), mis-describing the location of a property (which has a bearing on the price), not including taxes in prices, and misleading consumers about costs such as renovation or maintenance charges. For example:

- In Finland property prices were reported as being made to look lower than they actually were (a related practice was also reported from Norway; see NO-IP-1 in Table 11 above). This could be due to information not being included in advertising, or because the price was not transparent;
- Conversely, the enforcement authority from Belgium reported that property could be overvalued due to problems with advice;
- In Finland and Hungary common unfair practices reported related to charges such as maintenance or renovation charges that were not made clear.

Practices in this area were mostly described as misleading actions, and were often at the same time characterised as involving misleading omissions. One practice was described as blacklisted practice under the UCPD.

Fewer complaints were reported for these practices than those above involving agents. All responding authorities and other organisations reported that complaints were received 'sometimes' in this area. Again, complaints with a cross-border dimension were reported only from Belgium.

Respondents took varied actions including referring consumers to a relevant enforcement body or ADR scheme, issuing warnings or guidance, and taking an administrative decision.

The table on the following page presents further details of documented common unfair commercial practices that involve misleading information on costs when buying a property.

Table 13: Common unfair commercial practices involving misleading information on costs when buying a property

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Belgium	BE-IP-2	FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation	There were problems with advice given about buying property, namely the property value was overestimated.	Sometimes (7)	11-20%
Denmark	DK-IP-2	Danish Consumer Ombudsman	Brokers used sales promotions, such as "buy this house and get a car for free," which decreases transparency. This is because while the broker may state the value of the house in the deal, it is very hard to estimate the "real value" of a house, and therefore it is impossible for the consumer to tell whether they are really getting a "free car" or whether they are actually paying for the car in the (inflated) price of the house.	Sometimes	Not reported
Finland	FI-IP-1	Finnish Consumer Agency and Ombudsman	In advertising, the real prices of immovable properties are made to look lower than they are. For example, sometimes charges (for example, maintenance charges) turn out to be higher than indicated or than the consumer had reason to expect.	Sometimes	Not reported
Hungary	HU-IP-1	Hungarian Competition Authority	When selling houses, misleading information was given leading the consumer to assume that they would not have to pay for certain expenses related to the property (for example, conservation, renovation) but instead those would be borne by the selling party (a bank, an investor, and so on). In fact, the consumer did need to bear these costs.	Sometimes (2)	Not reported
Poland	PL-IP-4	Office of Competition and Consumer Protection	Some traders advertised their properties in a particular area as being "cheaper than you think," and listed a certain price. However, this claim was later proved to be misleading, as the traders were only able to offer properties at this price in other (less expensive) areas.	Sometimes	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of immovable property.

Note: The description of the unfair commercial practices listed here is presented as reported by the relevant organisation.

d) *Withholding title deeds*

Unfair commercial practices that involve withholding title deeds were reported by the Cyprus Property Action Group (a non-governmental organisation) and information received from the European Commission. These complaints have a particular cross-border aspect as they generally relate to buyers from abroad (often from the UK) buying properties in Cyprus and Bulgaria.

In Cyprus it was reported that developers are able to retain title deeds rather than transferring them to the new buyers immediately. This in turn gives rise to a number of unfair commercial practices, such as excessive charges for maintenance, which buyers can be pressurised into paying as they are reportedly threatened that the deeds will not be transferred otherwise (CY-IP-4, see Table 14 below). Properties without title deeds cannot be sold on, which according to the reporting organisation, provides another opportunity for developers to put pressure on buyers – either by forcing the buyer to sell back to the developer at less than the market price or by stating the buyer can only sell through the developer and then charging a commission (CY-IP-3). Most damagingly, because title deeds had been withheld, it was reported that consumers were at risk of losing properties which had already been paid in full if the developer defaulted on their debt (CY-IP-1).²⁶⁴ Complaints data reported by the Cyprus Property Action Group regarding these problems totalled approximately 7,070 between 2007 and 2010.²⁶⁵

Although these practices primarily involve UK nationals buying property in Cyprus, the withholding of title deeds can also affect Greek Cypriots living and buying property in Cyprus.²⁶⁶ The Cyprus Property Action Group that was set up to lobby for a change of these practices, estimates that around 100,000 homes in Cyprus do not have title deeds in the names of the rightful owners, and around 30,000 of these properties have been bought by foreigners, mostly from developers.²⁶⁷ Withheld title deeds are said to be less problematic for domestic purchasers as they may be able to leave the title deeds in their family name, and keep the will of the previous owner in order to prove ownership.²⁶⁸

The government of Cyprus partially addressed the problem of withheld title deeds by passing 'Town Planning Amnesty' laws. Affected buyers could apply for their title deeds under these laws until October 2011. However, the developer rather than the buyer had to initiate the process. If the building was affected by planning infringements the buyer would have to apply for a Certificate of Final Approval as part of this process. This may

²⁶⁴ This is related to problem CY-FS-1: "Some banks, when consumers applied for home loans, neglected to tell the consumers that developers already had mortgages from the same bank on the same land on which the consumers' property stood to be built. If a developer defaults in their payments, the bank has a priority claim over the land and, under local law, everything built on it. Consequently, even if a consumer was duly paying their own mortgage, they still stood to lose their property if the developer defaulted and the bank repossessed the land." See fact sheet Cyprus.

²⁶⁵ Total complaints, from data received from the Cyprus Property Action Group for problems CY-IP-1 to CY-IP-4. Because of the way complaints were collected data from 2007 was also included for practice CY-IP-1.

²⁶⁶ Information provided by the Cyprus Property Action Group, September 2011.

²⁶⁷ <http://cyprus-property-action-group.net/about-us/>.

²⁶⁸ Information provided by the Cyprus Property Action Group, September 2011.

involve a fine, and in cases where the planning infringements are major the title deed may be issued with a caveat relating to the affected part. Such a statement could prevent the sale of the property or allow sale, but only providing certain conditions are met.²⁶⁹

The Cyprus Property Action Group reported a significant loss to consumers, as consumers may in the worst case lose their homes (practice CY-IP-1).

Affected buyers are reported to have complained to the Cyprus Competition and Consumer Protection Service.²⁷⁰ No enforcement action regarding these particular practices has been reported by this organisation in their response to the survey conducted for this study. The Cyprus Property Action Group, on the other hand, has issued a warning about the practice.

A similar practice has been reported from Bulgaria. UK consumers and those from Ireland reported being sold apartments in Bulgaria by companies that had offices in the UK. They were told the company would handle all the legal aspects, and after paying for apartments were informed the developments were complete. However, it appears the developments were not completed, and were missing essential services such as electricity and water in some cases (BG-IP-1, see Table 14 below).²⁷¹ Consumers were then unable to contact the company in order to complain or resolve the issue. In addition to this consumers have complained that they have not received the title deeds to their properties, meaning they are unable to sell them. It has also been reported that when the developer abandoned the project while still owing money to a bank, the bank then attempted to sell the apartments without informing the buyer – this included those apartments which had already been paid for in full but for which the buyer had not received the title deeds. The matter has been brought to the attention of the European Commission, and the Bulgarian Ambassador has been asked to investigate. The Bulgarian Commission for Consumer Protection has undertaken action against a web portal for immovable property which provides incorrect information about already sold or rented property.²⁷²

For more information see the table below, the Bulgaria country report, and the Cyprus and Bulgaria country fact sheets.

²⁶⁹ <http://www.news.cyprus-property-buyers.com/2011/06/18/we-will-get-your-title-deeds-for-a-price/id=008017>.

²⁷⁰ Information provided by the Cyprus Property Action Group, September 2011.

²⁷¹ See also http://www.bbc.co.uk/blogs/watchdog/2009/02/the_bulgarian_dreams_nightmare.html.

²⁷² See Civic Consulting country report Bulgaria.

Table 14: Common unfair commercial practices involving withholding title deeds when buying a property

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Bulgaria	BG-IP-1	Information provided by European Commission	Apartments were sold to buyers in the UK and Ireland. Buyers paid in full (and some even paid a fee for transfer of the deeds) but did not receive their title deeds. In some cases apartments lacked basic services such as electricity and water. The developer ultimately abandoned the project while still owing money to the bank. The bank then attempted to sell all the apartments, including those which had already been paid for in full but for which the buyer had not received the title deeds.	Not reported	Not reported
Cyprus	CY-IP-1	Cyprus Property Action Group	Developers withheld consumers' title deeds (often for many years) after the properties were paid for in full by these consumers. During this time, should the developer go bankrupt, consumers are at risk that they could lose their properties.	Very frequently (~4,500, including data from 2007)	Very frequently
	CY-IP-2	Cyprus Property Action Group	Developers neglected to secure a "certificate of final completion" for a property before buyers moved in, as is required under consumer protection law CAP 96, Article 10, and they withheld this information from the buyers. Moving into a property without this certificate is illegal under criminal law, both for the buyer and the developer. Furthermore, a title deed cannot be applied for without this certificate. Additionally, developers sometimes built properties that had illegalities, which meant that completion certificates could not be obtained for the properties. This greatly devalued the properties, sometimes rendering them worthless, as in certain circumstances the property cannot even be resold.	Rather frequently (~920)	Not reported
	CY-IP-3	Cyprus Property Action Group	When a buyer who has not yet been transferred title deeds by their developer wishes or needs to "sell" their property (which is not yet legally theirs), some developers have used this opportunity to exploit the buyer. They have done this by either offering a price that is much less than the going market rate. Or developers have mandated that the buyer only sell through them, in which case the developer makes sales commission. Or the buyer may simply have to pay significant cancellation charges. As a result of being able to make these charges on each sale, the developer has no great incentive to transfer the buyers' title deeds.	Very frequently (<675)	Not reported
	CY-IP-4	Cyprus Property Action Group	Developers withheld buyers' title deeds (often for many years), which allowed them to charge excessive fees for maintenance or other services and to claim that they have paid highly-inflated property taxes on behalf of the buyer. Developers were able to exert such pressure on buyers for these payments by threatening to not transfer title deeds to the buyer	Very frequently (<975)	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of immovable property.

Note: The description of the unfair commercial practices listed here is presented as reported by the relevant organisation.

4.2.4 Common unfair commercial practices – renting property

Common unfair commercial practices reported regarding renting property most often fall into the category ‘essential information was not included in advertising’. Common unfair commercial practices in the rental sector were reported by enforcement bodies from six countries (Bulgaria, France, Germany, the Netherlands, Norway and the United Kingdom). Examples include:

- The Office of Fair Trading reported sub-standard service by letting agents in the UK;
- From Bulgaria, France and Norway unfair commercial practices involving missing or incomplete information were reported – such as information about taxes not being given, or room measurements being inaccurate.

The legislative categories were most often described as misleading actions, misleading omissions or ‘other’.

The most complaints were reported by the Office of Fair Trading (UK-IP-6, see table on the following page): 3,280 complaints were reported about sub-standard services by lettings agents in 2009 and 2010, and this was considered to be ‘very frequent’. Relevant complaints were received ‘sometimes’ by reporting enforcement bodies in France, Germany, the Netherlands and Norway. The enforcement authority from the Netherlands reported to also have received complaints with a cross-border dimension.

Consumer loss was reported from France (financial loss and loss of confidence) and Norway (loss of time and confidence). The UK Office of Fair Trading reported the associated spending linked to the complaints it received at 760,000 GBP in 2009, and over one million GBP in 2010.²⁷³

Actions reported by the authorities included taking an administrative decision (UK, France and Norway), issuing guidance for businesses (France and Norway), referring consumers to a relevant body such as an ADR scheme (Norway), and initiating the procedure for a judicial decision (France and Germany). The Netherlands Consumer Authority published an information brochure on fraud and unfair commercial practices, which included an example relating to immovable property.

The table on the following page presents further details of documented common unfair commercial practices when renting a property.

²⁷³ Note the numbers relate to the total value of the reported transactions in which the unfair practices took place. It is not an attempt to quantify the resulting consumer detriment, which is likely to be much lower.

Table 15: Common unfair commercial practices reported when renting a property

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Bulgaria	BG-IP-2	Commission for Consumer Protection	Misleading, incomplete, or inaccurate information was given in the sale and rental of immovable property. For example, contract terms were written in small print, information requirements were not fulfilled, or information about taxes was not given.	Not reported	Not reported
France	FR-IP-1	General Directorate for Fair Trading, Consumer Affairs and Fraud Control	Misleading or missing information was given, for example room measurements were inaccurate. This occurred most often in the rental of immovable properties	Sometimes	Not reported
Germany	DE-IP-4	Centre for Protection against Unfair Competition	Companies, most often those renting properties, did not have a complete imprint by the standards of the E-Commerce Directive and § 5 TMG (<i>Telemediengesetz</i>). This related to the online environment over 50% of the time.	Sometimes (30-45)	Not reported
The Netherlands	NL-IP-2	Netherlands Consumer Authority	In online advertising for immovable properties, sometimes the properties turn out to be non-existent and/or the trader is not traceable.	Sometimes (~60)	41-50%
Norway	NO-IP-1	Consumer Ombudsman	Essential information was not included in the advertising for immovable property and often the advertised "estimate" prices were set deliberately too low in order to attract a higher number of potential buyers. Most often, this related to buying and renting property. (Note: This practice is relevant for both buying and renting property and has therefore also been included in Table 11 above.)	Sometimes (~104)	Not reported
United Kingdom	UK-IP-6	Office of Fair Trading	There was sub-standard service by lettings agents when renting properties.	Very frequently (3,280 for 2009 to 2010)	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of immovable property.

Note: The description of the unfair commercial practices listed here is presented as reported by the relevant organisation.

4.2.5 Common unfair commercial practices – timeshare

Common unfair commercial practices regarding timeshare fall most often into the category ‘essential information was not included in advertising’. Problems with timeshare have been well documented,²⁷⁴ and the practices reported here are similar in nature. Responding authorities and other organisations report aggressive tactics used by traders such as putting pressure on consumers to sign a contract (Luxembourg, the Netherlands and Portugal), or a lack of full or transparent information given to the consumer, such as information on withdrawal rights (Czech Republic, Hungary and Lithuania).

Responding authorities and other organisations noted the use of blacklisted practices, misleading actions, misleading omissions and aggressive practices.

In all countries but one complaints were received by the responding organisations ‘sometimes’, whilst in Portugal complaints were identified as being ‘rather frequent’. However, the actual number of complaints regarding timeshare is likely to be higher as reported in Table 16 below, because enforcement bodies may categorise complaints about timeshare separately to those about unfair commercial practices. Indeed data from the European Consumer Centre Network (ECC-NET) shows that 372 cross-border complaints were recorded regarding timeshare and related/similar products in 2010, and 281 in 2011.²⁷⁵ In addition to this, the Consumer Protection Co-operation network, which handles the implementation of Regulation EC 2004/2006 on co-operation between national authorities responsible for the enforcement of consumer protection laws, also reported issues relating to timeshare in 2011. 27 information requests were made to the network on the subject of timeshare in 2011, as well as three enforcement requests and three alerts.²⁷⁶

As can be expected in the field of timeshare, a cross-border aspect was identified frequently. The European Consumer Centre Luxembourg and the Netherlands Consumer Authority reported consumers being approached while on holiday. The State Consumer Rights Protection Authority Lithuania pointed out that when they received complaints about timeshare usually the houses are in the Mediterranean, for example Spain or Greece, while the buyers are in Lithuania.²⁷⁷

Five respondents identified financial loss due to the practices. Additionally the Czech, Lithuanian and Portuguese respondents identified time loss, and the respondents from the Czech Republic and Luxembourg pointed to a loss of confidence.

Actions taken by the responding authorities and other organisations included issuing a warning about the trader or the practice, taking an administrative decision, or using alternative dispute resolution processes such as mediation or arbitration in order to reach

²⁷⁴ See European Commission Consultation Paper on *Review of Timeshare Directive 94/47/EC*, p1. 3. A new Timeshare Directive (2008/122/EC) entered into force in February 2009.

²⁷⁵ Data provided by European Consumer Centre Network. Complaints recorded for year 2011: up to 30 November 2011.

²⁷⁶ Data provided by the Consumer Protection Co-operation network. Complaints recorded for year 2011: up to 30 November 2011.

²⁷⁷ Interview with the State Consumer Rights Protection Authority Lithuania, July 2011.

a settlement with the trader. Most respondents took action using the national implementation of the UCPD. According to the Hungarian Competition Authority, the frequent cross-border aspect can make enforcement more difficult, for example if the client is not from Hungary, the proceeding is likely to be longer, more complicated, more expensive and might not be successful, because it can be difficult to find enough proof to establish the illegal conduct.²⁷⁸

The table on the following page presents further details concerning documented common unfair commercial practices relating to timeshare.

²⁷⁸ See fact sheet Hungary.

Table 16: Common unfair commercial practices relating to timeshare

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Czech Republic	CZ-IP-1	European Consumer Centre Czech Republic	There were sometimes misleading practises in the selling of timeshares. For example, the prices of timeshares were not transparent.	Sometimes	>50%
Hungary	HU-IP-2	Hungarian Authority for Consumer Protection	Some traders did not provide the necessary information for consumers who were considering timeshare contracts. For example, information on the right of withdrawal was missing and there was no transparent information on prices.	Sometimes (2 for 2009 to 2010)	Not reported
Lithuania	LT-IP-1	State Consumer Rights Protection Authority	Essential information was not included in the advertising for immovable properties. Most often, this related to timeshare properties.	Sometimes (5 for 2009 to 2010)	1-5%
Luxembourg	LU-IP-1	European Consumer Centre Luxembourg	After arriving at their holiday destination, consumers were approached by people affiliated with the trader from whom they bought the holiday package. These agents asked the consumer to, for example, draw a lot and then informed the consumer that they won a lottery. The consumer was then taken by taxi to a hotel far away from where they were staying and once there was pressured to sign a contract and make an advanced payment for a timeshare.	Sometimes (23)	>50%
The Netherlands	NL-IP-1	Netherlands Consumer Authority	Sometimes, misleading and/or aggressive practices related to the renting and selling of timeshare properties occur. Occasionally consumers are led to sign a contract that they were not aware was a timeshare contract. Other times, Dutch consumers are approached on holiday and pressured to come to meetings where they are asked to buy timeshare, for example by being told they won a prize.	Sometimes (~60)	41-50%
Portugal	PT-IP-1	Lisbon Arbitration Centre for Consumer Conflicts	In the selling of timeshares, there was sometimes overly aggressive pressure placed on the consumer to buy the properties, as well as a lack of information given. This sometimes led consumers to buy something they did not want or need.	Rather frequently (31)	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of immovable property. Note: The description of the unfair commercial practices listed here is presented as reported by the relevant organisation.

4.2.6 Other common unfair commercial practices in the area of immovable property

Enforcement authorities and other organisations from nine countries (Austria, Germany, Hungary, Poland, Slovakia, Slovenia, Spain, Sweden, and United Kingdom) reported common unfair commercial practices in the area of immovable property that were not categorised in line with the categories described in the previous sub-sections. Examples for these practices are:

- In Poland, the code of conduct of an immovable property traders association had provisions in it which were contrary to the law. Also, an association of entrepreneurs of immovable property included wrongfully a note in an advertisement that a code of conduct that they adhered to was approved by the president of the Office of Competition and Consumer Protection (OCCP);
- In Slovakia a practice was reported where a third person, who is named by a consumer's service supplier, takes advantage of the distress felt by a consumer who needs financing. The third person signs a contract with the service supplier where they agree this person will act in the consumer's name. The person provided by the service supplier, however, does not act in the consumer's favour, but actually signs agreements that are to the consumer's detriment.

Other practices reported focus on misleading information given about immovable properties and related issues.

For most of the unfair commercial practices reported here, responding organisations received complaints 'sometimes', with only the Ministry of Justice of the Slovak Republic referring to a practice that caused 'very frequent' complaints (detailed complaint numbers were not provided). Only the Swedish Consumer Agency observed a significant percentage of complaints with a cross-border dimension regarding advertising related to the selling of immovable properties that was sometimes misleading.

The table on the following page presents further details concerning common unfair commercial practices in the area of immovable property that were not categorised in line with the categories described in the previous sub-sections.

Table 17: Other common unfair commercial practices relating to immovable property

Country	ID	Reporting organisation	Description of unfair commercial practice	Frequency of complaints (number of complaints 2008-2010)	Percentage of complaints with cross-border dimension
Austria	AT-IP-1	Federal Ministry of Economy, Family and Youth	Essential information was either not included or was misleading in advertising for immovable property.	Sometimes (8)	Not reported
Germany	DE-IP-3	Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V. (Centre for Protection against unfair Competition)	Consumers received unsolicited telephone calls, e-mails, and faxes without prior consent, most often about the buying of properties. For example, some consumers received unsolicited e-mail newsletters.	Sometimes (~30)	Not reported
Hungary	HU-IP-3	Hungarian Competition Authority	Advertising around the selling of immovable properties made false statements, for example that the consumer could buy the property with cash within 30 days.	2	Not reported
Poland	PL-IP-1	Office of Competition and Consumer Protection	The code of conduct of an immovable property traders association had provisions in it which were contrary to the law. Specifically, the provisions did not require traders to give out some essential information. Traders who agreed to this voluntary "code of conduct" could then use the association's logo on their advertising, thus leading consumers to assume a certain level of credibility on the part of the trader.	Not reported	Not reported
	PL-IP-2	Office of Competition and Consumer Protection	An association of entrepreneurs of immovable property included a note in an advertisement that a code of conduct that they adhered to was approved by the president of the Office of Competition and Consumer Protection (OCCP). In fact, the president of the OCCP gave a positive opinion about a first draft of the code of conduct but not about the later version that included a significant attachment. Consumers trusted the code of conduct because it was supposedly "endorsed" by OCCP. It later turned out that provisions in the attachment were contrary to the law.	Not reported	Not reported
Slovakia	SK-IP-1	Commission to assess the terms in consumer contracts and unfair business practices - Ministry of Justice of the Slovak Republic	A third person, who is named by a consumer's service supplier, takes advantage of the distress felt by a consumer who needs financing. The third person signs a contract with the service supplier where they agree this person will act in the consumer's name. The person provided by the service supplier, however, does not act in the consumer's favour, but actually signs agreements that are to the consumer's detriment. For example, agreements to transfer property and block accounts if only a single payment is late. Thus the third person who enters into the agreement	Very frequently	~0.1%

			between the service provider and the consumer does not defend the interest of consumers but instead acts in conflict with their interests.		
Slovenia	SI-IP-2	Market Inspectorate of Republic of Slovenia	Misleading information was given about immovable properties.	Sometimes	Not reported
Spain	ES-IP-1	Catalan Consumer Agency	Essential information was not included in advertising for immovable properties.	Sometimes	Not reported
Sweden	SE-IP-1	Swedish Consumer Agency	Sometimes, misleading information about the inspection of a property was presented, causing features (excluding price) about the properties to not be transparent.	Not reported	Not reported
	SE-IP-2	Swedish Consumer Agency	Advertising related to the selling of immovable properties was misleading sometimes, causing features (excluding price) about the properties to not be transparent.	Sometimes (8 for 2010)	11-20%
United Kingdom	UK-IP-2	Which?	There were misleading property descriptions (both misleading actions and omissions).	Not reported	Not reported

Source: Civic Consulting database on unfair commercial practices in the field of immovable property.

Note: The description of the unfair commercial practices listed here is presented as reported by the relevant organisation.

5 Conclusions and recommendations

Key findings:

- (1) This study shows that most Member States have maintained or adopted legislation in the areas of financial services and immovable property that goes beyond the protective standards of the UCPD. The smallest part of that specific legislation is enshrined in unfair commercial practices law as such. Rather, unfair commercial practices law is complemented by general legislation in the area of financial services, or by sector-specific legislation that addresses certain financial services or certain issues in the area of immovable property.
- (2) Partly, the special rules in the areas of financial services and immovable property consist of prohibitions and can thus be equated with black-listed unfair commercial practices. By far the larger part of special rules, however, consists of sector-specific pre-contractual and contractual information obligations.
- (3) This study concludes that it would be undesirable to remove the exemptions for financial services and immovable property as enshrined in Article 3(9), and to apply the current level of protection of the UCPD in these areas. Large majorities of responding organisations in both the area of financial services and immovable property also consider it very or fairly important to keep the exemption under Article 3(9) UCPD.
- (4) Reasons for this conclusion of the study are the higher financial risk of financial services and immovable property, as compared to other goods and services; the particular inexperience of consumers in these areas, combined with a lack of transparency in particular of financial operations; particular vulnerabilities that occur in both sectors that make consumers susceptible to both promotional practices and pressure; existing experience of enforcement bodies with a nationally grown system; and finally the functioning and the stability of the financial markets as such. Moreover, the country reports of this study have underlined the desirability of maintaining the Member States' competence to add to the blacklist of the UCPD in order to react to country-specific unfair practices.
- (5) Also, particular vulnerabilities exist in the areas of financial services and immovable property. Consumers heavily depend on access to certain goods or services, in particular to a bank account, to credit or to accommodation. Access to essential services, or services of general interest, has been subject to sector-specific EU legislation in areas such as electricity and gas supply, telecommunications services and postal services, where special rules related to access to these services (under the concept of universal service) and to the protection of particularly vulnerable consumers have been introduced. In contrast, such specific rules do not exist yet in the areas of financial services and immovable property, and it should be open to the Member States to afford specific protection to consumers that are vulnerable due to problems in obtaining access on the basis of the free market.
- (6) Finally, the study concludes that a very important factor of unfair commercial practices law is its enforceability, and the country reports of this study as well as the survey responses of and interviews with competent authorities have established a

clear connection between the sector-specific rules (whether going beyond the standards of the UCPD or not) and enforcement issues. In fact, in many Member States financial services legislation, in particular, is enforced by specialised bodies. These bodies have great experience in applying their regimes, which have been developed over a long period of time, and they are therefore able to enforce the law. In contrast, many Member States have reported difficulties in enforcing unfair commercial practices law as derived from the UCPD, with its open-textured provisions that wait to be concretised by case law. Two elements of national rules have often been mentioned to mediate that risk: a greater level of detail, and the avoidance of the UCPD's 'transactional decision making' test that is felt to make the success of litigation less calculable. At the same time, this type of regulation increases legal certainty, as the assessment of what is allowed and what is not is easier for all sides.

- (7) The possibility of Member States to adopt or maintain stricter provisions than those in the UCPD gives them the flexibility that they need to deal with newly developed (unfair) commercial practices that react to the specifics of national legislation in the areas of financial services and immovable property, and the removal of Article 3(9) would harm well-working enforcement system and therefore lower the level of consumer protection if not in theory (due to potentially equivalent or similar levels of protection provided by the UCPD) but certainly in practice.

This study shows that most Member States have maintained or adopted legislation in the areas of financial services and immovable property that goes beyond the protective standards of the UCPD. The smallest part of that specific legislation is enshrined in unfair commercial practices law as such. Rather, unfair commercial practices law is complemented by general legislation in the area of financial services, or by sector-specific legislation that addresses certain financial services or certain issues in the area of immovable property. This complementary legislation often forms part of the public laws of the Member States and is not necessarily enforced by the same bodies that enforce unfair commercial practices law that is derived from the UCPD. Often, special authorities have been established that deal with the financial services sector in general, or with specific sectors, such as insurance. This latter type of laws do, however, fulfil equivalent or similar functions, or have equivalent or similar effects on traders as unfair commercial practices law and therefore need to be taken into account when analysing the desirability of a repeal of Article 3(9) UCPD.

Partly, the special rules in the areas of financial services and immovable property consist of prohibitions and can thus be equated with black-listed unfair commercial practices. Such prohibitions predominantly occur in the areas of direct selling and promotional practices, as well as related to practices that take advantage of special vulnerabilities; or they aim to avoid conflicts of interest. By far the larger part of special rules, however, consists of sector-specific pre-contractual and contractual information obligations. These can form part of public law, like the information obligations of the MiFID Directive do, or of contract law. They can come under different enforcement systems, or they are linked to unfair commercial practices law. The latter approach is not only reflected in Article 7(5) UCPD but also in the laws of many Member States where the breach of pre-contractual

and contractual information obligations is regarded as an unfair commercial practice – either per se or if it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers. In a lesser form, sector-specific information obligations may inform the application of general terms used in unfair commercial practices law, such as professional diligence in the terms of Article 5(2) UCPD or material information in the terms of Article 7(1) UCPD.

Since the sector-specific rules are normally not incorporated in unfair commercial practices law, they cannot be easily classified in the typology of the UCPD. Some rules clearly exceed the protective level of the UCPD. This applies to the prohibitions of practices that do not form part of the blacklist of the UCPD, but also to information obligations the breach of which is sanctioned regardless of whether or not it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers. In other cases, the country reports of this study have suggested that the results that are envisaged by sector-specific rules may also be achieved through the application of the UCPD as nationally implemented but that this has not been tested in court since in practice, only the alternative system is applied.

The country reports of this study have concluded that it would be undesirable to remove the exemptions for financial services and immovable property as enshrined in Article 3(9), and to apply the current level of protection of the UCPD in these areas. Reasons that are mentioned are the higher financial risk of financial services and immovable property, as compared to other goods and services; the particular inexperience of consumers in these areas, combined with a lack of transparency in particular of financial operations; particular vulnerabilities that occur in both sectors that make consumers susceptible to both promotional practices and pressure; existing experience of enforcement bodies with a nationally grown system; and finally the functioning and the stability of the financial markets as such. Moreover, the country reports have underlined the desirability of maintaining the Member States' competence to add to the blacklist of the UCPD in order to react to country-specific unfair practices, especially relevant for Member States that have already taken legislative action in order to address such specific practices, such as Poland. It is notable that enforcement authorities and other stakeholders responding to our survey have come to a similar conclusion. Large majorities of responding organisations in both the area of financial services and immovable property consider it very or fairly important to keep the exemption under Article 3(9) UCPD.²⁷⁹

²⁷⁹ In the area of financial services, 28 of the responding 62 enforcement authorities and other stakeholder organisations considered keeping the exemption under Article 3(9) 'very important' and 16 organisations considered this to be 'fairly important'. In contrast, only 10 organisations considered this to be 'not very important', 1 organisation found it 'not at all important' (the remaining 7 organisations had no opinion). In the area of immovable property, 12 of the responding 35 enforcement authorities and other stakeholder organisations considered keeping the exemption under Article 3(9) 'very

Indeed, such special treatment of financial services and immovable property appears to be justified at an analytical level, and it also seems to be in line with EU law and policy, in particular, in the area of financial services.

First of all, the lack of knowledge and/or experience of consumers is especially relevant in the area of financial services, because financial products are often so-called credence goods. This is a category of goods which the consumer cannot evaluate straight after the conclusion of the contract, in particular in cases where the effects of the contract only come to light much later, for example in insurance contracts. In the area of immovable property, the consumers' inexperience simply stems from the fact that the average consumer only enters into transactions related to immovable property very rarely, and many consumers only once in a life-time.

Economic theory has shown that consumers are particularly vulnerable when it comes to investment decisions. Research in 'behavioural finance' shows that investment decisions are not necessarily made according to the classical model of the rational consumer that was long assumed in economic theory. Today, there has been a paradigm shift in economics which involves the consideration of behavioural biases rather than the more conventional view of a rational 'homo economicus'. Some of the main points are the lack of stability in people's preferences, over-confidence in decision making leading to sub-optimal decisions, and the relevance of fairness instead of pure cost-benefit-analysis. These behavioural biases and cognitive heuristics may lead to bad choices and may be exploited by some traders.²⁸⁰

Inexperience, behavioural biases and the difficulties to assess the quality of a financial service in advance lead to increased need for information and advice. This has been recognised in EU legislation. For example, the Consumer Credit Directive 2008/48/EC takes into account that even with extensive information, as required by Article 5(1) and (2), the consumer may not be able to make an informed decision and therefore may need personalised advice. According to Article 5(6), Member States shall ensure that creditors and, where applicable, credit intermediaries provide adequate explanations to the consumer, in order to place the consumer in a position enabling him to assess whether the proposed credit agreement is adapted to his needs and to his financial

important' and 10 organisations considered this to be 'fairly important'. Again, only a minority of 5 organisations shared the view that keeping the exemption would be 'not very important', with 1 organisation stating that this would be 'not at all important' (again, 7 organisations had no opinion).

²⁸⁰ Both financial services and immovable property imply transactions that require making projections of costs and benefits that extend into the future. As mentioned before, they are also typically infrequent and thus, learning may not help much in correcting biases in cognition and behaviour. One may therefore expect, that a combination of time inconsistencies and hyperbolic discounting, over-confidence and availability heuristic systematically afflict consumer transactions in these two settings, well above what one may expect in other areas. For an overview of behavioural economics see the Nobel prize lecture of Kahneman, D., 'Maps of Bounded Rationality: Psychology for Behavioral Economics', *American Economic Review*, 93 (2003), 1449; for a summary treatise see Dowling, J., and Chin-Fang, Y., *Modern Developments in Behavioral Economics*, Singapore World Scientific, 2007; with a specific view to law see Sunstein, C., (ed.), *Behavioral Law and Economics*, Cambridge University Press, 2000; for an overview of behavioural economics in financial services see Chater, N., Huck, S., and Inderst, R., *Consumer Decision-Making in Retail Investment Services: A Behavioural Economics Perspective*, Study for European Commission DG SANCO, 2010.

situation, where appropriate by explaining the pre-contractual information, the essential characteristics of the products proposed and the specific effects they may have on the consumer, including the consequences of default in payment by the consumer.

In the Member States, this increased need of information and advice is reflected in a variety of protective measures, in particular in the prohibition of certain marketing practices in the areas of financial services and immovable property that are otherwise allowed, and in very specific information and advice duties.

As to specific prohibitions, two main types of measures should be mentioned: Direct selling and promotional practices. Member States have weighed the protection of the consumer's making up his or her mind over the trader's freedom to use direct selling or promotional practices.

A number of Member States have restricted direct selling practices specifically with regard to (certain) financial services. The provisions in place sometimes reflect the particular circumstances of the Member States in question; in some cases they are immediate reactions to unwanted commercial practices, as the example of the new prohibition of direct marketing of pension funds in Poland demonstrates. Generally speaking, they demonstrate the wish to protect the consumers from making hasty decisions specifically in areas where there is a perceived need of information and reflection. Member States have introduced or maintained the prohibition of direct selling practices even where EU doorstep selling law has provided for a withdrawal right (which has not applied to investment and insurance contracts), and this may be even more important in the future since the rules on off-premises contracts of the new Consumer Rights Directive 2011/83/EU does not cover financial services anymore.

For the same reasons, Member States have restricted promotional practices such as combined offers and prize games specifically in the area of financial services. These practices aim at distracting the consumer from considering the advantages and disadvantages of the main product and therefore run counter to the higher level of reflection that consumer should reasonably give to the purchase of financial services and immovable property.

As mentioned earlier, the greatest part of specific legislation consists in pre-contractual or contractual information obligations. In this context, it is worthwhile to remember that financial services are intangible legal products that are only defined by the terms of the contract; which therefore gain particular importance. The relevance of compliance or non-compliance with information obligations is well-rooted in EU unfair commercial practices law, and in particular in Article 7(5) UCPD. Within the area of information obligations, the degree of diversity, unsurprisingly, strongly depends on the degree of harmonisation through EU law. Whereas we find barely any special national provisions in consumer credit law (as far as covered by Directive 2008/48/EC, where part of the provisions of this Directive are fully harmonised and so Member States are unable to enact more prescriptive rules at the national level), the diversity is great in those services that have not undergone intense harmonisation at EU level yet, in particular mortgage credit, investment services outside the scope of the MiFID Directive 2004/39/EC and the services of financial intermediaries (other than insurance intermediaries), but also the

services of real estate agents and the sale and construction of immovable property. In these areas, Member States have often introduced protective instruments that are well-known from sector-specific EU law related to similar services, such as information on the main characteristics of the product (that may be specified in a list) or status transparency of intermediaries. Additional differences may stem from different functions that, for example, mortgage credit has in different countries, depending on their legal and social environment.

Beyond this general inexperience and need of transparency, particular vulnerabilities exist in the areas of financial services and immovable property, to which Member States have reacted. Consumers heavily depend on access to certain goods or services, in particular to a bank account, to credit or to accommodation. The importance of access to a bank account has recently been recognized by the European Commission in its Recommendation on access to a basic payment account.²⁸¹ Access to essential services, or services of general interest, has been subject to sector-specific EU legislation in areas such as electricity and gas supply, telecommunications services and postal services, where special rules related to access to these services (under the concept of universal service) and to the protection of particularly vulnerable consumers have been introduced. In contrast, such specific rules do not exist yet in the areas of financial services and immovable property, and it should be open to the Member States to afford specific protection to consumers that are vulnerable due to problems in obtaining access on the basis of the free market. Protection from tying is one instrument that falls into the category of unfair commercial practices law, and indeed we find a similar rule in EU telecommunications law.²⁸²

A very important factor of unfair commercial practices law is its enforceability and enforcement, and the country reports of this study as well as the survey responses of and interviews with competent authorities have established a clear connection between the sector-specific rules (whether going beyond the standards of the UCPD or not) and enforcement issues. In fact, in many Member States financial services legislation, in particular, is not enforced by the “normal” consumer law enforcement body but by specialised bodies, either entirely or cumulatively. These bodies have great experience in applying their regimes, which have been developed over a long period of time, and they are therefore able to enforce the law. In contrast, many Member States have reported difficulties in enforcing unfair commercial practices law as derived from the UCPD, with its open-textured provisions that wait to be concretised by case law. The situation is aggravated in Member States where the designated enforcement body risks having to bear the litigation costs. Two elements of national rules have often been mentioned to mediate that risk: a greater level of detail, and the avoidance of the UCPD’s ‘transactional decision making’ test that is felt to make the success of litigation less calculable. At the same time, this type of regulation increases legal certainty, as the assessment of what is allowed and what is not is easier for all sides.

²⁸¹ C(2011)4977 of 18/7/2011.

²⁸² Article 10 of universal service and users' rights relating to electronic communications networks and services Directive 2002/22/EC (Universal Service Directive).

Finally, an additional factor in the areas of banking, investment and insurance law is the stability of the respective systems, that is, the banking system, the capital market and the insurance market. This is the obvious reason for the important role of prudential supervision and public law in these areas; and the additional layer of enforcement mechanisms that exist in a number of Member States. However, it also seems to be the reason for special rules that are intended to keep the market clear of imprudent decisions on both the part of the consumers and the service providers.

Overall, it therefore does not seem to be recommendable to amend Article 3(9) UCPD at this time. The possibility of Member States to adopt or maintain stricter provisions than those in the Directive gives them the flexibility that they need to deal with newly developed (unfair) commercial practices that react to the specifics of national legislation in the areas of financial services and immovable property, and the removal of Article 3(9) would harm well-working enforcement system and therefore lower the level of consumer protection if not in theory (due to potentially equivalent or similar levels of protection provided by the UCPD) but certainly in practice.

Instead, if the European legislator sees a need to further promote business-to-consumer cross-border activities in the fields of financial services and immovable property through more intense harmonisation it would seem that harmonisation should first take place in the areas of pre-contractual obligations and contract law as well as at the level of prudential supervision. As the example of consumer credit law (within the ambit of Directive 2008/48/EC) shows, the diversity in the national unfair commercial practices laws will automatically be significantly reduced or even abolished as a consequence of such harmonisation measures. Other measures at EU level are already far advanced, in particular in the areas of mortgage credit and investment services,²⁸³ and candidates for further EU action might be retail banking and the services of real estate agents. Such a sector-specific approach appears to be better suited to accommodate the particularities of the financial services in question and also of immovable property and to avoid gaps in consumer protection in these areas where the risk for imprudent decisions with grave consequences is so high.

²⁸³ See, for example, the Commission proposal for a Directive on credit agreements relating to residential property, COM(2011) 142 final, and the Commission proposal for a Directive on markets in financial instruments repealing Directive 2004/39/EC, COM(2011) 656 final.

ANNEX I: Country Fact Sheets

Austria

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Federal Act Against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb, UWG*)

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- § 1 UWG, § 2 UWG Annex 1;
- § 5 Consumer Credit Act (*Verbraucherkreditgesetz*);
- § 41, § 62, § 63 Securities Supervision Act 2007 (*Wertpapieraufsichtsgesetz, WAG*);
- Relevant sections of the Capital Market Act (*Kapitalmarktgesetz, KMG*);
- § 107 (*Telekommunikationsgesetz, TKG*) concerning cold calling by email and fax;
- Relevant sections of the Consumer Protection Act (*Konsumentenschutzgesetz, KSchG*);
- § 69 Trade, Commerce and Industry Regulation Act 1994 (*Gewerbeordnung, GewO*) on government codes of conduct for certain trades;
- § 36 Austrian Banking Act (*Bankwesengesetz, BWG*) regarding duty of care towards minors.

Immovable property

- § 4 Z.2, § 4 Z.9, and § 6 Real Estate Agent Ordinance (*Verordnung des Bundesministers für wirtschaftliche Angelegenheiten über Standes- und Ausübungsregeln für Immobilienmakler, IMMV*);
- § 57 and 54 Trade, Commerce and Industry Regulation Act 1994 (*Gewerbeordnung, GewO*);
- § 3a, 30b, 30c, 31 Consumer Protection Act (*Konsumentenschutzgesetz, KSchG*).

Reasons why enforcement bodies apply these national legal provisions

The Federal Ministry of Labour, Social Affairs and Consumer Protection stated that the national provisions in the area of financial services and immovable property go beyond the level of protection provided by the UCPD, are more specific, better known and understood by enforcers and in some cases by consumers, and it is easier to obtain a result under them than the UCPD.

Relevant case law

Financial services

- Jurisdiction according to §§ 1 and 2 UWG

For example: OGH: 4 Ob 188/08p; 5 Ob 18/11z

The Supreme Court, (OGH) noted that: "advertising for investment products may also be misleading even if it does not logically contradict the prospectus. The potential for being misleading is to be examined under general unfair competition law. A formal reference to the prospectus is not sufficient to prevent potential for being misleading. Conversely, not every risk warning in the prospectus has to be included in an advertisement, and whether this is necessary depends on the circumstances of each individual case...An advertisement that is effectively directed at several groups identifiable by objective criteria must be assessed with respect to each of these groups in particular. In this case a prohibition is already justified when the commercial practice in question could potentially mislead only one average member of one of these groups and initiate a transactional decision the (fictitious) person would not otherwise have taken."

According to the Federal Ministry of Labour, Social Affairs and Consumer Protection, if it is possible to go to court using either the UWG or more specific provisions (such as breach of § 41 WAG; advertisement for bonds), taking action based on § 28a KSchG (Consumer Protection Act), the latter is preferred.

Immovable property

- Jurisdiction according to §§ 1 and 2 UWG

For example: OGH: 4 Ob 320/80

Real estate brokers must be designated in advertisements as such, and must state in their listings that they are a commercial agent within the meaning of § 259 para 1 GewO 1973.

Enforcement

Responsibility for enforcing the UCPD

Financial services

National Courts are responsible for enforcing the UCPD. The Federal Ministry of Economy, Family and Youth is responsible for implementing the Directive. If certain provisions are violated a claim for an injunction may be filed by certain bodies such as the *Verein für Konsumenteninformation* (VKI, a consumer organisation), Federal

Immovable property

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Chamber of Labour, the Federal Economic Chamber, the Presidential Conference of the Austrian Chambers of Agriculture or the Austrian Trade Union Federation.	Chamber of Labour, the Federal Economic Chamber, the Presidential Conference of the Austrian Chambers of Agriculture or the Austrian Trade Union Federation.
Means of enforcement of UCPD	
<i>Financial services</i> By private law	<i>Immovable property</i> By private law
Who can bring an action under the national legislation implementing the UCPD	
Public authorities, organisations representing consumer interests, competitors and trade associations.	
Main obstacles for enforcing unfair commercial practices legislation reported	
<i>Financial services</i> The Federal Ministry of Labour, Social Affairs and Consumer Protection stated that for misleading actions, misleading omissions and aggressive practices obstacles are not having enough money, problems of proof, and the long duration of court proceedings.	<i>Immovable property</i> None reported
Problems relating to cross-border enforcement of unfair commercial practices legislation reported	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011. Respondents: Federal Ministry of Labour, Social Affairs and Consumer Protection, Federal Ministry of Economy, Family and Youth, and European Consumer Centre Austria.
UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=AT>)
Civic Consulting Country Report Austria.

Austria

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category						Number of complaints			Financial product most frequently complained about											Evidence				Loss suffered	Actions taken											
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Life insurance	Health insurance	Motor insurance	Travel insurance	Other insurance (home, care, etc.)	Stocks or shares, bonds, derivatives, etc.	Collective investments	Private pension plans	Savings account	Current account	Mortgage	Secured loan	Credit card	Other loans (including consumer credit)	Other retail financial service	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies	Decisions or recommendations made by ADR bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
AT-FS-1	Some financial products (most often stocks and shares, bonds, derivatives) were presented as having higher interest rates and lower risks than they actually had. Other products (such as consumer credit) were sometimes shown as having a lower interest rate than they actually had once other charges were taken into account.	X		X	X			RF	RF	RF					X								X		X	X									X			X
AT-FS-2	Misleading advertising was used in the sale of financial services.			X							X			X									X		X										X		X	
AT-FS-3	Aggressive practices were used in the sale of financial services.					X																																
AT-FS-4	Insurance brokers and salespeople were not qualified to sell their products.				X																																	X
AT-FS-5	'Cold calling' was used in the sale of financial services. This is prohibited under § 107 of the Telecommunications Act 2003	X																																				

Source: Federal Ministry of Labour, Social Affairs and Consumer Protection (AT-FS-1); Federal Ministry of Economy, Family and Youth (AT-FS-2; AT-FS-3; AT-FS-4; AT-FS-5).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes. Complaints concerning stocks, shares, bonds and derivatives were 'rather frequent' whereas complaints concerning consumer credits were reported as occurring 'sometimes'.

Austria

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008	2009	2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
AT-IP-1	Essential information was either not included or was misleading in advertising for immovable property.	X				X		No	

Source: Federal Ministry of Economy, Family and Youth (AT-IP-1).

Belgium

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Legislation implementing the UCPD was enacted in June 2007, but this has now been replaced by a new law dating from April 2010: the Law of April 6 2010 on Market Practices and Consumer Protection. This law is used to implement provisions relating to both financial services and immovable property. Article 84 onwards includes both financial services and immovable property.

Other relevant implementing legislation:

- Law regarding the reform of some economic state owned companies
- Law regarding the regulation of some procedures in the framework of the law of 6 April 2010
- Procedural Code
- Royal decree regarding the changes of the complaint management in the insurance sector

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Articles 7 to 9 of the law of 12 June 1991 relating to consumer credit
- Article 31 of the law of 12 June 1991 relating to consumer credit
- Article 19 of the law of 4 August 1992 relating to mortgage credits
- Article 72 of the law of 6 April 2010 on market practices and the protection of consumers

Immovable property

- Royal Decree on certain clauses in brokerage contracts of real estate agents

Reasons why enforcement bodies apply these national legal provisions

FPS Economy, SMEs, Self-Employed and Energy and DG Enforcement and Mediation stated that the national provisions go beyond the level of protection provided by the UCPD, are more specific, and are easier to obtain a result under than the UCPD alone. These provisions are better known and understood by enforcers, businesses and consumers.

There was discussion around maintaining or introducing stricter national provisions during implementation of the UCPD. The complexity and risks in the financial services industry make this a particularly sensitive area for the consumer. Therefore, more protective measures were deemed necessary to ensure a balanced market and consumer confidence in services, the complex characteristics of which may not be fully understood by the consumer.

Relevant case law

In the field of financial services, existing case law includes:

- President of the Commercial Court of Brussels, 5 March 2008 ^(a)

The defendant launched a promotional campaign in which an interest rate of 7% on a bank account was offered, this under the condition of simultaneously buying other financial products at least for the same amount of the deposits on the bank account. Advertisements were made via the website of the defendant, through radio commercials and through leaflets. The radio commercial made no reference to the additional obligation of buying the financial products in order to obtain the 7% interest rate, and merely stated that it concerned an "offer under conditions". The consumer was, however, invited to consult all applicable conditions on the website of the bank or to contact the bank's offices. The President ordered the cessation of the offer and of all related advertising.

- Commercial Court of Brussels, 23 April 2008 ^(a)

Through various channels (including newspapers, magazines, websites, posters, barriers in public parking lots, and gadgets such as ice scrapers and calendars), the defendant made publicity for the car insurance services of its foreign affiliate. The plaintiff argued that: (1) the publicity was misleading, because the official insurance registration number of the defendant was not mentioned on every type of publicity; and (2) the defendant misled the consumer with respect to its identity and nature, because the publicity did not explicitly mention that the defendant acts as an insurance intermediary, promoting the insurance services of an affiliate. The claims were dismissed.

- Commercial Court of Antwerp, 29 May 2008 ^(a)

The defendants (an insurance company and its affiliate) made publicity for their car insurance service. As part of the publicity, they invited the consumer to visit a website (www.ingauto.be) to try out an "insurance tariff simulator" and obtain an insurance offer. While the website mentioned the possibility of increasing insurance premiums, this information was omitted in the publicity. According to the plaintiff, the omission of this information renders the advertisement to be misleading. The claim was dismissed.

- Commercial Court of Brussels, Lehman Brothers case, 2009 ^(b)

This case concerned investors who, advised by their banks, invested in structured bonds issued by Lehman Brothers. In 2009 Citibank Belgium S.A. and Deutsche Bank S.A. were brought before the Brussels Chamber of Commerce, for more than 700 Belgian investors. Concerning Citibank Belgium S.A., the collective action led to an overall settlement between the bank and the consumers, as a result of which they were able to recover between 65% and 75% of their investment. The civil proceedings for damages against Deutsche Bank S.A. are currently pending. Parallel to these civil proceedings, the Brussels public prosecutor has launched a criminal procedure.

- Decision of the Commercial Court of Brussels, 13 April 2011 ^(c)

A car manufacturer offered insurance together with the sale of a car. The judge considered that the provision was not limited to dual offers whereby all products offered need to be financial services. It is sufficient that one of the elements in the dual offer contains a financial service. The judge condemned the dual offer of insurance with the purchase of a car.

Enforcement

Responsibility for enforcing the UCPD

Financial services

Federal Public Service Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation

Immovable property

Federal Public Service Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation

Means of enforcement of UCPD

By public law and criminal law

Additionally, in the field of financial services by using ADR (as a requirement before pursuing legal remedies)

Private law can also be used: consumers may ask to terminate a contract concluded because of an unfair commercial practice.

Who can bring an action under the national legislation implementing the UCPD

Public authorities, organisations representing consumer interests, competitors, trade associations, and individual consumers

In addition, there is an ombudsman in the financial services sector.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

FPS Economy, SMEs, Self-Employed and Energy and DG Enforcement and Mediation stated that for misleading actions, misleading omissions, and aggressive practices there can be difficulties of proof and assessment of the practice with regard to the law. For other unfair commercial practices there can be difficulties of interpretation and evidence.

Immovable property

FPS Economy, SMEs, Self-Employed and Energy and DG Enforcement and Mediation stated that for all practices proof gathering is often complex.

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

In addition to the applicable law, the financial sector has developed several codes of conduct specific to its various branches (insurance, credit, banking). Most of them contain rules relating to disclosure requirements. Failure to comply with the code is considered a misleading commercial practice and can be punished.

Codes of conduct (negotiated between professional organisations and consumer organisations) include:

- A code of conduct regarding the advertising and marketing of banking or insurance products and/or services towards young people
- Codes of conduct regarding the advertising of individual savings accounts and life insurance plans

Rules of conduct (drafted by trade associations for their members) also exist. They relate to:

- The general running/functioning of the insurance company
- Intermediaries (regarding the distribution/retailing of financial

Immovable property

None reported

products, and the information insurance intermediaries have regarding their clients)

- Sale/advertising (distance marketing of financial services)
- Resolution of damage claims
- Rules of conduct specific to certain sectors (hospitalisation insurance, legal protection insurance, collaboration between mortgage brokers and notaries/solicitors).

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents: FPS Economy, SMEs, Self-Employed and Energy and DG Enforcement and Mediation

(a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=BE>)

(b) See: <http://www.deminor.fr/BE/EN/cases/lehman-brothers>

(c) Interview with Professor Jules Stuyck and information provided by the European Commission.

Belgium

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category						Number of complaints			Financial product most frequently complained about							Evidence			Loss suffered	Actions taken																	
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Life insurance	Health insurance	Motor insurance	Travel insurance	Other insurance (home, care, etc.)	Stocks or shares, bonds, derivatives, etc.	Collective investments	Private pension plans	Savings account	Current account		Mortgage	Secured loan	Credit card	Other loans (including consumer credit)	Other retail financial service	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies	Decisions or recommendations made by ADR bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
BE-FS-1	Essential information was not included in the advertising for certain financial products. Often, this meant they were not able to gain an accurate idea of the exact return of the product, as information was insufficient or non-existent as regards to the offer's conditions, charges to be paid, and other aspects. For regulated savings products and specific life insurance products, codes of conducts including a minimum number of advertising rules were developed with the sector. In many cases, banks did not comply with these rules.	X	X	X			14	8	44	X	X	X		X			X	X						X	X														X
BE-FS-2	Since 2010, many consumers have received advertisements by fax from a foreign company about investments and shares without having given their consent and without having any possibility to opt out.					X																																	
BE-FS-3	Financial institutions in Belgium did not make the risks associated with structured products from Lehman Brothers clear. This included misrepresenting them to consumers, for instance by saying there was 100% guaranteed capital at maturity; by not mentioning any risk of Lehman Brothers going bankrupt; by saying that there could be a very high profit; and in some cases by presenting them as savings products. Over 200 million Euro of structured products were sold to Belgian consumers between 2008 and 2010.	X	X	X			716	423	28	X				X										X	X													X	
BE-FS-4	Joint offers in consumer credit which prevented the price from being transparent.	X	X	X	X	X	46	14	58												X	X	X	X	X													X	

Source: FPS Economy, SMEs, Self-Employed and Energy (BE-FS-1; BE-FS-2; BE-FS-3; BE-FS-4).

Bulgaria

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The Directive is implemented in the Consumer Protection Act December 2005. Other relevant implementing legislation:

- Civil Procedure Code
- Competition Act 2008
- Electronic Commerce Act
- Obligations and Contracts Act

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

- Competition Act Article 36 (restrictions on the use of free gifts, prize competitions and other forms of sales promotions)
- Consumer Protection Act Article 67 (restriction on the use of combined offers) and Article 68 (general prohibition of any commercial practice that violates consumers economic interests or the collective interests of consumers)
- Social Insurance Code Article 123i (prohibition of organising lotteries)

These legal provisions of Article 36 Competition Act and Articles 67 and 68 Consumer Protection Act are general provisions which are not confined to the areas of financial services and immovable property.^(a)

Reasons why enforcement bodies apply these national legal provisions

Article 36 Competition Act is relatively frequently invoked because the use of special offers and promotions is perceived by competitors as a particularly hard selling technique exerting undue pressure on consumers and distorting consumer choice, especially when the value of the offer is very high.^(a)

Article 123i of the Social Insurance Code seems to be prompted by the desire to combat aggressive marketing techniques for financial services of substantial social importance for the individual.^(a)

Relevant case law

Financial services

- Decision of the Supreme Administrative Court Nr. 8364 of 27.07.2006 in case No. 11337/2003 (MZK "Evropa" v. ZD "Levski- Spartak"), confirming the decision of the Commission for Protection of Competition No. 176 of 11/11/2003 imposing sanctions on an insurance company for allowing one of its employees to register and maintain an internet site with a domain name identical with that of a competitor and with a purpose of unfairly enticing clients. The Commission for Protection of Competition established no violation of the special provisions on unfair soliciting of customers (then Article 34(1) and Article 33(1) and (2) of the Competition Act) but nevertheless found the conduct to be in conflict with the general clause on good commercial practices.
- Judgment Nr. 10841 of 03.11.2006, case Nr. 4926/2006 on the misleading character of an advertising campaign for housing loans by a major Bulgarian bank. The result was a fine of 100,000 Bulgarian Leva (approximately 50,000 Euro).

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

Commission for Consumer Protection

Immovable property

Commission for Consumer Protection

Means of enforcement of UCPD

Financial services

By public law

Immovable property

By public law

<i>Who can bring an action under the national legislation implementing the UCPD</i>	
Public authorities, organisations representing individual consumers, and individual consumers.	
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<i>Financial services</i> Companies which carry out questionable practices in Bulgaria may be linked to companies which are based in another EU Member State. However, they typically operate through a daughter company registered in Bulgaria and so cross-border enforcement is not required. ^(a)	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondent: Commission for Consumer Protection Bulgaria.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=BG>).

(a) Civic Consulting Country Report Bulgaria.

BG-FS-5	A bank presented the conditions for credit in a misleading fashion. In their advertisements, the bank described the marketed credit rate as being tied to established market indexes (such as EURIBOR) but with a 'bonus' increase. Consumers were given the impression that this increase was stable, while in fact it was flexible—the bank changed it regularly depending on market conditions. In the end, this credit offer was therefore far less attractive than initially presented.	X	X							X	X			X
BG-FS-6	A bank delayed publishing standard contract terms.	X	X								X			X
BG-FS-7	Investment firms transferred their clients' investments without their knowledge.			X	RF	RF	RF		X		X	X		
BG-FS-8	Insurance companies were reluctant to adequately and competently reimburse their clients. For example, claims were processed slowly, compensation was refused, and there were disagreements as to the level of compensation.	X			RF	RF	RF	X	X	X	X	X		X
BG-FS-9	Some elderly people were forced into signing pension plan contracts and/or were misled about the basic terms and conditions of the pension plans.	X	X							X				

Source: Commission for Consumer Protection (BG-FS-1; BG-FS-2); Civic Consulting Bulgaria Report (BG-FS-3; BG-FS-4; BG-FS-5; BG-FS-6; BG-FS-7; BG-FS-8; BG-FS-9).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Bulgaria

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints				Sector				Evidence				Loss suffered	Actions taken						
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property	Renting property	Timeshare	Don't know	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies	Other		Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
BG-IP-1	Apartments were sold to buyers in the UK and Ireland. Buyers paid in full (and some even paid a fee for transfer of the deeds) but did not receive their title deeds. In some cases apartments lacked basic services such as electricity and water. Some buyers paid for furniture from a company recommended by the developer, but only a limited amount of the fixtures and fittings paid for were ever installed. The developer ultimately abandoned the project while still owing money to the bank. The bank then attempted to sell all the apartments, including those which had already been paid for in full but for which the buyer had not received the title deeds.			X	X	X						X						X									
BG-IP-2	Misleading, incomplete, or inaccurate information was given in the sale and rental of immovable property. For example, contract terms were written in small print, information requirements were not fulfilled, or information about taxes was not given.			X	X						X	X															

Source: Information provided by European Commission (BG-IP-1); Commission for Consumer Protection (BG-IP-2).

Cyprus

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The Directive is implemented by the Unfair Business-To-Consumer Commercial Practices Law of 2007 (Law 103(I) 2007). Other relevant implementing legislation:

- The Control of Misleading and Comparative Advertising Act 2007

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

Not applicable

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

The general enforcement of the Unfair Business-To-Consumer Commercial Practices Law of 2007 is handled by the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism.

The general enforcement of the Unfair Business-To-Consumer Commercial Practices Law of 2007 is handled by the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism.

Means of enforcement of UCPD

Financial services

By public law

Immovable property

By public law

Who can bring an action under the national legislation implementing the UCPD

Public authorities and organisations representing consumer interests.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

According to the Competition and Consumer Protection Service, for misleading actions, misleading omissions, and aggressive practices an obstacle can be difficulties of proof.

Immovable property

According to the Competition and Consumer Protection Service, for misleading actions, misleading omissions, and aggressive practices an obstacle can be difficulties of proof.

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondent: Competition and Consumer Protection Service.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=CY>).

Cyprus

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category						Number of complaints			Financial product most frequently complained about											Evidence		Loss suffered	Actions taken														
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Life insurance	Health insurance	Motor insurance	Travel insurance	Other insurance (home, care, etc.)	Stocks or shares, bonds, derivatives, etc.	Collective investments	Private pension plans	Savings account	Current account	Mortgage	Secured loan	Credit card	Other loans (including consumer credit)	Other retail financial service	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies	Decisions or recommendations made by ADR bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions	
CY-FS-1	Some banks, when consumers applied for home loans, neglected to tell the consumers that developers already had mortgages from the same bank on the same land on which the consumers' property stood to be built. If a developer defaults in their payments, the bank has a priority claim over the land and, under local law, everything built on it. Consequently, even if a consumer was duly paying their own mortgage, they still stood to lose their property if the developer defaulted and the bank repossessed the land.			X	X			50	60	<150											X																		
CY-FS-2	Essential information, specifically concerning interest rates concerning loans and deposits, as well as restrictions on the minimum amount for deposits, was not included in advertising for the financial product. This applied most often to: saving accounts, credit cards, and other loans.			X	X			11	7	8							X					X	X			X	X				Don't know							X	

Source: Cyprus Property Action Group (CY-FS-1); Competition and Consumer Protection Service (CY-FS-2).

CY-IP-3	When a buyer who has not yet been transferred separate title deeds by their developer wishes or needs to "sell" their property (which is not yet legally theirs), some developers have used this opportunity to financially exploit the buyer. They have done this by either offering a "take it or leave it" financial offer for the property to the first buyer at a price that is much less than the going market rate, therefore prohibiting the buyer from the chance to make a profit on their purchase. Or developers have mandated that the buyer only sell through them, in which case the developer makes sales commission, in addition to any contract cancellation charges the developer may also charge. Or the buyer may simply have to pay significant cancellation charges—usually a percentage of the sales price. As a result of being able to make these charges on each sale, the developer has no great incentive to transfer the buyers' title deeds.		X						175	<200	<300	X																								
CY-IP-4	Developers withheld buyers' title deeds (often for many years), which allowed them to charge fees for maintenance or other services and to claim that they have paid property taxes on behalf of the buyer. Developers were able to exert such pressure on buyers for these payments by threatening to not transfer title deeds to the buyer.								325	<350	<300	X																								
CY-IP-5	Essential information was not included in advertising for certain immovable properties, namely the price was given without VAT.			X	X				0	0	0	X																								X

Source: Cyprus Property Action Group (CY-IP-1; CY-IP-2; CY-IP-3; CY-IP-4); Competition and Consumer Protection Service (CY-IP-5). *This figure refers to complaints received in both 2007 and 2008.

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Czech Republic

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The Directive is implemented by Act no. 36/2008 Coll., amending Act no. 634/1992 Coll., on protection of consumers, as amended, implemented in 2009. Other relevant implementing legislation:

- Act no. 40/1995 Coll. (Advertising Regulation Act)
- Act no. 40/1964 of Civil Code
- Act no. 480/2004 Coll. (spam regulation)

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

Not applicable

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

The Czech Trade Inspection Authority
Czech National Bank

Immovable property

The Czech Trade Inspection Authority

Means of enforcement of UCPD

Financial services

By public and private law

The ECC Czech Republic reported that currently only a natural person may be prosecuted under criminal law. Although this does not rule out the possibility that an unfair commercial practice may at the same time constitute a criminal offence (such as fraud), criminal law is not very significant in terms of unfair commercial practices.

Immovable property

By public and private law

The ECC Czech Republic reported that currently only a natural person may be prosecuted under criminal law. Although this does not rule out the possibility that an unfair commercial practice may at the same time constitute a criminal offence (such as fraud), criminal law is not very significant in terms of unfair commercial practices.

Who can bring an action under the national legislation implementing the UCPD

Public authorities

According to the ECC Czech Republic: other entities, mainly Consumer Associations, may bring civil court actions. Individuals and competitors may also bring civil court actions if an unfair commercial practice also constitutes unfair competition as defined in the Commercial Code.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

According to the Czech Trade Inspection authority timeshare sellers and resellers are often from third countries. Effective legal instruments are not available to enforce unfair commercial practices legislation when sellers are settled in non-EU countries.

Codes of conduct and self-regulation

Financial services

Code of Conduct on Relations between Banks and Clients

Mortgage Code of Conduct (ESIS)

Ethical Code of Conduct

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents included: the Czech Trade Inspection Authority, the Czech Banking Association and the European Consumer Centre Czech Republic.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=CZ>).

Czech Republic

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category						Number of complaints			Financial product most frequently complained about										Evidence			Loss suffered	Actions taken													
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Life insurance	Health insurance	Motor insurance	Travel insurance	Other insurance (home, care, etc.)	Stocks or shares, bonds, derivatives, etc.	Collective investments	Private pension plans	Savings account	Current account	Mortgage	Secured loan	Credit card		Other loans (including consumer credit)	Other retail financial service	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies	Decisions or recommendations made by ADR bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice
CZ-FS-1	Misleading information was sometimes provided about consumer credit products.	X		X	X																		X		X	X	X				Yes							
CZ-FS-2	Misleading information was sometimes provided about consumer credit products.	X		X	X																		X		X	X	X				Yes		X					
CZ-FS-3	Job applicants were sometimes made to sign up for life insurance.					X					X													X		X				Yes								

Source: European Consumer Centre Czech Republic (CZ-FS-1; CZ-FS-3); The Czech Trade Inspection Authority (CZ-FS-2).

Czech Republic

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008	2009	2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
CZ-IP-1	There were sometimes misleading practises in the selling of timeshares. For example, the prices of timeshares were not transparent.		S	S	S	X	X	Yes	

Source: European Consumer Centre Czech Republic (CZ-IP-1).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Denmark

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

- Executive Order No. 769 of 27/6 2011 on Good Business Practice for Financial Undertaking
- Executive Order No. 1253 of 24 October 2007 on Good Business Practice for Insurance Intermediaries
- Order 1084 of 14 September 2007
- Act no 1547 of 20 December 2006 amending the Danish Marketing Practices Act
- The Marketing Practices Consolidation Act 2005
- Act No. 451 of 9 June 2004 on Certain Consumer Contracts

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- The Executive Order no. 769 of 27/6 2011 on Good Business Practices
Articles 3, 4 and 5 of the Executive Order on Good Business Practices implement the UCPD, while the remaining articles include provisions which are not harmonised in the UCPD such as advice.
- § 3b and § 34b of the Insurance Contracts Act
- § 46 of the Financial Businesses Act

Immovable property

- Real Estate Transactions Act

Reasons why enforcement bodies apply these national legal provisions

According to the Danish FSA, in the area of financial services the Executive Order on Good Business Practices goes further than Article 5(2)(b) of the UCPD. The material distortion test in Article 5(2)(b) of the Directive is not applied in the Executive Order and one can in fact violate the Order without having the material distortion test. In Denmark, the material distortion test is not applied, but a more flexible regime exists, saying that a financial undertaking shall act honestly and loyally towards its customers. The expressions 'honest' and 'loyal' in this context have no specific definition in law, but they have evolved in practice. There are some guidelines to the Executive Order providing some notion of what is meant by acting loyally and honestly towards the customer. This means that the national legislation is more flexible as it is not necessary to prove that the unfair commercial practice is distorting the economic behaviour of consumers on the market.

The Consumer Ombudsman commented that Denmark has had provision on unfair commercial practices for a long time as the Marketing Practices Act dates back to 1975. Many cases and decisions of the Consumer Ombudsman regarding goods and services have been applied since then, some of which may also apply to immovable property. Danish general provisions on good marketing practices and professional diligence are more or less the same as unfair commercial practices in the Directive, though it may differ from sector to sector what is considered good marketing. This also applies to the ban on misleading practices and omissions and the use of sales promotions. For example, the information duty regarding for instance the use of sales promotions is applicable wherever the promotion applies to goods and services or immovable property. In Denmark, there have not been many problems with the implementation of the Directive, as there have been provisions for many years which are more or less the same as the UCPD, and these are well established.

Relevant case law

Financial services

The following case laws are judicial decisions of the Danish High Court:

- U.2007.2905H concerned unrequested e-mails about a computer fair sent by an IT company to addresses the IT company had received in connection with its regular sales. The company was fined.
- U.2008.161/2H concerned a law firm which was fined for violating the ban in the Marketing Practices Act on giving a discount by using coupons put at the consumer's disposal prior to a purchase.
- U.2010.2561H concerned an injunction against the marketing of a product which constituted an illegal imitation.

Immovable property

None reported

Enforcement	
<i>Responsibility for enforcing the UCPD</i>	
<i>Financial services (including financial services related to immovable properties such as mortgages)</i> Danish FSA (<i>Finanstilsynet</i>)	<i>Immovable property</i> Danish Consumer Ombudsman
<i>Means of enforcement of UCPD</i>	
<i>Financial services</i> By public law	<i>Immovable property</i> By public law
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
<p>Public authorities, ombudsman, organisation representing consumer interests, competitors, trade associations and individual consumers.</p> <p>Besides the Consumer Ombudsman organisations, firms and individuals with a 'sufficient legal interest' have standing to sue under the Marketing Practices Act.</p> <p>The Danish FSA commented that the Financial Business Act is enforced by them. The Consumer Ombudsman can take civil lawsuits including class actions to court on behalf of consumers if violation of the Good Business Practises has led to consumer detriment.</p>	
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<i>Financial services</i> The Danish FSA reported that for commercial practices which are banned in all circumstances, for misleading actions, misleading omissions, aggressive practices, and other unfair commercial practices the main obstacle is the fact that information about unfair practices is partly reported by consumers or others. The FSA conducts investigations of marketing material for example by conducting sweeps of marketing material on the internet. However new marketing material does not have to be authorised by the Danish FSA prior to the beginning of a marketing campaign. The FSA therefore also rely on consumers, competitors and the press to inform them about unfair behaviour.	<i>Immovable property</i> None reported
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> Finance and Leasing Code on best practice/good behaviour	<i>Immovable property</i> None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
Respondents: the Danish FSA, the Association of Danish Finance Houses, the Danish Bankers Association, Danish Mortgage Credit Complaint Board and the Danish Consumer Ombudsman.
UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=DK>).
Interview with Danish Consumer Council.
Civic Consulting Country Report Denmark.

Denmark

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints				Sector	Evidence					Loss suffered	Actions taken								
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property		Renting property	Timeshare	Don't know	Complaints data	Court cases		Decisions by enforcement bodies	Warnings issued by enforcement bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice
DK-IP-1	Brokers sometimes misleadingly used "was / now" prices to speed up the sale of immovable properties. Specifically, they stated that a certain immovable property was on the market now for less than it used to be, in order to give the buyer the impression they were getting a bargain. However, this "was" price is not considered relevant because this is not actually something the buyer is saving, but rather reflects stagnation in the market.			X	X			S	S	S	X			X	X				No			X					X
DK-IP-2	Brokers used sales promotions, such as "buy this house and get a car for free," which decreases transparency. This is because while the broker may state the value of the house in the deal, it is very hard to estimate the "real value" of a house, and therefore it is impossible for the consumer to tell whether they are really getting a "free car" or whether they are actually paying for the car in the (inflated) price of the			X	X			S	S	S	X			X	X				No			X				X	

Source: Danish Consumer Ombudsman (DK-IP-1; DK-IP-2).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Estonia

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

- Consumer Protection Act
- Advertising Act
- Act amending the Consumer Protection Act and the Law of Obligations Act

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Reasons why enforcement bodies apply these national legal provisions

Not applicable

Relevant case law

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Enforcement

Responsibility for enforcing the UCPD

<i>Financial services</i>	<i>Immovable property</i>
The Consumer Protection Board of Estonia	The Consumer Protection Board of Estonia

Means of enforcement of UCPD

<i>Financial services</i>	<i>Immovable property</i>
By public law	By public law

Who can bring an action under the national legislation implementing the UCPD

Public authorities

An individual consumer or a consumer association may also bring an action before the courts.^(a)

Main obstacles for enforcing unfair commercial practices legislation reported

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Codes of conduct and self-regulation

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents: The Consumer Protection Board of Estonia, completed jointly with the Estonian ECC.

(a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=EE>).

Estonia

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category						Number of complaints			Financial product most frequently complained about										Evidence				Loss suffered	Actions taken													
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Life insurance	Health insurance	Motor insurance	Travel insurance	Other insurance (home, care, etc.)	Stocks or shares, bonds, derivatives, etc.	Collective investments	Private pension plans	Savings account	Current account	Mortgage	Secured loan	Credit card	Other loans (including consumer credit)	Other retail financial service	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies	Decisions or recommendations made by ADR bodies	Other	Don't know	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
EE-FS-1	Features (other than price) relating to the financial product were not made clear.		X																				X	X						X	Don't know								X
EE-FS-2	Essential information regarding financial products and services was not included in advertising.		X																				X	X					X	Don't know									X
EE-FS-3	Risks associated with financial products were not made clear. This most often related to other loans (including consumer credit) and to currency exchange.		X				S	S	S														X	X	X	X	X		Don't know			X	X						

Source: The Consumer Protection Board of Estonia (EE-FS-1; EE-FS-2; EE-FS-3).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Estonia

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>				<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
EE-IP-1	Essential information was sometimes not included in advertising for the immovable property. This meant either bait advertising, falsely stating information about the period of time the property was available for, or not transparently representing the costs of a property.	X	S	S	S	X	X	Don't know	

Source: The Consumer Protection Board of Estonia (EE-IP-1).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Finland

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The UCPD was implemented by an amendment 561/2008 to the Consumer Protection Act (*Kuluttajansuojalaki 38/1978*), chapter 2. The amendment entered into force on the 1 October 2008. Other legislation implementing the UCPD:

- Government decree 601/2008 on practices in marketing and customer relationships considered unfair to the consumer implements the UCPD black list
- Unfair Business Practices Act 1061/1978 (this applies to business-to-business marketing practices)

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported

Immovable property

- Decree on Required Information in Housing Marketing (*Asetus asuntojen markkinoinnista annettavista tiedoista*) 130/2001
- Act on Real Estate and Housing Agency Services (*Laki kiinteistöjen ja vuokrahuneistojen välityksestä*) 1074/2000 §8-9

Reasons why enforcement bodies apply these national legal provisions

Financial services

Not applicable

Immovable property

According to the Finnish Consumer Agency and Ombudsman national provisions are more specific and better known and understood by enforcers and businesses. It is also easier to obtain a result under this legislation than the UCPD.

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

Finnish Financial Supervisory Authority (FIN-FSA), Finnish Consumer Agency and Ombudsman, Consumer Disputes Board, the Finnish Financial Ombudsman's Bureau with the Finnish Insurance, Banking and Securities Complaints Boards.

Immovable property

The Finnish Consumer Agency and Ombudsman and Regional State Administrative Agencies

Means of enforcement of UCPD

Financial services

By public law

The FIN-FSA together with the Consumer Ombudsman supervises service providers to make sure they comply with good practice in their marketing. The FIN-FSA has the right to impose administrative sanctions, including public reprimands and public warnings. The Consumer Ombudsman may bring the matter to the Market Court or issue a prohibition against continuing the illegal practices.

If individual consumers have suffered damages in specified situations, they also have the right to apply for damages caused by misleading marketing before a general court or an ADR body.

Immovable property

By public law

<i>Who can bring an action under the national legislation implementing the UCPD</i>	
<p><i>Financial services</i></p> <p>Public authorities, ombudsman, individual consumers, and organisations representing consumer interests.</p> <p>The <i>locus standi</i> of consumer organisations is only secondary to that of public authorities.</p> <p>The Finnish Consumer Agency and Ombudsman reported that consumers can apply for damages suffered, for example, from misleading information in marketing. The Consumer Ombudsman may also assist a consumer in court in individual disputes that set a precedent or are otherwise important in terms of consumers' best interests overall. The Consumer Ombudsman can file for class action and represent the plaintiffs in disputes between consumers and entrepreneurs concerning the selling and marketing of investment products.</p>	<p><i>Immovable property</i></p> <p>Ombudsman and organisations representing consumer interests</p>
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>None reported</p>	<p><i>Immovable property</i></p> <p>None reported</p>
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>None reported</p>	<p><i>Immovable property</i></p> <p>None reported</p>
Codes of conduct and self-regulation	
<p><i>Financial services</i></p> <p>The set of FIN-FSA regulations includes both legally binding regulations and recommendatory guidelines issued by FIN-FSA. Standard 2.2 on the marketing of financial services and financial instruments provides instructions for all activities aimed at promoting sales of financial services and instruments. The standard provides detailed examples of good marketing practice applied to different financial products.^(b)</p>	<p><i>Immovable property</i></p> <p>None reported</p>

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
 Respondents included: Finnish Financial Supervisory Authority (FIN-FSA) and the Finnish Consumer Agency and Ombudsman.
 (a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=FI>).
 (b) See: http://www.finanssivalvonta.fi/en/Regulation/Regulations/Financial_sector/2_Code_of_conduct/Pages/2_2.aspx.

Finland

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints				Sector	Evidence					Loss suffered	Actions taken									
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property		Renting property	Timeshare	Don't know	Complaints data	Court cases		Decisions by enforcement bodies	Warnings issued by enforcement bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
FI-IP-1	In advertising, the real prices of immovable properties are made to look lower than they are. For example, sometimes charges (for example, maintenance charges) turn out to be higher than indicated or than the consumer had reason to expect.			X	X			S	S	S	X				X	X	X			Yes	X						X	

Source: The Finnish Consumer Agency and Ombudsman (FI-IP-1).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

France

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The provisions implementing the Directive have been inserted in the French Consumer Code (*Code de la consommation*), Articles L 120-1 to L 121-7 and L 122-11 to L122-15. Some provisions have been amended in order to be in conformity with EU law (more precisely ECJ decisions) by Law 2011-525 of 17 May 2011 on simplification and improvement of the quality of law (*Loi de simplification et d'amélioration de la qualité du droit*).

- Law 2008-3 of 3 January 2008 for the development of competition for the benefit of consumers (*Loi pour le développement de la concurrence au service des consommateurs*)
- Law 2008-776 of 4 August 2008 on modernisation of the economy (*Loi de modernisation de l'économie*)

National legal provisions on commercial practices*

Overview of relevant provisions which are not based on EU legislation

Financial services

National provisions include:

- The French Monetary and Financial Code (Art. L. 312-1-2, 1) prohibits joined offers and sales with incentives for deposit and payment accounts;
- The French Consumer Code (Art. L. 311-10-1) provides that when the conclusion of a consumer credit agreement gives or may give immediate or eventual entitlement to a benefit in kind in the form of products or goods, the value of the latter shall not exceed 80 Euro;
- The French Consumer Code (Art. L.311-17) prohibits tying commercial advantages linked to a card to the use of credit linked to this card;
- Article L.312-9 of the Consumer Code indicates that a bank granting a housing loan cannot refuse another insurance contract guaranteeing either the total or partial reimbursement of the outstanding loan amount, or payment of all, or part, of the instalments for said loan than its own, when the level of guarantee is similar. Any refusal must have a clear reason behind it. Moreover, it is forbidden for the bank to modify the conditions of the rate of the loan, fixed or variable, indicated in the offer of credit, in return for its acceptance in guarantee of an insurance;
- Law 2010-737 of 1 July 2010 Consumer Credit Reform Act (*Loi portant réforme du crédit à la consommation*);
- Articles L.313-3 to L.313-5 of the Consumer Code which prohibit and sanction usurious loans;
- Article L.311-8-1 of the Consumer Code, which requires lenders to offer, at the point of sale, a redeemable credit in addition to the revolving credit to finance a product or service (credits beyond 1,000 Euro);
- Articles L.311-27 to L.311-29 of the Consumer Code laying down rules on free credit;
- Article L.311-5 of the Consumer Code, which specifies rules for the presentation of advertisements for consumer credit;
- Article L.313-15 of the Consumer Code relating to consolidation of credit.

Immovable property

- Law of 2 January 1970 and implementing decree 72-678 of 20 July 1972

Reasons why enforcement bodies apply these national legal provisions

Financial services

Tying or sales with bonuses would have to be dealt with using the general clause (Article 5) or the misleading clauses (Articles 6 and 7) of the UCPD. These clauses are ill suited to this aim. Therefore stricter provisions are required.^(a)

Immovable property

None reported

<i>Relevant case law</i>	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
Enforcement	
<i>Responsibility for enforcing the UCPD</i>	
<i>Financial services</i> The General Directorate for Fair Trading, Consumer Affairs and Fraud Control (DGCCRF) <i>Autorité de Contrôle Prudentiel (ACP)</i> <i>Autorité des Marchés Financiers (AMF)</i>	<i>Immovable property</i> The General Directorate for Fair Trading, Consumer Affairs and Fraud Control (DGCCRF)
<i>Means of enforcement of UCPD</i>	
<i>Financial services</i> By criminal law and private law	<i>Immovable property</i> By criminal law and private law
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
<i>Financial services</i> Public authorities, organisations representing consumer interests, competitors, trade associations, and individual consumers	<i>Immovable property</i> Public authorities, organisations representing consumer interests, and individual consumers
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<i>Financial services</i> DGCCRF stated that identification of traders and practices, and following-up can be problematic.	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> <ul style="list-style-type: none"> Codes of Conduct of the French Banking Federation Standards of the banking profession The French Federation of Insurance Companies and the French Asset management Association have adopted codes of conduct concerning advertising on life insurance and UCITS. Banks as retailers of these products have to comply with the provisions of these codes. Their provisions are more specific than the UCPD provisions and are adapted to the products concerned.	<i>Immovable property</i> None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents: The General Directorate for Fair Trading, Consumer Affairs and Fraud Control (DGCCRF), the French Banking Federation, *Fédération Française des Sociétés d'Assurances*, and *UFC-Que Choisir*.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=FR>).

(a) Civic Consulting Country Report France.

*Note: DGCCRF stated that national regulations related to financial services and immovable property are not 'national legal provisions on unfair commercial practices' but are texts which regulate financial services and real estate professionals, and which seek to regulate certain commercial practices that cannot be addressed using the UCPD. Therefore, for France, the word 'unfair' has been removed from the heading.

France

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints				Sector	Evidence					Loss suffered	Actions taken								
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property		Renting property	Timeshare	Don't know	Complaints data	Court cases		Decisions by enforcement bodies	Warnings issued by enforcement bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice
FR-IP-1	Misleading or missing information was given, for example room measurements were inaccurate. This occurred most often in the rental of immovable properties			X	X	X		S	S	S	X			X	X	X			Yes	X		X	X	X			

Source: The General Directorate for Fair Trading, Consumer Affairs and Fraud Control (DGCCRF) (FR-IP-1).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Germany

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

First Act Amending the Unfair Competition Act (UWG), 2008

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- German rule concerning unsolicited advertising (§ 7 UWG)
- Price Indication Regulation (sometimes also called the Decree on Price Disclosure)
- Law on Banking (*Gesetz über das Kreditwesen*), especially § 39 and § 40
- Act on the Supervision of Insurance Companies (*Gesetz über die Beaufsichtigung der Versicherungsunternehmen*), especially § 4

Immovable property

- German rule concerning unsolicited advertising (§ 7 UWG)
- Price Indication Regulation (sometimes also called the Decree on Price Disclosure)
- Accommodation Agency Act (*Wohnungsvermittlungsgesetz*)

Reasons why enforcement bodies apply these national legal provisions

According to the Federation of German Consumer Organisations the national provisions in the area of financial services are more specific.

Relevant case law

Financial services

Rulings of the Federal Court of Justice (*Bundesgerichtshof*, BGH) in cases such as: BGH, Az. I ZR 189/92 regarding cold calling by insurance companies asking consumers to upgrade contracts. BGH, Az. I ZR 86/00 regarding misleading information at cash points concerning the account balance.

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Organisations representing consumer interests such as the Federation of German Consumer Organisations (*Verbraucherzentrale Bundesverband e.V.*) and trade associations such as the Centre for Protection against Unfair Competition (*Zentrale zur Bekämpfung unlauteren Wettbewerbs e.V.*), and also other parties such as competitors and chambers of commerce, who are able to bring an action under German law.

Means of enforcement of UCPD

Financial services

By private law. There is public law enforcement of the prohibition on cold calling (§ 7 UWG).

Immovable property

By private law. There is public law enforcement of the prohibition on cold calling (§ 7 UWG).

Who can bring an action under the national legislation implementing the UCPD

Organisations representing consumer interests, competitors and trade associations.
In the area of financial services the public authority *Bundesanstalt für Finanzdienstleistungsaufsicht* (BaFin) can also bring an action.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

The Federation of German Consumer Organisations stated that for commercial practices which are banned in all circumstances a problem is lack of compensation for consumers. The consumer cannot claim compensation if they have made a contract based on a misleading advertisement. Only the Federation of German Consumer Organisations and other such qualified organisations have the possibility of profit-skimming, and this can be a risk to the organisation since the loser has to pay the litigation costs.

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents included: the Centre for Protection against Unfair Competition, and the Federation of German Consumer Organisations.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=DE>).

Civic Consulting Country Report Germany.

DE-FS-8	Consumers received letters from their insurance company stating that changes to their plan would occur unless they acted to stop this.	X	X	4	5	4	X	X	Don't know	X	X
DE-FS-9	Advertising for a financial product, investment, and/or company misleadingly stated that said entity was approved and controlled by the German government's responsible inspection authority (BaFin).	X	X	X	5	8	10	X X X X	X	Don't know	X
DE-FS-10	The imprint text of companies in financial services contained misleading omissions and/or false information. Imprint text is the legally required information on websites and correspondence that gives details such as registered address, tax numbers, copyright information, trademark information, and contact details. This occurred most often for companies that sell: health insurance, other insurance (home, care), stocks or shares, bonds, derivatives, collective investments, private pension plans, savings accounts, and current accounts.	X			15	20	20	X X X X X X	X	Don't know	X
DE-FS-11	Companies misleadingly stated, in advertising, that they were a bank or insurance company.	X	X		0	0	0	X X X X	X	Don't know	X

Source: Centre for Protection Against Unfair Competition (DE-FS-1; DE-FS-5; DE-FS-6; DE-FS-7; DE-FS-8; DE-FS-9; DE-FS-10; DE-FS-11); The Federation of German Consumer Organisations (VZBV) (DE-FS-2; DE-FS-3; DE-FS-4).

Germany

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints				Sector	Evidence					Loss suffered	Actions taken								
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property		Renting property	Timeshare	Don't know	Complaints data	Court cases		Decisions by enforcement bodies	Warnings issued by enforcement bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice
DE-IP-1	Some advertising about the prices of houses either did not mention or did not have transparency around the cost of the estate agents's commission (normally between 3 and 7% of the price of the house). The fact that there is an additional cost is always supposed to be at least mentioned in advertising.			X	X			15-20	15-20	15-20	X				X					Don't know				X			X
DE-IP-2	In the rental and buying of houses, some estate agents have misled consumers by either not stating they are agents (which they are required to do by law) or by advertising the property with only a telephone number. This can give consumers the impression they are not dealing with professional agents but with private persons, which is	X		X	X			15-20	15-20	15-20	X				X					Don't know				X			X
DE-IP-3	Consumers received unsolicited telephone calls, e-mails, and faxes without prior consent, most often about the buying of properties. For example, some consumers received unsolicited e-mail newsletters.					X		~10	~10	~10	X				X					Don't know				X			X
DE-IP-4	Companies, most often those renting properties, did not have a complete imprint by the standards of the E-Commerce Directive and § 5 TMG (<i>Telemediengesetz</i>). This related to the online environment over 50% of the time.					X		10-15	10-15	10-15		X			X					Don't know				X			X

Source: Centre for Protection Against Unfair Competition (DE-IP-1; DE-IP-2; DE-IP-3; DE-IP-4).

Greece

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

In Greece the Directive is incorporated in the law 2251/1994, articles 9a-9i, (as amended by law 3587/2007) on Consumer Protection.

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Law 3758/2009

The purpose of this law is to focus on unfair and aggressive practices of companies when communicating with debtors.

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

Financial services

According to the General Secretariat of Consumer Affairs, the national provisions in the area of financial services are more specific and that they are better known by enforcers. It is easier to obtain a result under this legislation than the UCPD.

Immovable property

Not applicable

Relevant case law

Financial services

- Ombudsman of the Consumer 9th of December 2010 (Protocol No 2853)^(a)

The Ombudsman of the Consumer received a number of oral complaints from consumers stating that several insurance companies delayed payments of money they owed to consumers.

The Ombudsman of the Consumer recommended to all insurance companies established in Greece to:

- provide clear and understandable information to the consumers regarding the necessary supporting documents that they have to provide in order to receive payment on time,
- proceed to the immediate and on-time payment of the amounts of money due, and
- in case of a delay of payment, to pay the corresponding interest.

- Ombudsman of the Consumer 16th of December 2009 (Protocol No 3990)^(a)

A consumer had submitted a complaint to the Ombudsman of the Consumer claiming that the defendant (an insurance company) denied paying the amount of 2,475 Euro regarding submitted invoices for the repair of his vehicle after an accident. The consumer argued that the insurance contract signed by the parties, which was valid at the time of the accident, included coverage of the vehicle's own damages. The insurance company argued that for a vehicle's own damages, the insurance company's liability was limited to the insurance amount that existed at the day of the damage. From this amount, any amount paid during each insurance period was removed, so that only the rest remained as the insured amount. For this reason, the insurance company argued that the consumer was entitled to only 321 Euro. The Ombudsman recommended the insurance company to pay the remaining amount.

- Ombudsman of the Consumer 28th of December 2009 (Protocol No 4084)^(a)

The Ombudsman received reports from consumers against the defendant (a financial institution) asking for reimbursement of the money they had invested in titles of Lehman Brothers. The plaintiffs received from the defendant investment papers that were issued by Lehman Brothers Treasury Co. B. V. and guaranteed by Lehman Brothers Holding Inc. The consumers wanted to use the money and did not want to risk the loss of any part of their capital. The defendant argued that it acted merely as a distributor of the titles, receiving and sending the orders of the titles purchased to the issuer. In addition, the defendant claimed that it provided investment advice only in those cases where the client did not proceed to the purchase of the titles with his own liability and initiative. On September 2008, however, Lehman Brothers Holding Inc was declared bankrupt and the titles of the plaintiffs lost their value. The consumers argued that, based on the existing relationship of trust with the defendant, the employees of the defendant, using misleading methods, convinced them to sign unclear applications of titles purchase. In these applications, many other legal persons were mentioned too, whose role was not clear to the consumers. The applications also referred to different types of risks, without explaining these risks to the consumers. Finally, those applications were not handed over to the consumers so as to carefully study them. The Ombudsman of the Consumer recommended the defendant to compensate the consumers for the damage incurred.

- Recommendation no 1/03-05-2008^(a)

The National Board of Radio and Television conducted on its own initiative checks regarding television advertisements for banking products that were broadcast in February 2008. For most advertisements, it was found that the additional charges on the advertised banking products (which altered the final price of the initial offer) were presented separately from the main message, in a rolling tape at the lower part of the screen. The size and the speed of the characters of these tapes made it almost impossible for the viewers to read the information. At the same time, the message misleadingly created the impression of an extremely profitable

offer. The National Board of Radio and Television recommended to the TV stations (without imposing a penalty) to comply with the UCP rules.

- Unsolicited credit cards case^(b)

The Hellenic Consumer Ombudsman initiated an investigation ex officio following some complaints from consumers, who reported that they were sent (by post) credit cards in their name, without having previously asked the bank to do so. It was revealed that this commercial practice on behalf of banks is of a relatively small scale, still though the negative consequences and the potential financial risks for consumers are considerable and need to be tackled. In this light, the Ombudsman issued a public recommendation to the bank sector as a whole, stressing on the one hand the need to protect consumers against unsolicited goods and services, and highlighting on the other hand the obligation of banks to supply their financial products only to clearly consenting customers.

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

Ministry of Labour and Social Security (General Secretariat for Consumer Affairs)

Immovable property

Ministry of Labour and Social Security (General Secretariat for Consumer Affairs)

Means of enforcement of UCPD

Financial services

By private law and using ADR
Public law (to the extent that Law 2251/94 imposes administrative fines)

Immovable property

By private law and using ADR

Who can bring an action under the national legislation implementing the UCPD

Organisations representing consumer interests and individual consumers

According to the General Secretariat of Consumer Affairs, actions can also be brought by commercial, industrial, handcraft and professional chambers.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

Code of Conduct for the advertising of financial products and services offered by credit institutions:
The Code specifies that the marketing of financial products or services by telephone is acceptable only within a specific timeframe, that consumer consent is required and the caller ought to respect the consumer's wishes and not be persistent.

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents: General Secretariat of Consumer Affairs and the Hellenic Bank Association.

Hellenic Consumer Ombudsman

(a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=GR>).

(b) Hellenic Consumer Ombudsman

Greece

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints	Sector	Evidence	Loss suffered	Actions taken
	No common unfair commercial practice is reported.	<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>

Hungary

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

- Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices 2008
- Act No. 48 of 2008 on Basic Requirements and Certain Restrictions of Commercial Advertising

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

Not applicable

Relevant case law

Financial services

The resolutions of the Competition Council, the resolutions of the Hungarian Financial Supervisory Authority, and decisions of Courts, resolutions of the Competition Council.

Immovable property

The resolutions of the Competition Council and decisions of Courts

Enforcement

Responsibility for enforcing the UCPD

Financial services

Hungarian Competition Authority
Hungarian Financial Supervisory Authority

Immovable property

Hungarian Competition Authority
Hungarian Authority for Consumer Protection

Means of enforcement of UCPD

By public law and private law

According to the Authority for Consumer Protection, under the Hungarian act transposing the UCPD (UCP Act) administrative proceedings do not prevent injured parties from enforcing civil law claims, which are based on the unfairness of a commercial practice, directly before a court. In court proceedings the burden of proof relating to the authenticity of any fact comprising a part of commercial practices lies with the business entity. However where there are no specific court actions to enforce the UCPD, a general claim for civil damages can be filed.

Who can bring an action under the national legislation implementing the UCPD

Financial services

Public authorities

Immovable property

Public authorities

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

The Hungarian Competition Authority reported that for commercial practices which are banned in all circumstances problems with enforcement do not depend on the type of the infringement, but relate to the proceeding itself.

Immovable property

The Hungarian Competition Authority reported that for commercial practices which are banned in all circumstances problems with enforcement do not depend on the type of the infringement, but relate to the proceeding itself – for example there is a judicial review of the resolutions - if the client is not from Hungary the enforcement is generally more difficult, especially if he or she is a non-EU citizen. There can also be problems if the firm will be wound up and there is not any legal successor.

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

According to the Hungarian Competition Authority if the client is not from Hungary, the proceeding is generally longer, more complicated, more expensive and might not be successful,

Immovable property

According to the Hungarian Competition Authority if the client is not from Hungary, the proceeding is generally longer, more complicated, more expensive and might not be successful,

meaning it is difficult to find enough proof to establish the illegal conduct.
According to the Hungarian Financial Supervisory Authority, finding proof for a cross-border case is a longer and more complicated process.

meaning it is difficult to find enough proof to establish the illegal conduct.

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
Respondents: Hungarian Competition Authority and Hungarian Authority for Consumer Protection.
Information from the Hungarian Financial Supervisory Authority, December 2011.
UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=HU>).

Hungary

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints				Sector	Evidence					Loss suffered	Actions taken									
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property		Renting property	Timeshare	Don't know	Complaints data	Court cases		Decisions by enforcement bodies	Warnings issued by enforcement bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
HU-IP-1	When selling houses, misleading information was given leading the consumer to assume that they would not have to pay for certain expenses related to the property (for example, conservation, renovation) but instead those would be borne by the selling party (a bank, an investor, and so on). In fact, the consumer did need to bear these costs.			X				1	0	1	X					X				Yes			X					
HU-IP-2	Some traders did not provide the necessary information for consumers who were considering timeshare contracts. For example, information on the right of withdrawal was missing and there was no transparent information on prices.				X			S	1	1		X		X	X					Yes			X					
HU-IP-3	Advertising around the selling of immovable properties made false statements, for example that the consumer could buy the property with cash within 30 days.			X				0	1	1	X			X	X					Yes			X					

Source: Hungarian Competition Authority (HU-IP-1; HU-IP-3); Hungarian Authority for Consumer Protection (HU-IP-2).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Iceland

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Act no 50/2008, amending Act no 57/2005 on the surveillance of unfair business practices and market transparency (*Lög nr. 57/2005, um eftirlit með viðskiptaháttum og markaðssetningu*).

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported

Immovable property

None reported

Reasons why enforcement authorities apply these national legal provisions

Not applicable

Relevant case law

Financial services

None reported

Immovable property

The Consumer Agency's formal decision no 12/2006 concerning surcharge of a real estate agent when concluding the contract for the purchase of a property. The Consumer Agency decided that without the consent of the consumer for such billing the estate agent could not demand such a surcharge.

Enforcement

Responsibility for enforcing the UCPD

Financial services

The Icelandic Consumer Agency

Immovable property

The Icelandic Consumer Agency

Means of enforcement of UCPD

Financial services

By public law

Immovable property

By public law

Who can bring an action under the national legislation implementing the UCPD

The Icelandic Consumer Agency

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
Respondent: Icelandic Consumer Agency.

Iceland

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category	Number of complaints			Financial product most frequently complained about										Evidence	Loss suffered	Actions taken				
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008	2009	2010	<i>Life insurance</i> <i>Health insurance</i> <i>Motor insurance</i> <i>Travel insurance</i> <i>Other insurance (home, care, etc.)</i> <i>Stocks or shares, bonds, derivatives, etc.</i> <i>Collective investments</i> <i>Private pension plans</i> <i>Savings account</i> <i>Current account</i> <i>Mortgage</i> <i>Secured loan</i> <i>Credit card</i> <i>Other loans (including consumer credit)</i> <i>Other retail financial service</i> <i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Decisions or recommendations made by ADR bodies</i> <i>Other</i>	<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other body</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>															
IS-FS-1	Advertising for certain financial products was misleading. There were misleading omissions in the advertising for certain consumer credit products and there were misleading actions in the advertising for certain insurance products.	X X	203	401	176	X	X	X	X	X	X	X	X	X	Don't know	X						

Source: Icelandic Consumer Agency (IS-FS-1).

Iceland

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints	Sector	Evidence	Loss suffered	Actions taken
	No common unfair commercial practice is reported.	<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>

Ireland

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

- Consumer Protection Act 2007
- European Communities (Misleading and Comparative Marketing Communications) Regulations 2007

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Consumer Protection Code 2006
- Consumer Protection Code for Licenced Moneylenders 2009
- Code of Conduct for Business Lending to Small and Medium Enterprises 2009
- Code of Conduct on Mortgage Arrears 2010

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

The Central Bank of Ireland reported that the national provisions in the area of financial services go beyond the level of protection provided by the UCPD, and are more specific.

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

The Central Bank of Ireland
National Consumer Agency

Immovable property

The Property Services Regulatory Authority, who commented that they will set and enforce standards of practice as well as requiring licensees to have professional indemnity insurance and will establish a compensation fund (of at least two million Euro) to compensate consumers who suffer a loss due to dishonesty of licensees. However, the legislation to establish this authority is currently progressing through the Irish Parliament and the authority has yet to start enforcement of that legislation.

Means of enforcement of UCPD

Financial services

By public law

Immovable property

By public law

Who can bring an action under the national legislation implementing the UCPD

Public authorities, organisations representing consumer interests, and individual consumers.

In the field of financial services, the Central Bank of Ireland reported that they have the power to impose sanctions on regulated entities, including caution, reprimand and imposition of monetary penalties, in circumstances where a contravention of relevant legislation has been committed. Accordingly, contravention by regulated entities of relevant provisions of the Consumer Protection Act 2007 may be subject to investigation and imposition of sanctions pursuant to the Administrative Sanctions Procedure. Where breaches of certain sections of the Consumer Protection Act 2007 constitute a criminal offence, and where either the National Consumer Agency or the Central Bank of Ireland have the power to refer cases to the Director of Public Prosecutions (DPP) when they have reasonable grounds for suspecting that an indictable offence may have been committed, the DPP would undertake the prosecution of suspected indictable offences.

In the field of immovable property, the Property Services Regulatory Authority, when established on a statutory basis, will accept complaints against estate agents and letting agents.

<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>According to the Central Bank of Ireland, to date the provisions of the UCPD have not formed the basis of an enforcement action by the Central Bank of Ireland in relation to the financial services area. The Central Bank has however taken enforcement actions under the national Consumer Protection Code.</p>	<p><i>Immovable property</i></p> <p>None reported</p>
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>The Central Bank of Ireland reported that they have not yet used the consumer protection cooperation system.</p>	<p><i>Immovable property</i></p> <p>None reported</p>
Codes of conduct	
<p><i>Financial services</i></p> <p>The codes of conduct listed below are issued under statute by the Central Bank of Ireland and are not self-regulatory:</p> <ul style="list-style-type: none"> • Consumer Protection Code 2006 • Consumer Protection Code for Licensed Moneylenders 2009 • Code of Conduct for Business Lending to Small and Medium Enterprises 2009 • Code of Conduct on Mortgage Arrears 2010 	<p><i>Immovable property</i></p> <p>None reported</p>

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents: the Central Bank of Ireland and the Property Services Regulatory Authority.

(a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=IE>).

Ireland

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category	Number of complaints	Financial product most frequently complained about	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Life insurance</i> <i>Health insurance</i> <i>Motor insurance</i> <i>Travel insurance</i> <i>Other insurance (home, care, etc.)</i> <i>Stocks or shares, bonds, derivatives, etc.</i> <i>Collective investments</i> <i>Private pension plans</i> <i>Savings account</i> <i>Current account</i> <i>Mortgage</i> <i>Secured loan</i> <i>Credit card</i> <i>Other loans (including consumer credit)</i> <i>Other retail financial service</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Decisions or recommendations made by ADR bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other body</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
IE-FS-1	A mortgage firm failed to act with due diligence, which constituted breaches of the Consumer Protection Code and Consumer Credit Act. Specifically, for example, it failed to provide consumers with details of all charges, including third party charges prior to providing a service. Note that while it may appear that a firm which has breached the Irish Consumer Protection Code could be considered to have engaged in an unfair practice under the UCPD, the actions taken in these cases were taken under the Code provisions rather than under the national implementation legislation of the UCPD.	X		X		X Don't know	X

IE-FS-2	<p>A bank failed to act with due diligence and to employ effective checks and controls, which constituted breaches of the Consumer Protection Code. Specifically, it applied interest to consumer credit card accounts in error. These breaches occurred during the period July 2007 to October 2009 and resulted in 373,105 customer accounts being overcharged a total of 16,997,321 Euro. The Central Bank reprimanded the firm and required it to pay a monetary penalty of 750,000 Euro. Affected consumers were also refunded. The Central Bank of Ireland has marked "Don't know" if loss was suffered since the consumers were ultimately refunded. Note that while it may appear that a firm which has breached the Irish Consumer Protection Code could be considered to have engaged in an unfair practice under the UCPD, the actions taken in these cases were taken under the Code provisions rather than under the national implementation legislation of the UCPD.</p>	X		X	X	Don't know	X
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Source: Central Bank of Ireland (IE-FS-1; IE-FS-2).

Ireland

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints	Sector	Evidence	Loss suffered	Actions taken
	No common unfair commercial practice is reported.	<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>

Italy

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

- Legislative Decree No 146 of 2 August 2007 modified the Italian Consumer Code to implement the UCPD
- Legislative Decree No. 145 of 2 August 2007 (implements Article 14 of the UCPD)
- Legislative Decree No. 221 of 23 October 2010

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Legislative Decree No 385/1993 (TUB) for banking products, concerning transparency, information to consumer and firms behaviour
- Legislative Decree No 58/1998 (TUF) for financial instruments and investment services and activities, concerning transparency, information to be provided to consumers, and investment firms' behaviour
- Legislative decree No. 209/2005 (PIC): Private Insurance Code
- Article 36-*bis* of Law n. 214 of 22 December 2011
- Regulations enacted by ISVAP
- Regulations enacted by CONSOB
- Regulations enacted by the Bank of Italy

Immovable property

Legislative Decree No 122 of 20 June 2005

Reasons why enforcement bodies apply these national legal provisions

The Italian Competition and Market Authority (AGCM) stated that in the area of financial services, the national legislation lays down particular standards of behaviour for professionals to follow in order to protect the consumer. The national provisions regulate behaviour *ex ante* and in detail, over a wide range of matters. This is needed to provide consumers with adequate protection and information standards. Moreover, national provisions can help define UCPD requirements such as 'professional diligence' or the prohibition of imposing 'disproportionate...barriers...where a consumer wishes to switch to another trader'.

Relevant case law

Financial services

According to AGCM, the most important cases regarding consumer credit are from 2008 when there were 20 decisions about portability. These were linked to Law 40 of 2007 concerning bank switching.

Some of the most important cases are:

- PS1191 *Portabilità' Mutuo Unicredit*
- PS705 *BNL Contratto di Mutuo*
- PS2167 *BNL Chiusura Conto*
- PS6758 *Cofidis Prestito Revolving*
- PS1311 *Fiditalia Carta Eureka*
- PS2167 *BNL Chiusura Conto*
- PS4126 *Barclays Bank Rata di Cauzione*
- PS5371 *INA Assitalia Polizze Assicurative*

Immovable property

- AGCM, *Provvedimento* n. 21952 of 22nd December 2010 (case n. PS4312 – *Immobildream. Complesso immobiliare Polis*)
- AGCM, *Provvedimento* n. 19757 of 16th April 2009 (case n. PS1363 – *Raffaello e Michelangelo. Vendita ville Roddolo*)
- AGCM, *Provvedimento* n. 18116 of 6th March 2008 (case n. PI6459 – *GM Immobiliare. Villa tri livelli*)
- AGCM, *Provvedimento* n. 21543 of 8th September 2010 (case n. PS3553 – *Valpadana Costruzioni*)
- AGCM, *Provvedimento* n. 21009 of 14th April 2010 (case n. PS1437 – *Papillo. Immobili Roma Aurelia*)

Enforcement

Responsibility for enforcing the UCPD

Financial services

Competition and Market Authority (*Autorità Garante della*

Immovable property

Antitrust Authority (*Autorità Garante della Concorrenza e del*

<i>Concorrenza e del Mercato)</i>	<i>Mercato)</i>
Means of enforcement of UCPD	
<i>Financial services</i> By public law	<i>Immovable property</i> By public law
Who can bring an action under the national legislation implementing the UCPD	
Public authorities, ombudsman, organisations representing consumer interests, competitors, trade associations, and individual consumers	
Main obstacles for enforcing unfair commercial practices legislation reported	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
Problems relating to cross-border enforcement of unfair commercial practices legislation reported	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> Common Principles for bank account switching (issued by the European Banking Industry Committee, EBIC). The EBIC Common Principles for bank account switching – the compliance of which is monitored by <i>Associazione Bancaria Italiana</i> in Italy – provides specific obligations for banks, in order to facilitate personal current account switching.	<i>Immovable property</i> None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011. Respondents: Antitrust Authority (AGCM), Associazione Bancaria Italiana, and Associazione Nazionale fra le Imprese Assicuratrici (ANIA). UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=IT>). Civic Consulting Country Report Italy.

Italy

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008	2009	2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
IT-IP-1	Advertising regarding immovable property was misleading in some cases. For example, sometimes the cost of the property included in the advertising was not the real one. Sometimes the location of the property that was given was not accurate.		<10	<10	<10	X	X	Yes	X

Source: Competition and Market Authority (AGCM) (IT-IP-1).

Latvia

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The UCPD in the fields of financial services and immovable property is implemented by the Unfair Commercial Practices Prohibition Law. The Law was implemented on 1st January 2008. Other legislation implementing the UCPD:^(b)

- Advertising Law
- Criminal Law
- Latvian Code of Administrative Offenses

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Law on State Funded Pensions (section 111)
- Law on Investments Companies (section 59)
- Regulations of Cabinet of Ministers (28 December 2010) No.1219 'Consumer credit regulations'

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

The Consumer Rights Protection Center stated that the national provisions in the area of financial services are more specific. They provide a higher level of protection of consumer rights.

Not applicable

Relevant case law

Financial services

None reported

Immovable property

Not applicable

Enforcement

Responsibility for enforcing the UCPD

Financial services

The Consumer Rights Protection Center

Immovable property

The Consumer Rights Protection Center

Means of enforcement of UCPD

By public law and criminal law

According to Criminal Law Section 211 (Unfair Competition, Misleading Advertising and Unfair Commercial Practices), "for a person who commits an offence relating to unfair competition, misleading advertising or unfair commercial practices, if commission of such offences is repeated within a one-year period, the applicable punishment is deprivation of liberty for a term not exceeding two years or community service, or a fine not exceeding eighty times the minimum monthly wage, with or without deprivation of the right to engage in entrepreneurial activity for a term of not less than two years and not exceeding five years."^(a)

Who can bring an action under the national legislation implementing the UCPD

Public authorities, organisation representing consumer interests, and individual consumers

In accordance with the Unfair Commercial Practices Prohibition Law (Article 15), and the Advertising Law (Article 14), any person may file an administrative complaint with the competent authority and ask them to take necessary actions to stop violations of the law.^(b)

Main obstacles for enforcing unfair commercial practices legislation reported

The Consumer Rights Protection Center stated that for all practices: the Directive has a broad range of interpretation options. Sometimes it is difficult to assess, for instance, whether unfair commercial practices are misleading or contrary to professional diligence.

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: (a) Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents included: Consumer Rights Protection Center.

(b) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=LV>).

Latvia

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints	Sector	Evidence	Loss suffered	Actions taken
	No common unfair commercial practice is reported.	<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>

Lithuania

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The Directive is implemented by the Law on Prohibition of Unfair Business-to-Consumer Commercial Practices and the Law on Advertising.

The Law on Prohibition of Unfair Business-to-Consumer Commercial Practices was adopted in December 2007 solely for the implementation of the UCPD.

The Law on Advertising was adopted in 2000, but in 2008 Articles 1, 2, 5, 6, 12, 17, 18, 22, 23, 24, and 25 of the this law were amended in order to align the provisions concerning misleading and comparative advertising with the provisions of the UCPD.^(a)

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

In Lithuania there is a general ban on comparative advertising. This applies across all sectors and is most often enforced by the Competition Council.

Reasons why enforcement bodies apply these national legal provisions

Financial services

Not applicable

Immovable property

Not applicable

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services and immovable property:

The general enforcement of the Law on Prohibition of Unfair Business-to-Consumer commercial practices (except the provisions concerning misleading and comparative advertising) is handled by the State Consumer Rights Protection Authority which controls compliance with the provisions of this law. The enforcement of the provisions concerning misleading and comparative advertising regulated in the Law on Prohibition of Unfair Business-to-Consumer commercial practices and the Law on Advertising is handled by the Competition Council which ensures advertising is not misleading. Comparative advertising is not permitted in accordance with the procedure laid down in the Law on Advertising and the Law on Competition.^(a)

From 1 January 2012 the control and supervision of all financial services rests with the Bank of Lithuania.

Means of enforcement of UCPD

Financial services

By public law

Immovable property

By public law

Who can bring an action under the national legislation implementing the UCPD

Administrative complaints to the State Consumer Rights Protection Authority concerning infringements of the provisions of Law on Prohibition of Unfair Business-to-Consumer commercial practices (except the provisions concerning misleading or comparative advertising) can be filed by consumers, state and municipal institutions and agencies and consumer associations. The State Consumer Rights Protection Authority also has a right to initiate investigation procedures on the infringements of this law on its own initiative.

Administrative complaints to the Competition Council concerning misleading or comparative advertising can be filed by undertakings having a legitimate interest, entities of public administration, associations, or unions representing the interests of undertakings or consumers. The Competition Council also has a right to initiate investigation procedures on infringements concerning misleading and comparative advertising on its own initiative. Even though there is no provision explicitly stating that an application can be filed by consumers, in practice consumers can complain to the Competition Council. In this case, the Competition Council initiates the procedure itself.^(a)

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondent: State Consumer Rights Protection Authority.

(a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=LT>).

Lithuania

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category	Number of complaints	Financial product most frequently complained about	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Life insurance</i> <i>Health insurance</i> <i>Motor insurance</i> <i>Travel insurance</i> <i>Other insurance (home, care, etc.)</i> <i>Stocks or shares, bonds, derivatives, etc.</i> <i>Collective investments</i> <i>Private pension plans</i> <i>Savings account</i> <i>Current account</i> <i>Mortgage</i> <i>Secured loan</i> <i>Credit card</i> <i>Other loans (including consumer credit)</i> <i>Other retail financial service</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Decisions or recommendations made by ADR bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other body</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
	No common unfair commercial practice is reported.						

Lithuania

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken					
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>				<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>					
LT-IP-1	Essential information was not included in the advertising for immovable properties. Most often, this related to timeshare properties.	X	X	X	X	5	2	3	X	X	X	Yes	X	X

Source: The State Consumer Rights Protection Authority (LT-IP-1).

Luxembourg

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The UCPD was transposed into national legislation by provisions set down in the Consumer Code (Article L111-1 onwards, especially L121-1. to L.122-8) by Law of 8 April 2011.

The *Commission de Surveillance du Secteur Financier* (CSSF) also consider Article L320-2 regarding actions which can be taken to stop unfair commercial practices important.

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported*

Immovable property

National provisions concerning unsolicited commercial communications (such as phone, mail) and doorstep selling (Articles L.122-7. 2 and 3 of the Consumer Code).

Reasons why enforcement bodies apply these national legal provisions

The CSSF operates a strict regime in the sector of financial services, but this work relates to aspects which are outside the scope of this study. In terms of unfair commercial practices the national implementation of the UCPD is the applicable legislation.

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

Commission de Surveillance du Secteur Financier
Commissariat aux Assurances (for the insurance sector)

Immovable property

Ministère de l'Économie et du Commerce extérieur

Means of enforcement of UCPD

Mainly by public law. CSSF reported that private law and criminal law may also be used in some cases. However, these are general provisions which do not relate specifically to unfair commercial practices.

Who can bring an action under the national legislation implementing the UCPD

Public authorities, organisations representing consumer interests, competitors, trade associations, and individual consumers.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondents: Commission de Surveillance du Secteur Financier, European Consumer Centre Luxembourg, Ministère de l'Économie et du Commerce extérieur.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=LU>).

Note: *The CSSF reported that the Consumer Code contains a faithful copy-out of the UCPD and does not contain provisions regarding unfair commercial practices which go further than the UCPD.

Malta

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The Directive was implemented by Act II of 2008 which amended the Consumer Affairs Act (Chapter 378 of the Laws of Malta). Act II of 2008 introduced Part VII in the Consumer Affairs Act which deals with Unfair Commercial Practices and Illicit Schemes. Other relevant implementing legislation:

- Commercial Code (Chapter 13 of the Laws of Malta)
- Distance Selling (Retail Financial Services) Regulations (330.07)
- Distance Selling Regulations (378.08)

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Malta Financial Services Authority Act – Chapter 330 Laws of Malta
- Investment Services Act - Chapter 370 Laws of Malta
- Insurance Business Act – Chapter 403 Laws of Malta
- Insurance Intermediaries Act - Chapter 487 Laws of Malta
- Banking Act – Chapter 371 Laws of Malta
- Financial Institutions Act – Chapter 376 Laws of Malta

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

According to the Malta Financial Services Authority, the national provisions in the area of financial services are more specific and better known and understood by enforcers, businesses, and consumers. The national provisions are also more sector-specific and tend to include every aspect of financial services including consumer protection and consumer redress.

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Malta Competition and Consumer Affairs Authority, Consumer Affairs Directorate

Means of enforcement of UCPD

Financial services

By public law

Immovable property

By public law

Who can bring an action under the national legislation implementing the UCPD

Public authorities, ombudsman, organisations representing consumer interests, and individual consumers.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

According to the Malta Financial Services Authority, the problems encountered relate to different languages and different business practices.

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting survey on the application of Directive 2005/29/EC in financial services, May 2011. Respondent: Malta Financial Services Authority.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=MT>).

Malta

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category	Number of complaints			Financial product most frequently complained about										Evidence	Loss suffered	Actions taken																
		Banned commercial practice which is included in the Black List (Annex I) of the UCPCD Practice banned in my country, but not included in the Black List (Annex I) of the UCPCD Misleading action Misleading omission Aggressive practice Other unfair commercial practice	2008	2009	2010	Life insurance	Health insurance	Motor insurance	Travel insurance	Other insurance (home, care, etc.)	Stocks or shares, bonds, derivatives, etc.	Collective investments	Private pension plans	Savings account	Current account	Mortgage	Secured loan	Credit card	Other loans (including consumer credit)	Other retail financial service	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies	Decisions or recommendations made by ADR bodies	Other		Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
MT-FS-1	Some consumers were given bad advice and sold a financial product that was not suitable to them. This occurred most often in relation to collective investments.		54	51	30	X	X	X	X		X										X		X			Yes				X	X	X		

Source: Malta Financial Services Authority (MT-FS-1).

Malta

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints	Sector	Evidence	Loss suffered	Actions taken
	No common unfair commercial practice is reported.	<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>

The Netherlands

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

- Unfair Commercial Practices Act 2008
- Adaptation of Books 3 and 6 of the Civil Code
- Consumer Protection (Enforcement) Act
- General Administrative Law Act

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Dutch Gambling Act
- *Colportagewet* (Doorstep Selling Act) Article 6
- Wft (Financial Supervision Act) – Consumer protection is mainly integrated into the broader legislation concerning financial services, the Wft, which incorporates virtually all European directives regarding financial services, and in some cases may go further than the provisions of the UCPD (as far as these contain particular national rules on marketing and sales of financial products).

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

According to the Netherlands Authority for the Financial Markets and the Department of Finance, the national provisions in the area of financial services go beyond the level of protection provided by the UCPD, are more specific, better known and understood by enforcers and businesses, it is easier to obtain a result under the national legislation than the UCPD, and there is existing case law relating to this legislation.

Relevant case law

Financial services

- Rotterdam District Court (summary proceedings) 6 July 2009, parties: TRE Investments II B.V. against AFM, case number: AWB 09/2114 BC-T2, references: LJN: BJ2013 and JOR 2009/233.
- Rotterdam District Court (summary proceedings) 13 January 2011, parties: 'X' B.V. against AFM, case number: AWB 10/5116 VBC-T2, reference: LJN: BP1386.
- Rotterdam District Court (summary proceedings) 15 February 2011, parties: O&B Finance Nederland B.V. and 'X' against AFM, case number: AWB 11/193 VBC-T2 and AWB 11/194 VBC-T2, reference: LJN: BP5303.
- Because of their complexity, descriptions of these cases are available in Dutch, at www.rechtspraak.nl.
- Please note that there is also relevant Dutch non-financial services case law since implementation concerning the interpretation of certain terms used in the national implementation legislation of the UCPD, as this legislation has a broader scope than just the financial services area. Furthermore, there may be Dutch case law from before implementation of the UCPD that is relevant for a similar reason.

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

The Netherlands Authority for the Financial Markets and the Department of Finance

Immovable property

The Netherlands Consumer Authority
Provided that collective consumer interests are involved, the

	Netherlands Consumer Authority (NCA) is competent to enforce the UCPD in all sectors with exception of the financial sector. This means the NCA could enforce the UCPD in the field of immovable property, unless the practice is related to a financial product or service. In that case the Netherlands Authority for Financial Markets (AFM) is the competent authority.
<i>Means of enforcement of UCPD</i>	
<i>Financial services</i> By public law and private law	<i>Immovable property</i> By public law and private law
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
Public authorities in both areas. Additionally, the Netherlands Consumer Authority reported that in case of enforcement under private law, an action can be brought by organisations representing consumer interests (Article 3:305b Civil Code), and by individual consumers in the area of immovable property.	
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<i>Financial services</i> None reported	<i>Immovable property</i> According to the Netherlands Consumer Authority, an obstacle is lack of evidence. The sort of problems the NCA has come across is that of a trader offering an apartment for rent online and providing misleading information about the apartment, but the trader does not mention his/her name or identity. In such cases it is difficult to take action against the trader.
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<i>Financial services</i> The Netherlands Authority for the Financial Markets and the Department of Finance reported that when organisations hold foreign establishments, information essential for enforcement of investigation is hard to obtain. For example it is harder to establish whether documents are authentic.	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
 Respondents: the Netherlands Authority for the Financial Markets and the Department of Finance, and the Netherlands Consumer Authority.
 UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=NL>).
 Civic Consulting Country Report Netherlands.

Netherlands

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints			Sector				Evidence				Loss suffered	Actions taken								
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property	Renting property	Timeshare	Don't know	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies		Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions	
NL-IP-1	Sometimes, misleading and/or aggressive practices related to the renting and selling of timeshare properties occur. Occasionally consumers are led to sign a contract that they were not aware was a timeshare contract. Other times, Dutch consumers are approached on holiday and pressured to come to meetings where they are asked to buy timeshare, for example by being told they won a prize.	X		X	X	X		~20	~20	~20			X		X					Don't know								X
NL-IP-2	In online advertising for immovable properties, sometimes the properties turn out to be non-existent and/or the trader is not traceable.			X	X			~20	~20	~20	X			X						Don't know							X	

Source: The Netherlands Consumer Authority (NL-IP-1; NL-IP-2).

Norway

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Legislation implementing the UCPD in the fields of financial services and immovable property:
The Marketing Control Act (*Lov om kontroll med markedsføring og avtalevilkår mv. - markedsføringsloven*) implemented in 2009

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Reasons why enforcement bodies apply these national legal provisions

<i>Financial services</i>	<i>Immovable property</i>
Not applicable	Not applicable

Relevant case law

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Enforcement

Responsibility for enforcing the UCPD

The Norwegian Consumer Ombudsman

Means of enforcement of UCPD

By public law and criminal law

Who can bring an action under the national legislation implementing the UCPD

Ombudsman

Main obstacles for enforcing unfair commercial practices legislation reported

<i>Financial services</i>	<i>Immovable property</i>
For commercial practices which are banned in all circumstances and aggressive practices: to identify the practice and collect evidence. For misleading actions, misleading omissions, and other unfair commercial practices: the extent of advertising, especially online. The Ombudsman does not have sufficient resources to deal with the huge amount of online advertising. However, this difficulty is not specific to enforcement of the UCPD in the area of financial services.	None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

<i>Financial services</i>	<i>Immovable property</i>
None reported	None reported

Codes of conduct and self-regulation

<i>Financial services</i>	<i>Immovable property</i>
None reported	Code of conduct regarding marketing of immovable property (<i>Bransjenorm for markedsføring av bolig</i>). Guidance on marketing of real estate agent services (<i>Forbrukerombudets veiledning om markedsføring av eiendomsmeglingstjenester</i>)

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
Respondent: The Norwegian Consumer Ombudsman (*Forbrukerombudet*).

Poland

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

- Prevention of Unfair Commercial Practices Act, 23 August 2007, (*Ustawa z 23 sierpnia 2007 o Przeciwdziałaniu Nieuczciwym Praktykom Rynkowym*)
- Act on Competition and Consumer Protection

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- § 3, art. 4 of the Prevention of Unfair Commercial Practices Act, 23 August 2007: The article bans carrying out an activity in the form of a pyramid or 'Argentine' system (organising groups with consumer participation to finance a purchase as part of a pyramid scheme).

Immovable property

- According to the Office of Competition and Consumer Protection, new legislation (the Act on protection of real estate purchasers) will enter into force 6 months after publication (the law is currently awaiting publication).

Reasons why enforcement bodies apply these national legal provisions

The Polish Financial Supervision Authority stated that it is easier to obtain a result under the national provision in the area of financial services than the UCPD. Applying the national provisions, the authority can sometimes stop misleading actions, such as misleading advertising in TV and print newspapers. The national legislation gives the authority more power. They can take an action under financial sector regulations related to banking, insurance, capital markets and pensions, but they also use the UCPD to support their actions.

Relevant case law

Financial services

- Decision nr 8/2010 of the Office of Competition and Consumer Protection: It is a misleading omission to advertise a fixed-term savings deposit without mentioning that the interest rate is actually variable.
The object of the proceedings was the promotional campaign of defendant (a bank), encouraging actual and potential clients of the bank to take advantage of the offer "*Przyjaźń procentuje*" ('Friendship pays off') for fixed-term savings deposits.
From 17 November to 19 December 2009, the defendant published materials in the form of brochures, labelled "Recommendation Certificates".
The President of the Office of the Competition and Consumer started proceedings, as the trader was misleading the consumer, because the brochures did not state that the terms of the offer (including the interest rate for the deposits) were subject to modification.
The practice of the defendant was found to be unfair.
The President of the Office ordered publication of the administrative decision, not only on the defendant's website, but also in the first five pages of a nationwide journal.
Please also see Civic Consulting Poland Country Report for other relevant cases.

Immovable property

- Decision no. RWA-25/2010 of the President of the Office of Competition and Consumer Protection: Advertisements infringe the prohibition on misleading commercial practices when the indicated prices are exclusive of VAT.
The defendant was a joint-stock company providing services including building and selling apartments.
In a complaint addressed to the President, the consumers indicated that the defendant advertised apartments using phrases as "It's cheaper than you might think. Prices starting from 9000 PLN for square meter" ("*Jest taniej niż sądzisz. Ceny od 9000 zł/m²*"). However, it turned out that there were no apartments available for the price as indicated in the advertisement. Moreover, the price indicated in the advertisement did not include VAT.
The defendant argued that there was a limited number of flats available for the price mentioned in the advertisement. However, the price of such apartments was lower in comparison with the majority of apartments offered, due to the unfavourable location of the former.
The defendant breached the prohibition on misleading commercial practices.
The President ordered the company to stop using the contested practice; in addition, he ordered publication of the administrative decision on the website of the defendant (by posting the link to the full text of the decision) which was to be maintained on the website for a period of 14 days as from the date of the decision becoming final. Moreover, the President imposed a financial penalty upon the defendant, to be paid to the state budget and amounting to PLN 213,185.
Please also see Civic Consulting Poland Country Report for other relevant cases.

Enforcement	
<i>Responsibility for enforcing the UCPD</i>	
<i>Financial services</i> Office of Competition and Consumer Protection	<i>Immovable property</i> Office of Competition and Consumer Protection
<i>Means of enforcement of UCPD</i>	
<i>Financial services</i> By public law and by private law	<i>Immovable property</i> By public law and by private law.
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
Public authorities, ombudsman, organisations representing consumer interests, and individual consumers.	
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<i>Financial services</i> The Office of Competition and Consumer Protection reported that there are not enough cases to define any obstacles so far.	<i>Immovable property</i> The Office of Competition and Consumer Protection reported that it is too early to define any obstacles so far.
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> The code of good practices of the Conference of Financial Companies in Poland (KPF).	<i>Immovable property</i> The Polish Association of Developers (<i>Polski Związek Firm Deweloperskich</i>) administers a code of conduct called the 'Code of conduct regarding client-to-developer relations' (<i>Kodeks dobrych praktyk w relacjach Klient- Deweloper</i>).

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
 Respondents: the Office of Competition and Consumer Protection, the Polish Financial Supervision Authority, Transcom
 WorldWide CMS Poland LLC, and *Konferencja Przedsiębiorców Finansowych*.
 UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=PL>).
 Civic Consulting Country Report Poland.

PL-FS-6	Certain life insurance providers refused to pay an insurance claim, which was related to misleading information concerning the insurer's liability. In general, the terms of life insurance cover heart attacks. However, in the provisions of some providers, the definition of a heart attack was not the same as the medical definition. In order for the customer to claim compensation for their heart attack, it had to be a specific kind of heart attack.		X X	RF RF RF	X		X	Yes	X
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Source: *Konferencja Przedsiębiorców Finansowych* (PL-FS-1); Transcom WorldWide CMS Poland LLC (PL-FS-2); The Polish Financial Supervision Authority (PL-FS-3; PL-FS-4); Office of Competition and Consumer Protection (PL-FS-5;

PL-FS-6).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Poland

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category					Number of complaints			Sector				Evidence					Loss suffered	Actions taken					
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property	Renting property	Timeshare	Don't know	Complaints data	Court cases	Decisions by enforcement bodies	Warnings issued by enforcement bodies		Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses
PL-IP-1	The code of conduct of an immovable property traders association had provisions in it which were contrary to the law. Specifically, the provisions did not require traders to give out some essential information. Traders who agreed to this voluntary "code of conduct" could then use the association's logo on their advertising, thus leading consumers to assume a certain level of credibility on the part of the trader.					X				X					X				Yes		X				X
PL-IP-2	An association of entrepreneurs of immovable property included a note in an advertisement that a code of conduct that they adhered to was approved by the president of the Office of Competition and Consumer Protection (OCCP). In fact, the president of the OCCP gave a positive opinion about a first draft of the code of conduct but <i>not</i> about the later version that included a significant attachment. Consumers trusted the code of conduct because it was supposedly "endorsed" by OCCP. It later turned out that provisions in the attachment were contrary to the law.			X						X				X	X				Yes		X				X
PL-IP-3	Developers advertised the price of immovable property before taxes, instead of after taxes, therefore misleading consumers. Consumers had to verify the information given in the invitation to purchase and after they found out that the information was unreliable, they lost confidence in the trader.			X			S	S	S	X					X				Yes		X				X

PL-IP-4	Some traders advertised their properties in a particular area as being "cheaper than you think," and listed a certain price. However, this claim was later proved to be misleading, as the traders were only able to offer properties at this price in <i>other</i> (less expensive) areas.	X					S	S	S	X			X	Yes			X		X
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Source: Office of Competition and Consumer Protection (PL-IP-1; PL-IP-2; PL-IP-3; PL-IP-4).

Portugal

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Decree-Law No. 57/2008 of 26 March 2008 ('UCP Act') implemented the UCPD.

Other relevant implementing legislation:

Decree-Law No. 330/90, as amended, establishes the general rules on advertising. It is also known as the 'Advertising Code'.

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

National provisions include:

- Rounding up the interest rate applicable to a mortgage credit agreement in breach of the rules set out in Decree-Law 240/2006, of 22 December and Decree-Law 171/2007 of 8 May 2007
- Advertising of financial products or services in breach of the rules set out in Banco de Portugal Notice 10/2008 of 22 December 2008
- Tying of financial products or services in breach of the rules set out in Decree-Law 51/2007 of 7 March 2007, Decree-Law 133/2009 of 2 June 2009 and Decree-Law 171/2008 of 26 August 2008
- Unsolicited offers of financial products or services in breach of the rules set out in Decree-Law 95/2006 of 29 May 2006
- Failure to provide the customer with complete and accurate information in breach of the rules set out in, for example:
 - Decree-Law 298/92 of 31 December 1992 as amended (Legal Framework of Credit Institutions and Financial Companies)
 - Decree-Law 317/2009 (Legal Framework of Payment Institutions and Payment Services)
 - Notice 2/2010 of Banco de Portugal of 16 April 2010 (pre-contractual information to be given by lenders offering mortgage credit)
 - Notice 4/2009 of Banco de Portugal of 20 August 2009 (information to be given to consumers by credit institutions receiving deposits)
 - Notice 5/2009 of Banco de Portugal of 20 August 2009 (information to be given to customers in respect of complex financial products)

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

Financial services

According to respondents, national provisions are more specific and better understood by businesses and consumers than the UCPD. The Bank of Portugal also noted that it is easier to obtain a result under these national provisions than the UCPD.

Immovable property

Not applicable

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement	
<i>Responsibility for enforcing the UCPD</i>	
<p><i>Financial services</i></p> <p>Bank of Portugal (<i>Banco de Portugal</i>) Insurance and Pension Funds Supervisory Authority (<i>Instituto de Seguros de Portugal</i>) Securities Market Commission (<i>Comissão do Mercado de Valores Mobiliários</i>)</p> <p>In the field of advertising generally the Directorate General for Consumers (<i>Direcção-Geral do Consumidor</i>) is also empowered to enforce the UCP Act, and can request the assistance of the Portuguese Authority for Food and Economic Safety (<i>Autoridade de Segurança Alimentar e Económica</i>) if necessary.</p>	<p><i>Immovable property</i></p> <p>Public Works and Real Estate Regulatory Authority (INCI) Portuguese Authority for Food and Economic Safety (<i>Autoridade de Segurança Alimentar e Económica</i>)</p>
<i>Means of enforcement of UCPD</i>	
<p><i>Financial services</i></p> <p>By public law and private law</p>	<p><i>Immovable property</i></p> <p>By public law and private law</p>
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
<p>Public authorities, organisations representing consumer interests, competitors, trade associations, and individual consumers may bring an action.</p> <p>The Bank of Portugal reported that according to article 16 of Decree-Law 57/2008 any person, including competitors which have a legitimate interest in combating an unfair commercial practice may take legal action in order to prevent, correct or cease such unfair commercial practice. In addition, any person may bring such unfair commercial practices before an administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings. In addition to this, there is an Ombudsman (<i>Provedor de Justiça</i>), which is the control body for every sector of public administration, representing an alternative, non-jurisdictional remedy for resolution of disputes between citizens and public powers. However, the Ombudsman does not pursue legal actions in these sectors.</p>	
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>According to the Bank of Portugal the UCPD contains some generic and vague provisions which may be difficult to enforce. The Portuguese Insurance and Pension Funds Supervisory Authority reported that the main obstacles relate to the initial reluctance of some insurance companies to change their procedures.</p>	<p><i>Immovable property</i></p> <p>None reported</p>
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>None reported</p>	<p><i>Immovable property</i></p> <p>None reported</p>
Codes of conduct and self-regulation	
<p><i>Financial services</i></p> <p>Principles regarding bank account switching</p> <p>According to the Bank of Portugal, this code implements the guidelines adopted by the European Banking Industry Committee (EBIC) and aims to smooth the procedure for consumers switching accounts from one bank to another and, to facilitate consumer mobility. However, the Bank of Portugal considered that self-regulation in this area is not very effective.</p>	<p><i>Immovable property</i></p> <p>None reported</p>

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
Respondents include: Bank of Portugal, Lisbon Arbitration Centre for Consumer Conflicts, and Portuguese Insurance and Pension Funds Supervisory Authority.
UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=PT>).

Portugal

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008	2009	2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
PT-IP-1	In the selling of timeshares, there was sometimes overly aggressive pressure placed on the consumer to buy the properties, as well as a lack of information given. This sometimes led consumers to buy something they did not want or need.	X X X X	10	12	9	X	X	Yes	X

Source: Lisbon Arbitration Centre for Consumer Conflicts (PT-IP-1).

Romania

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Law No. 363/2007 on the fight against unfair practices of traders in their relations with consumers

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Emergency Ordinance of the Government regarding loan agreements for individual consumers.
The National Authority for Consumers' Protection reported that this Ordinance transposes Directive 2008/48/CE but also contains national provisions. It is a complex legal act which regulates all contract credits, including mortgages. Unlike Directive 2008/48/EC, there is no cap on the amount of credit which is covered by the Ordinance. In addition, the Ordinance regulates issues regarding charges and elements of variable interest, in order to ensure transparency for consumers.

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

None reported

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

National Authority for Consumers' Protection

Immovable property

None reported

Means of enforcement of UCPD

Financial services

By private law

Immovable property

By private law

Who can bring an action under the national legislation implementing the UCPD

A court action can be initiated by any person or organisation that proves a legitimate interest, including: public authorities, organisations representing consumer interests, trade associations, and individual consumers.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting survey on the application of Directive 2005/29/EC in financial services, May 2011. Respondents included: the National Authority for Consumers' Protection, the Romanian Banking Association, and the European Consumer Centre Romania. UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=RO>).

Romania

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category	Number of complaints	Financial product most frequently complained about	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Life insurance</i> <i>Health insurance</i> <i>Motor insurance</i> <i>Travel insurance</i> <i>Other insurance (home, care, etc.)</i> <i>Stocks or shares, bonds, derivatives, etc.</i> <i>Collective investments</i> <i>Private pension plans</i> <i>Savings account</i> <i>Current account</i> <i>Mortgage</i> <i>Secured loan</i> <i>Credit card</i> <i>Other loans (including consumer credit)</i> <i>Other retail financial service</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Decisions or recommendations made by ADR bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other body</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
RO-FS-1	Information about additional costs related to the financial service was not provided before consumers signed a contract.				X	Yes	
RO-FS-2	Essential information was not included in advertising for certain financial products. This was most often related to: mortgages, credit cards, and other loans (including consumer credit).				X X X	Yes	X

Source: European Consumer Centre Romania (RO-FS-1); National Authority for Consumers' Protection (RO-FS-2).

Romania

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints	Sector	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
	No common unfair commercial practice is reported.						

Slovakia

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The Directive is implemented into Act 250/2007 Coll. on Consumer Protection as amended. Other relevant implementing legislation:

- Act no. 108/200 Coll. on Consumer Protection in Doorstep Selling and Distance Selling
- Act no. 147/2001 Coll. on Advertisement as amended
- Act no. 513/1991 Coll. Commercial Code as amended

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported

Immovable property

None reported

Reasons why enforcement bodies apply these national legal provisions

Not applicable

Not applicable

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

Slovak Trade Inspection
Courts

Immovable property

Courts

Means of enforcement of UCPD

Financial services

By public law and using ADR
The Slovak Trade Inspection reported that they use public law to enforce the UCPD (mainly sanctions such as fines). ADR is a system used by consumer organisations to stop or resolve unfair commercial practices applied by a trader.

Immovable property

By public law and using ADR
The Slovak Trade Inspection reported that they use public law to enforce the UCPD (mainly sanctions such as fines). ADR is a system used by consumer organisations to stop or resolve unfair commercial practices applied by a trader.

Who can bring an action under the national legislation implementing the UCPD

Public authorities, ombudsman, organisations representing consumer interests and individual consumers.

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

The Ministry of Economy of The Slovak Republic, Slovak Trade Inspection, and the Association of Service Users reported that for misleading actions, aggressive practices, and other unfair commercial practices, there is a problem with burden of proof in some cases, and application of the definitions (for example there are different definitions of 'trader' in the UCPD and the Consumer Credit Directive).

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting survey on the application of Directive 2005/29/EC in financial services, May 2011. Respondents included: the Ministry of Economy of The Slovak Republic, Slovak Trade Inspection, Ministry of Justice of the Slovak Republic, and the Association of Service Users.

UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=SK>).

SK-FS-6	Traders misled consumers about the true intention of a contract for financial products. Specifically, consumers signed a contract to be able to receive a loan but received life insurance instead. In many consumer complaints about this issue, the consumer never received a loan, suggesting that the vendors never actually intended to provide this service.	X		X		X	X	X	X	X	X	X	Yes	X				X	X
SK-FS-7	Consumers were subjected to unfair influence encouraging them to buy products, and were provided with insufficient information about these products before signing a contract. Often, consumers were only told about the advantages and positive qualities of a product. They were not properly informed about the legal obligations related to signing the contract for said product, how to correctly use the product, and other relevant information.	X	X	X		X		X	X	X	X	X	Yes	X				X	X
SK-FS-8	Suppliers of financial products instructed their sales representatives to convince consumers to designate themselves businesses. As the UCPD only applies to business-to-consumer transactions, and not business-to-business transactions, this practice prevents consumers from being protected by consumer rights legislation.			X	X		X		X	X	X	X	Yes	X				X	X
SK-FS-9	Some creditors, and the debt collection companies hired by them, have used inappropriate ways to collect financial claims. This included threatening consumers that their names will be announced in local media or that their names would be printed on leaflets distributed in their home areas, frequent visits by debt collectors to consumers' homes, annoying consumers with frequent phone calls, sending consumers threatening mobile messages, and other practices.			X					X	X	X	X	Yes	X				X	X

Source: Association of Service Users (SK-FS-1); Ministry of Economy of The Slovak Republic, Slovak Trade Inspection (SK-FS-2); Ministry of Justice of the Slovak Republic (SK-FS-3 to SK-FS-9).

Slovakia

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken					
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008	2009	2010	<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>					
SK-IP-1	A third person, who is named by a consumer's service supplier, takes advantage of the distress felt by a consumer who needs financing. The third person signs a contract with the service supplier where they agree this person will act in the consumer's name. The person provided by the service supplier, however, does not act in the consumer's favour, but actually signs agreements that are to the consumer's detriment. For example, agreements to transfer property and block accounts if only a single payment is late. Thus the third person who enters into the agreement between the service provider and the consumer does not defend the interest of consumers but instead acts in conflict with their interests.		VF	VF	VF	X	X X X X	Yes	X				X	X

Slovenia

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Consumer Protection against Unfair Commercial Practices Act

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

None reported

Immovable property

Real Estate Agencies Act

Reasons why enforcement bodies apply these national legal provisions

The Market Inspectorate of the Republic of Slovenia reported that the national provisions in the area of immovable property go beyond the level of protection provided by the UCPD, and are more specific.

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

Market Inspectorate of the Republic of Slovenia

Immovable property

Market Inspectorate of the Republic of Slovenia

Means of enforcement of UCPD

Financial services

By public law and criminal law.

In theory a competitor could file a suit if the competitor could show a direct and legitimate interest. ^(a)

Immovable property

By public law and criminal law.

In theory a competitor could file a suit if the competitor could show a direct and legitimate interest. ^(a)

Who can bring an action under the national legislation implementing the UCPD

Public authorities and individual consumers

Main obstacles for enforcing unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Problems relating to cross-border enforcement of unfair commercial practices legislation reported

Financial services

None reported

Immovable property

None reported

Codes of conduct and self-regulation

Financial services

None reported

Immovable property

None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.

Respondent: Market Inspectorate of the Republic of Slovenia.

(a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=SI>).

Slovenia

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category	Number of complaints	Financial product most frequently complained about	Evidence	Loss suffered	Actions taken
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>	2008 2009 2010	<i>Life insurance</i> <i>Health insurance</i> <i>Motor insurance</i> <i>Travel insurance</i> <i>Other insurance (home, care, etc.)</i> <i>Stocks or shares, bonds, derivatives, etc.</i> <i>Collective investments</i> <i>Private pension plans</i> <i>Savings account</i> <i>Current account</i> <i>Mortgage</i> <i>Secured loan</i> <i>Credit card</i> <i>Other loans (including consumer credit)</i> <i>Other retail financial service</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Decisions or recommendations made by ADR bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other body</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>
SI-FS-1	There was a problem with advice given about consumer credit, which violated the consumer credit act.	X	S S S		X	Yes	X X

Source: Market Inspectorate of the Republic of Slovenia (SI-FS-1).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Spain

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Act 29/2009 transposes the UCPD into the Spanish Law by amending Acts 3/1991, 34/1988 and 7/1996, as well as Legislative Royal Decree 1/2007.

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- National Law 3/1991, of 10 January, on unfair competition, modified by Law 29/2009, of 30 December
- Royal Legislative Decree 1/2007, of 16 November, approving the revised text of the General Law on the Protection of consumers and users
- Law 22/2010, of 20 July of the Catalan Consumer Code (Catalonia)
- Law 16/2011, of 24 June, on consumer credit contracts
- Law 2/2009, of 31 March, on mortgages loans with consumers and credit agreements celebrated through intermediary services

Immovable property

- National Law 3/1991, of 10 January, on unfair competition, modified by Law 29/2009, of 30 December
- Royal Legislative Decree 1/2007 of 16th of November, approving the revised text of General Law for the Defence of Users and Consumers
- Royal Decree 515/1989, of 21 April 1989, on consumers' protection for the information to be provided in housing purchases and leases
- Law 22/2010 of 20th of July of Consumer Code of Catalonia (Catalonia)
- Law 18/2007 of 28th of December on the rights of housing (Catalonia)

Reasons why enforcement bodies apply these national legal provisions

According to the Catalan Consumer Agency, the national provisions in the area of financial services and immovable property go beyond the level of protection provided by the UCPD, and are more specific. In the area of financial services, national legislation provides more information and imposes stricter obligation of documentation than EU legislation.

At the regional level, according to the Catalonian Consumer Code, financial services are considered to be basic services and are therefore subject to stricter obligations. Service providers are obliged to provide the consumer with certain relevant information. For example, before making a contract, the service provider must give their physical address in Catalonia. Also, the consumer must be helped to quickly and directly make any complaints or claim regarding the service. Information on where the consumer can make complaints as well as on compensations and refunds must be provided in the contract.

In the area of immovable property, national provisions ban commercial practices which are not included in the Black List of the UCPD. When buying and selling property, the estate agent is obliged to sign an assignment note with the house owner before advertising or making an indication to purchase. This note has to contain certain information about the seller and the property, such as the identification of the agent, the identity of the house owner, or the duration of the contract. The national provisions also prohibit receiving money on account before fulfilling certain formalities and requirements of housing.

The agency also stated that national provisions concerning immovable property are more specific as they were brought in when the housing sector was more vulnerable to misleading practices, because consumers at that time were thinking of buying property before it was built. When consumers make decisions to purchase before the property is built, they can encounter more problems. Sometimes they had to wait more than two years for occupation, for example. The national provision established higher requirements regarding service on behalf of agents and all parties involved in the housing description.

Relevant case law

Financial services

None reported

Immovable property

None reported

Enforcement

Responsibility for enforcing the UCPD

Financial services

Ministry of Economy and Finance
 Ministry of Health and Social Policy
 Bank of Spain
 National Institute for Consumer Protection (*Instituto Nacional del Consumo*)
 National consumer organisations
 Regional consumer authorities (one in each Autonomous Community)

Immovable property

General Directorate of Housing of the Regional and Sustainable Department
 National Institute for Consumer Protection (*Instituto Nacional del Consumo*)
 Regional consumer authorities (one in each Autonomous Community)
 Consumer bodies of major town councils

<i>Means of enforcement of UCPD</i>	
<i>Financial services</i> By public and private law, and by using ADR (as a requirement before pursuing legal remedies)	<i>Immovable property</i> By public and private law, and by using ADR (as a requirement before pursuing legal remedies)
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
Public authorities and organisations representing consumer interests.	
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<i>Financial services</i> According to the Catalan Consumer Agency, aggressive practices can be an obstacle because this is based on subjective criteria. It can be difficult to define the average consumer and whether or not a consumer has been deceived or coerced, in a way which would affect their transactional decision.	<i>Immovable property</i> According to the Catalan Consumer Agency, aggressive practices can be an obstacle because this is based on subjective criteria. It can be difficult to define the average consumer and whether or not a consumer has been deceived or coerced, in a way which would affect their transactional decision. Furthermore, there are social and economic factors which should be considered, such as immigration and need for housing, which can make these practices more detrimental for certain consumers.
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<i>Financial services</i> None reported	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> None reported	<i>Immovable property</i> Agreement with the Builders Associations (developers) This code of conduct applies to construction companies – they have to respect legislation, and it has additional commitments, for example to have complaints resolution procedures, or to join an ADR scheme, or to give consumers additional information. The code applies in Catalonia.

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
 Respondents included: Catalan Consumer Agency, and Consumers' Union of Spain.
 UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=ES>)
 Civic Consulting Country Report Spain

Spain

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category	Number of complaints			Sector	Evidence	Loss suffered	Actions taken									
		<i>Banned commercial practice which is included in the Black List (Annex I) of the UCPD</i> <i>Practice banned in my country, but not included in the Black List (Annex I) of the UCPD</i> <i>Misleading action</i> <i>Misleading omission</i> <i>Aggressive practice</i> <i>Other unfair commercial practice</i>				<i>Buying property</i> <i>Renting property</i> <i>Timeshare</i> <i>Don't know</i>	<i>Complaints data</i> <i>Court cases</i> <i>Decisions by enforcement bodies</i> <i>Warnings issued by enforcement bodies</i> <i>Other</i>		<i>Referred consumer(s) to relevant enforcement body</i> <i>Referred consumer(s) to other relevant body such as ADR or ombudsman</i> <i>Took administrative decision</i> <i>Initiated procedure for judicial decision</i> <i>Issued guidance for businesses</i> <i>Issued a warning about the trader or the practice</i> <i>Other actions</i>									
ES-IP-1	Essential information was not included in advertising for immovable properties.	X	X			S S S	X	X	X X	Yes	X X							

Sweden

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

Marketing Practices Act (2008:486) or *Marknadsföringslagen*

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- Consumer Credit Act (*Konsumentkreditlagen*)
- Insurance Contracts Act (*Försäkringsavtalslagen*)
- Insurance Mediation Act (*Försäkringsförmedlingslagen*)

Immovable property

- Insurance Contracts Act (*Försäkringsavtalslagen*) regarding information requirements for home insurance.

Reasons why enforcement bodies apply these national legal provisions

According to the Swedish Consumer Agency, the national provisions in the area of financial services go beyond the level of protection provided by the UCPD, and are more specific.

The National Board for Consumer Disputes reported that a number of laws and administrative provisions already existed concerning marketing and information requirements in the field of financial services. To some extent these provisions differed from provisions of the UCPD. Since the UCPD was not subject to full harmonisation in the fields on financial services and immovable property, the current national provisions could be retained.

Relevant case law

Financial services

There are several verdicts by the Market Court on the application of the Directive:

- Case MD 2010:31

A company's marketing of funds towards consumers, was found to be contrary to good marketing practices. The company was obliged to clearly provide risk information in web banners and forbidden to highlight a certain period of time which gave a misleading impression of the development of the particular fund.

- Case MD 2010:30

A company providing consumer credit created a hit on an internet search engine containing the message that credit can be obtained quickly. The marketing was considered to be contrary to good marketing practices because it emphasized the possibility of receiving a credit rapidly which has been presented as a decisive argument in relation to other credit terms. Given the target audience the marketing was considered to be unfair.

- Case MD 2010:6 of the Swedish Market Court^(a)

The court considered whether:

It was misleading to compare financial products without explaining their differences, it was unfair to suggest that a product choice must be made swiftly, while in reality there were no circumstances indicating that the choice needs to be made swiftly, and it was misleading to compare the financial yield of two products, without explaining the circumstances associated with this yield.

The court concluded that the marketing was misleading, even though the specified yield as such was considered as being accurate. The court further stated that it could be assumed that the marketing had had an effect on the consumer's ability to make a well-founded transactional decision.

Immovable property

- None reported

Enforcement	
<i>Responsibility for enforcing the UCPD</i>	
<i>Financial services</i> The Swedish Consumer Agency	<i>Immovable property</i> The Swedish Consumer Agency
<i>Means of enforcement of UCPD</i>	
<i>Financial services</i> By private law and by public law	<i>Immovable property</i> By public law
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
Public authorities and individual consumers	
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<i>Financial services</i> According to the Swedish Consumer Agency, for all practices an obstacle is not to have enough evidence.	<i>Immovable property</i> According to the Swedish Consumer Agency, for all practices an obstacle is not enough evidence.
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<i>Financial services</i> According to the Swedish Consumer Agency: For commercial practices which are banned in all circumstances and aggressive practices: the trader disappears. For misleading actions and misleading omissions: difficulties in getting in touch with the trader. For other unfair commercial practices: aspects such as product development which result in difficulties in categorising in relation to legislation.	<i>Immovable property</i> None reported
Codes of conduct and self-regulation	
<i>Financial services</i> <ul style="list-style-type: none"> • The Code of Conduct for Home Loans (ESIS) • Consolidated ICC Code of Advertising and Marketing Communication Practice (http://www.nix.nu/) • More general codes of conduct also include financial services: for example the Swedish Telephone Preference Service (TPS), in Sweden known as NIX-Telefon. NIX gives the consumer the possibility to register that he or she does not want to receive direct telephone marketing calls. All businesses have to check if the consumer is listed before making a phone call. 	<i>Immovable property</i> None reported

Sources: Civic Consulting surveys on the application of Directive 2005/29/EC in financial services and immovable property, May 2011.
Respondents: the Swedish Consumer Agency, the National Board for Consumer Disputes, and the Swedish Bankers Association.
(a) UCP Database (see: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=SE>).

SE-FS-8	Since pre-contractual information related to insurance products vary on the market, there was sometimes a problem with transparency. Some traders provided too little information and others provided too much.	X X	S S S	X X X X	X X X	Yes	X
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Source: The Swedish Consumer Agency (SE-FS-2; SE-FS-4; SE-FS-5; SE-FS-6; SE-FS-7; SE-FS-8); The National Board for Consumer Disputes (SE-FS-1; SE-FS-3).
Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

Sweden

Common unfair practices reported in the area of immovable property

ID	Unfair commercial practice	Legislative category						Number of complaints				Sector	Evidence					Loss suffered	Actions taken										
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD	Practice banned in my country, but not included in the Black List (Annex I) of the UCPD	Misleading action	Misleading omission	Aggressive practice	Other unfair commercial practice	2008	2009	2010	Buying property		Renting property	Timeshare	Don't know	Complaints data	Court cases		Decisions by enforcement bodies	Warnings issued by enforcement bodies	Other	Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other relevant body such as ADR or ombudsman	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions	
SE-IP-1	Sometimes, misleading information about the inspection of a property was presented, causing features (excluding price) about the properties to not be transparent.			X														X	Don't know										X
SE-IP-2	Advertising related to the selling of immovable properties was misleading sometimes, causing features (excluding price) about the properties to not be transparent.		X	X			S	S	8	X								X	Yes	X									

Source: Swedish Consumer Agency (SE-IP-1; SE-IP-2).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

United Kingdom

Implementing legislation of the Unfair Commercial Practices Directive (UCPD)

The Directive is implemented by the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008.

National legal provisions on unfair commercial practices

Overview of relevant provisions which are not based on EU legislation

Financial services

- The Financial Services and Markets Act 2000, as amended, and the resultant FSA regulations and guidance (including Principles for Businesses 2, 6 and 7)
- Consumer Credit Act 1974 (though this is largely based on Directive 2008/48/EC)

Immovable property

- Property Misdescriptions Act 1991
- Estate Agents Act 1979
- Consumers, Estate Agents and Redress Act 2007
- Accommodation Agencies Act 1953
- Housing Act 2004

Reasons why enforcement bodies apply these national legal provisions

Financial services

According to the Financial Services Authority and the Office of Fair Trading, the national provisions in the area of financial services are more specific, comprehensive and tailored, and are better known and understood by enforcers and businesses. It is also easier to obtain a result under this legislation/requirements than the UCPD.

The Office of Fair Trading also added that national provisions are better known and understood by consumers.

The Financial Services Authority pointed out that national provisions go beyond the level of protection provided by the UCPD. National legislation provides the enforcement body with powers to obtain redress and restitution for consumers, impose unlimited penalties for civil offences, and prohibit individuals from carrying out regulated activities.

Immovable property

The Office of Fair Trading reported that the national provisions in the area of immovable property go beyond the level of protection provided by the UCPD, are more specific, and are better known and understood by enforcers and businesses. In addition there is existing case law relating to this legislation.

Relevant case law

Financial services

- OFT vs. Hall

The Office of Fair Trading (OFT) used the Consumer Protection from Unfair Trading Regulations 2008 (misleading actions) to secure an injunction against a lender while they were in the process of removing the credit license of this lender. The OFT concluded that this lender fraudulently obtained a consumer credit licence in September 2007 by failing to declare unspent criminal convictions, including offences of theft, harassment and grievous bodily harm, in breach of the Consumer Credit Act 1974. As a result he was misleading consumers into believing he was a legitimately licensed lender in breach of the Consumer Protection from Unfair Trading Regulations 2008.

Please also see Civic Consulting UK Country Report for other relevant cases.

Immovable property

The OFT reported that there is a range of case law under, for example, the Property Misdescriptions Act relating to the sale of properties. However, there has been little use of the UCPD in relation to immovable property so far.

Enforcement	
<i>Responsibility for enforcing the UCPD</i>	
<p><i>Financial services</i></p> <p>The Financial Services Authority and the Office of Fair Trading</p> <p>A concordat was made between FSA and OFT, setting out the division of responsibilities.^(a)</p> <p>A separate, independent Financial Ombudsman Service also collects complaints and provides a complaints resolution service between business and consumers.</p>	<p><i>Immovable property</i></p> <p>The Office of Fair Trading and the Local Authority Trading Standards Services</p>
<i>Means of enforcement of UCPD</i>	
<p><i>Financial services</i></p> <p>By public law and criminal law</p>	<p><i>Immovable property</i></p> <p>By criminal, public, and private law.</p> <p>The Office of Fair Trading also reported by using ADR as a complement to effective enforcement (for example through ombudsman schemes).</p>
<i>Who can bring an action under the national legislation implementing the UCPD</i>	
<p>Public authorities and individual consumers</p> <p>According to <i>Which?</i> some consumer organisations have been granted special powers which allow them to bring civil actions under the UCPD.</p>	<p>Public authorities and organisations representing consumer interests.</p>
<i>Main obstacles for enforcing unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>The Office of Fair Trading reported:</p> <ul style="list-style-type: none"> • For commercial practices which are banned in all circumstances: Lack of clarity over the precise meaning of the provisions. • For misleading omissions: Knowing what information is material in what circumstances. • Aggressive practices: Protecting vulnerable consumers appropriately (gathering evidence; setting protection at the right level). • Other unfair commercial practices: The precise meaning of the text is often less clear than ideal in Annex I. 	<p><i>Immovable property</i></p> <p>The Office of Fair Trading reported:</p> <ul style="list-style-type: none"> • For misleading actions: Sheer number of transactions. • For misleading omissions: Legal complexity (for example what is material information? Who has to give it? At what point in the process?).
<i>Problems relating to cross-border enforcement of unfair commercial practices legislation reported</i>	
<p><i>Financial services</i></p> <p>None reported</p>	<p><i>Immovable property</i></p> <p>According to the Office of Fair Trading, the applicable law/jurisdiction for timeshare and timeshare resale scams in particular, but also for property investment can be an obstacle. It is very difficult in practice to hold individuals and companies liable in cross border situations.</p>
Codes of conduct and self-regulation	
<p><i>Financial services</i></p> <ul style="list-style-type: none"> • FSA Code of Practice for Approved Persons <p>This Code sets down a range of principles and behavioural standards for approved persons that also extends to their conduct vis-à-vis their firms and the FSA. It also includes principles that concern the responsibilities of approved persons vis-à-vis the internal governance and control functions within firms.^(b)</p> <ul style="list-style-type: none"> • Finance & Leasing Association (FLA) Lending Code <p>The FLA Lending Code requires members to deal fairly and</p>	<p><i>Immovable property</i></p> <ul style="list-style-type: none"> • Code of Practice for Residential Estate Agents <p>This reflects the requirements of the legislation but sets standards for all aspects of an estate agency business and rather than being legally precise pursues the concept of reasonableness of approach.</p> <p>In addition, The Consumers, Estate Agency and Redress Act 2007 requires that Estate Agents belong to an ombudsman approved by the OFT. There are currently two approved ombudsmen, one of whom is also a member of the Consumer</p>

responsibly with their customers. The Code gives customers more rights than those provided by law. It sets out standards of good practice in consumer lending. It is intended to provide assurance to customers that they may buy with confidence from full members of the FLA. To be a full member, companies are bound by the Code at all times. In tandem with the Code, the FLA operates a conciliation procedure for consumer complaints and has an independent arbitration scheme operated by the Chartered Institute of Arbitrators. These schemes are free to consumers.^(c)

Codes Approval Scheme (CCAS) which is not specific to immovable property.

Sources: Civic Consulting survey on the application of Directive 2005/29/EC in financial services, May 2011. Respondents included: the Financial Services Authority, the Office of Fair Trading, the Property Ombudsman, the Finance & Leasing Association, and *Which?* UCP Database (See: <https://webgate.ec.europa.eu/ucp/public/index.cfm?event=public.country.showCountry&countryID=UK>). Civic Consulting UK Country Report

(a) See: http://www.fsa.gov.uk/pubs/other/concordat_fsa_of_08.pdf

(b) See: <http://fsahandbook.info/FSA/html/handbook/APER>

(c) See: http://www.fla.org.uk/consumers/The_Lending_Code

United Kingdom

Common unfair practices reported in the area of financial services

ID	Unfair commercial practice	Legislative category	Number of complaints			Financial product most frequently complained about	Evidence	Loss suffered	Actions taken						
			2008	2009	2010				Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
		Banned commercial practice which is included in the Black List (Annex I) of the UCPD Practice banned in my country, but not included in the Black List (Annex I) of the UCPD Misleading action Misleading omission Aggressive practice Other unfair commercial practice				Life insurance Health insurance Motor insurance Travel insurance Other insurance (home, care, etc.) Stocks or shares, bonds, derivatives, etc. Collective investments Private pension plans Savings account Current account Mortgage Secured loan Credit card Other loans (including consumer credit) Other retail financial service	Complaints data Court cases Decisions by enforcement bodies Warnings issued by enforcement bodies Decisions or recommendations made by ADR bodies Other		Referred consumer(s) to relevant enforcement body	Referred consumer(s) to other body	Took administrative decision	Initiated procedure for judicial decision	Issued guidance for businesses	Issued a warning about the trader or the practice	Other actions
UK-FS-1	Credit was lent irresponsibly and mis-sold. Most often, this related to: mortgages, secured loans, credit cards, and other loans (including consumer credit).	X	1,406	1,445	1,253		X X X X	X	Yes	X	X				X
UK-FS-2	There were failings in relation to the advised sales of payment protection insurance (PPI) which meant that the products were mis-sold.	X X X	31,066	49,196	104,597	X		X X X X X	Yes		X	X			
UK-FS-3	Traders engaged in aggressive debt collection. Most often this related to "other loans" including consumer credit.	X X	RF	RF	RF		X	X	Yes		X	X	X	X	
UK-FS-4	Payment protection insurance was mis-sold. This includes problems with advice, that the price was not transparent, that other features were not transparent, that consumers were informed they had to buy the product when they were purchasing another product, as well as other issues.	X				X		X X X X	Yes	X	X				X
UK-FS-5	Consumers were cold called for credit services, including unsecured credit, credit brokerage, claims management, and debt management services.	X					X	X X	Yes	X	X			X	X
UK-FS-6	There was unfair treatment and failure to lend responsibly with respect to mortgage customers in arrears or with payment difficulties.	X X X	RF	RF	RF		X	X X	Yes		X	X			
UK-FS-7	Traders engaged in misleading debt management, consolidation, and advice.	X X	RF	RF	RF		X	X	Yes		X	X	X		
UK-FS-8	There were excessive auxiliary charges on certain financial products.	X						X X	Don't know						X
UK-FS-9	There were aggressive debt collection and enforcement practices. Most often this related to: mortgages, secured loans, credit cards, and other loans (including consumer credit).	X	18,286	19,585	15,665		X X X X	X X X X	Yes	X	X		X	X	X

UK-FS-10	Traders failed to give customers suitable advice when selling investment products. Most often, this related to: stocks or shares, bonds, derivatives, collective investments, structured products, and private pension plans.		X	X			RF	RF	RF				X	X		X	X	X	Yes			X	X	X	
UK-FS-11	Savings and investment products were mis-sold.		X										X	X					Yes						X
UK-FS-12	There were failures by firms to keep to commitments in voluntary codes of guidance, which is related to many unfair commercial practices.			X											X				Yes	X	X			X	X
UK-FS-13	Consumers in stressful financial situations, perhaps facing repossession or other debt related difficulties, suffered through entering into a sale and rent back agreement when other solutions would be more suitable. Firms did not fully explain the risks and misled consumers by applying excessive charges late in the process (when the consumer could not pull out) or through promises of retained equity which the consumer actually loses under a complex contract. Consumers have also lost out on long term security of tenure.			X	X	X	RF	RF	RF						X			X	Yes						X
UK-FS-14	The results that could be expected from "cautious funds" were misrepresented. A cautious fund is a fund in which (i) a minimum of 30% is invested in fixed interest investments and cash and (ii) a maximum is invested in shares. At least 50% of assets in a cautious fund must be held in Pound or Euro.			X	X										X	X	X		Yes						X
UK-FS-15	There was misleading use of terms, such as "guaranteed." Most commonly, the sale of structured deposits were described as "guaranteed" where no third-party guarantee existed.			X			RF	RF	RF				X	X				X	Yes				X		
UK-FS-16	Some traders failed to give appropriate advice in relation to pensions-switching.			X	X		RF	RF	RF					X			X	X	Yes			X			

Source: Citizens Advice (UK-FS-1; UK-FS-5; UK-FS-9; UK-FS-12); The Financial Services Authority (UK-FS-2; UK-FS-6; UK-FS-10; UK-FS-13; UK-FS-15; UK-FS-16); Office of Fair Trading (UK-FS-3; UK-FS-7); Which? (UK-FS-4; UK-FS-8; UK-FS-11; UK-FS-14).

Note: VF: Very frequently, RF: Rather frequently, S: Sometimes.

ANNEX II: Survey questionnaires

STUDY ON THE APPLICATION OF DIRECTIVE 2005/29/EC ON UNFAIR COMMERCIAL PRACTICES IN THE EU FINANCIAL SERVICES

The Directorate General for Justice of the European Commission has commissioned a study on the application of Directive 2005/29/EC on Unfair Commercial Practices (UCPD) in the European Union.

The study will focus on the application of the Directive in the fields of financial services and immovable property. Article 3(9) of the Directive allows Member States to adopt or maintain stricter provisions than those in the Directive in the above mentioned fields. Our analysis will therefore cover any other rules which the Member States have in place to fight unfair commercial practices in the fields of financial services and immovable property, and will describe the main unfair commercial practices in these sectors.

Links to the Directive itself and the European Commission Guidance on the implementation and application of the Directive can be found here:

<http://ec.europa.eu/consumers/rights/>

Please note that the questions below relate to unfair commercial practices **in the field of financial services only**. A complementary survey questionnaire is available for the area of immovable property. In line with the scope of the Directive, such questions relate only to the business-to-consumer (B2C) segment.

In this questionnaire we kindly ask you to provide details concerning the legislative framework and unfair commercial practices observed in **your country** in the area of financial services, if any. Finally we would ask that you give your assessment of current enforcement and a possible need for EU action, based on your experience of the implementation of the UCPD in practice.

We appreciate you taking the time to complete this survey. The information you provide will be crucial in informing the possible future legislative process at EU level. Based on the data you provide and taking into account your views on the matter, we will analyse the application of the Directive in the field of financial services and provide recommendations, including whether the exemption under Article 3(9) should be kept or removed. This analysis will feed into the Report on the application of the Directive which the European Commission will undertake under Article 18 of the UCPD.

This questionnaire is targeted to Ministries and government agencies responsible for the enforcement of Directive 2005/29/EC in the field of financial services, ombudsmen and ADR schemes, consumer organisations, European Consumer Centres and national business associations.

Please complete the online questionnaire not later than 24th June 2011.

Clarifications:

All the questions relate to the situation since the Directive was implemented into your national legislation, unless specified otherwise. When completing the questionnaire, please consider the following clarifications

- The following questions relate to the business-to-consumer (B2C) segment and unfair commercial practices in other fields than financial services are **excluded**, as are rules and regulations related to business-to-business transactions and/or rules which provide for purely contractual protection to consumers or which regulate other aspects such as conditions of establishment or authorisations regimes.
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market is referred to throughout as the 'UCPD' or 'the Directive'.
- Financial services are defined in accordance with the definition contained in Article 2 of Directive 2002/65/EC: 'any service of a banking, credit, insurance, personal pension, investment or payment nature'.
- The 'Black List' referred to is Annex I of the UCPD.
- 'Cross-border' dimension means the consumer and the business are located in different Member States.
- ADR refers to Alternative Dispute Resolution

If you have any further queries, do not hesitate to contact:

Harriet Gamper: ucpd-study@civic-consulting.de

Phone +49-30-2196-2295

Fax +49-30-2196-2298

TECHNICAL REMARKS

Thank you for filling out this questionnaire online. You may complete this questionnaire in one sitting, or close it and return to the same question you closed it on, at a later time from the same computer. Each page that you fill in will be saved automatically when you proceed to the following page. For this purpose, please ensure that you have activated the cookies on your computer.

I. Identification**1. Please identify yourself****a. What is the name of your organisation?****b. In which country is your organisation located?****c. What category does your organization belong to?****d. Questionnaire completed by:****e. E-mail address:****f. Phone number:**

Note: Personal identification data (d,e,f) will only be used for the purposes of this study (in case there are clarifications needed), and will not be communicated to any third party.

2. Please describe the work of your organisation in relation to the application of the UCPD in the field of financial services (tick all that apply):

- Responsibility for enforcement of the Directive in the field of financial services
- Responsibility for enforcement of the Directive in the field of financial services and other goods and services
- Provide guidance on the application of the Directive to businesses in the field of financial services
- Provide guidance to consumers on their rights under the Directive
- Collect complaints
- Provide a complaints resolution service between businesses and consumers
- Resolve complaints online
- Resolve cross-border complaints
- Take legal action against businesses you consider to have breached the Directive
- Administer a code of conduct or self regulatory regime
- Other tasks (specify)

3. Which (other) agencies in your country are responsible for enforcing the UCPD in the field of financial services? Please list:

II. Legislative framework

4. Please specify the national implementation legislation(s) of the UCPD (ideally in the national language and in English) and the year of implementation:

Note: this legislation is hereafter referred to as the national implementation legislation of the UCPD.

5. Does national legislation ban commercial practices in the area of financial services which are not included in the Black List (Annex I) of the UCPD?

Yes No Don't know

If 'Yes', which practices are banned?

Are these practice(s) banned because of EU legislation other than the UCPD?

Yes No Don't know

Please specify the EU law and the national implementation legislation:

Please specify the national law banning this practice(s):

Legislative framework II

6. When you are dealing with a problem related to misleading actions in financial services, do you (tick all that apply):

- Apply the national implementation legislation of the UCPD (listed above)?
- Apply EU legislation other than the UCPD?
- Apply a national legal provision not based on any EU legislation?

Comments:

Please specify the EU legislation other than the UCPD to which you refer:

Please specify the national legal provision to which you refer:

Please specify the sector(s) to which the national legal provision applies (tick all that apply):

- Banking (including credit) Investment Insurance

Comments:

Why do you apply this national legal provision? Tick all that apply.

- It goes beyond the level of protection provided by the UCPD (please specify)
- It is more specific
- It is easier to obtain a result under this legislation than the UCPD
- It is better known and understood by enforcers
- It is better known and understood by businesses
- It is better known and understood by consumers
- There is existing case law relating to this legislation
- Other (please specify)

Comments:**7. When you are dealing with a problem related to misleading omissions in financial services, do you (tick all that apply):**

- Apply the national implementation legislation of the UCPD (listed above)?
- Apply EU legislation other than the UCPD?
- Apply a national legal provision not based on any EU legislation?

Comments:**Please specify the EU legislation other than the UCPD to which you refer:****Please specify the national legal provision to which you refer:****Please specify the sector(s) to which the national legal provision applies (tick all that apply):**

- Banking (including credit)
- Investment
- Insurance

Comments:**Why do you apply this national legal provision? Tick all that apply.**

- It goes beyond the level of protection provided by the UCPD (please specify)
- It is more specific
- It is easier to obtain a result under this legislation than the UCPD
- It is better known and understood by enforcers
- It is better known and understood by businesses
- It is better known and understood by consumers
- There is existing case law relating to this legislation
- Other (please specify)

Comments:

8. When you are dealing with a problem related to aggressive practices or the use of harassment, coercion and undue influence in financial services, do you (tick all that apply):

- Apply the national implementation legislation of the UCPD (listed above)?
- Apply EU legislation other than the UCPD?
- Apply a national legal provision not based on any EU legislation?

Comments:

Please specify the EU legislation other than the UCPD to which you refer:

Please specify the national legal provision to which you refer:

Please specify the sector(s) to which the national legal provision applies (tick all that apply):

- Banking (including credit) Investment Insurance

Comments:

Why do you apply this national legal provision? Tick all that apply.

- It goes beyond the level of protection provided by the UCPD (please specify)
- It is more specific
- It is easier to obtain a result under this legislation than the UCPD
- It is better known and understood by enforcers
- It is better known and understood by businesses
- It is better known and understood by consumers
- There is existing case law relating to this legislation
- Other (please specify)

Comments:

Legislative framework III

Contingent on the organization category chosen in Section I (Identification) either question 9 or question 9.ALTERNATIVE is shown.

The question sequence flow is as follows:
9 -> 9.a -> 9.b -> 10 -> 11

OR:
9.ALTERNATIVE -> 9.a -> 11

9. Are there any other national legal provisions concerning unfair commercial practices in the field of financial services which you have not considered in the previous answers and which are not based on the UCPD?

Yes No Don't know

9.ALTERNATIVE Are there any other national legal provisions concerning unfair commercial practices in the field of financial services which go beyond the level of protection provided by the UCPD and other relevant EU legislation?

Yes No Don't know

9.a Please describe these legal provisions

9.b Please indicate whether:

- These legal provisions are based on EU legislation other than the UCPD
- These legal provisions are based on national legislation that goes beyond the level of protection provided by EU legislation

Comments:

10. Please think about the legislative process when the UCPD was implemented into national law: was there discussion concerning maintaining or introducing stricter national provisions in the area of financial services?

Yes No Don't know

If 'Yes', please describe:

11. Is there important case law regarding the UCPD in your country (this includes case law which existed before the UCPD was implemented and which still applies now)?

Yes No Don't know

If 'Yes', please list references if available:

12. Where stricter national provisions compared to the UCPD exist regarding commercial practices in the field of financial services:

a. Do you think these stricter provisions are necessary and justified?

Yes No Don't know

Please explain:

b. Do you consider these to be best practice compared to the UCPD?

- Yes No Don't know

Please explain:

III. Most common unfair commercial practices

13. Have you observed unfair commercial practices in the area of financial services in your country since implementation of the UCPD into national law?

- Yes No

Most common unfair commercial practices - loop

Contingent on question 13.k, questions 13.a through 13.k can be repeated up to nine times.

Please provide details regarding up to ten common unfair commercial practices in the area of financial services that you have observed in your country:

a. Please briefly describe the most common practice (2-3 lines):

b. Please select the category which best describes the practice:

- Product was mis-sold (for example the product was sold to a person who was unable to use it)
- Product was mis-described
- Essential information was not included in advertising for the product
- There was a problem with advice given about the product
- The price was not transparent
- Other features relating to the product were not transparent
- Costs relating to advisers, notaries or other intermediaries were not transparent
- Results that could be expected from the product were misrepresented
- Risks associated with the product were not made clear
- The consumer was informed they had to buy this product when they were purchasing another product
- The rate or charge for the product was considered to be excessive
- The consumer was charged for a product or service they had not requested
- The provider refused to pay an insurance (or other) claim
- The consumer was subjected to harassment
- The trader imposed disproportionate barriers when the consumer wanted to switch or terminate the contract
- Other category (specify)

c. This constitutes a (tick all that apply):

- Banned commercial practice which is included in the Black List (Annex I) of the UCPD
- Practice banned in my country, but not included in the Black List (Annex I) of the UCPD
- Misleading action
- Misleading omission
-

Aggressive practice

- Other unfair commercial practice

Comments:

d. Do you collect complaints regarding this practice?

- Yes No

How frequently have you received complaints regarding this practice?

- Very frequently Rather frequently Sometimes Never

Please specify the total number of complaints received by your organisation regarding this practice during the last 3 years:

2008	<input type="text"/>
2009	<input type="text"/>
2010	<input type="text"/>

To which financial product did the complaints most often relate? (tick all that apply)

- Life insurance
- Health insurance
- Motor insurance
- Travel insurance
- Other insurance (home, care, etc.)
- Stocks or shares, bonds, derivatives, etc.
- Collective investments
- Private pension plans
- Savings account
- Current account
- Mortgage
- Secured loan
- Credit card
- Other loans (including consumer credit)
- Other retail financial service (specify)

Comments:

e. Please estimate the percentage of complaints regarding this practice which have a cross-border dimension?**f. Please estimate the percentage of complaints regarding this practice which relate to the online environment?**

g. What is the evidence that this is an unfair commercial practice?

- Complaints data
- Court cases
- Decisions by enforcement bodies
- Warnings issued by enforcement bodies
- Decisions or recommendations made by ADR bodies
- Other

h. Was a consumer loss suffered due to this practice?

- Yes No Don't know

What type of loss (tick all that apply)

- Financial loss
- Time loss
- Loss of confidence
- Other loss (please specify)

Please explain and refer to the evidence indicating the loss:

Are you able to quantify this loss?

- Yes No

If 'Yes', please explain:

i. Have you taken actions regarding this practice?

- Yes No

Please specify actions taken (tick all that apply):

- Referred consumer(s) to relevant enforcement body
- Referred consumer(s) to other relevant body such as ADR or ombudsman
- Took administrative decision
- Initiated procedure for judicial decision
- Issued guidance for businesses
- Issued a public warning about the trader or the practice
- Other actions

Comments:

In cases where administrative or judicial decisions were taken, please specify the number of decisions taken in 2010:

j. Did you take action using the national implementation of the UCPD?

- Yes No

If 'No', COULD you have taken action using the UCPD?

- Yes No Don't know

Please explain:

k. Have you observed another commercial practice in the area of financial services in your country that you consider to be unfair?

- Yes No

Most common unfair commercial practices II**l. Have you observed the emergence of new commercial practices in the online environment in the area of financial services which you consider to be unfair?**

- Yes No Don't know

If 'Yes', please explain:

m. Have you observed commercial practices in the area of financial services in other EU Member States country, which you consider to be unfair?

- Yes No Don't know

If 'Yes', please explain:

IV. Enforcement and self regulation**14. How is the UCPD enforced in your country in the field of financial services?**

- By means of public law
 By means of private law
 By means of criminal law
 Using ADR (as a requirement before pursuing legal remedies)

Comments:

15. Who can bring an action under the national law implementing the UCPD?

- Public authorities
 Ombudsman
 Organisations representing consumer interests

Competitors

- Trade associations
- Individual consumers

Comments:

16. Do you consider the enforcement system regarding unfair commercial practices in the area of financial services in your country to be effective?

- Very effective Fairly effective Not very effective Not at all effective Don't know

Please explain your answer:

17. What are the main obstacles for enforcing unfair commercial practices legislation in the field of financial services in your country, when enforcing against (please comment):

- a) Commercial practices which are banned in all circumstances
- b) Misleading actions
- c) Misleading omissions
- d) Aggressive practices
- e) Other unfair commercial practices

18. Are there any special problems relating to the cross-border enforcement of unfair commercial practices legislation in the field of financial services?

- Yes No We do not deal with cross-border transactions

If 'Yes', please describe the special problems encountered relating to cross-border enforcement:

19. Would you say you apply a different concept of "consumer" in financial services when compared to the concept of "consumer" in general (for example, do you require different standards on transparency, possibly taking into account a lack of knowledge about financial products)?

- Yes No Don't know

If 'Yes', please explain:

20. Codes of conduct and self regulation relevant for financial services (please tick if applicable):

- We belong to a code of conduct or self regulatory regime
- We administer a code of conduct or self regulatory regime
- Neither

Please give the name of the code of conduct or self regulatory regime:

Does the code of conduct or self regulatory regime go further than the provisions of the UCPD?

- Yes

No

If 'Yes', please explain:

Does this code of conduct or self regulatory regime go further than the provisions in your national law(s) which relate to unfair commercial practices?

Yes No

If 'Yes', please explain:

Do you consider self regulation to be effective in financial services in your country?

Very effective Fairly effective Not very effective Not at all effective Don't know

Please explain your answer:

21. ADR Bodies

a. Do you consider ADR (conciliation, mediation, etc.) to be effective in financial services in your country?

Very effective Fairly effective Not very effective Not at all effective Don't know

If 'Not very effective' or 'Not at all effective', please describe:

b. Do you think there is a need for development and/or an increased use of alternative dispute resolution mechanisms in relation to cross-border transactions in the fields of financial services?

Yes No Don't know

If 'No', please describe:

V. Concluding questions

22. Do you think the UCPD provides effective protection for consumers in the area of financial services?

Very effective Fairly effective Not very effective Not at all effective Don't know

If 'Not very effective' or 'Not at all effective', do you think this lack of effectiveness is (tick all that apply):

due to gaps in the UCPD due to lack of use of the existing provisions by enforcers

Please explain your answer:

23. Do you think your national provisions provide more effective protection for consumers than the UCPD alone would?

Yes No Don't know

Please explain your answer:

24. Are you aware of any legislative gaps in the UCPD in general that are relevant for the area of financial services and require action at EU level?

Yes No

If 'Yes', please specify the gaps and which action is needed in your view:

25. How important is it in your view to keep the exemption for financial services under Article 3(9) of the Directive, which would allow national regulators to adopt or maintain stricter provisions for financial services than the rules contained in the UCPD?

Very important Fairly important Not very important Not important at all

Please explain your answer:

26. Would it be beneficial to remove the Article 3(9) exemption and have a higher degree of convergence in the area of financial services?

Yes No Don't know

Please explain your answer:

27. Which consequences do you expect if the Article 3(9) exemption were to be removed in the area of financial services?

Costs of financial service providers operating only in our country can be expected to:

Decrease very significantly Decrease fairly significantly Remain similar Increase fairly significantly Increase very significantly Don't know

Costs of financial service providers operating in multiple EU countries can be expected to:

Decrease very significantly Decrease fairly significantly Remain similar Increase fairly significantly Increase very significantly Don't know

Cross-border competition between financial service providers in the EU can be expected to:

Decrease very significantly Decrease fairly significantly Remain similar Increase fairly significantly Increase very significantly Don't know

Level of protection of consumers in our country can be expected to:

Decrease very significantly Decrease fairly significantly Remain similar Increase fairly significantly Increase very significantly Don't know

Please explain your assessment:

28. Please add any other general comment that you may have regarding your experience with the implementation of the UCPD at national level and other issues covered by this questionnaire

Dear respondent,

By clicking next, you will submit your answers, and will not be able to change them. You will also not be able to complete the questionnaire again.

STUDY ON THE APPLICATION OF DIRECTIVE 2005/29/EC ON UNFAIR COMMERCIAL PRACTICES IN THE EU IMMOVABLE PROPERTY

The Directorate General for Justice of the European Commission has commissioned a study on the application of Directive 2005/29/EC on Unfair Commercial Practices (UCPD) in the European Union.

The study will focus on the application of the Directive in the fields of financial services and immovable property. Article 3(9) of the Directive allows Member States to adopt or maintain stricter provisions than those in the Directive in the above mentioned fields. Our analysis will therefore cover any other rules which the Member States have in place to fight unfair commercial practices in the fields of financial services and immovable property, and will describe the main unfair commercial practices in these sectors.

Links to the Directive itself and the European Commission Guidance on the implementation and application of the Directive can be found here:

<http://ec.europa.eu/consumers/rights/>

Please note that the questions below relate to unfair commercial practices **in the field of immovable property only**. A complementary survey questionnaire is available for the area of financial services. In line with the scope of the Directive, such questions relate only to the business-to-consumer (B2C) segment.

In this questionnaire we kindly ask you to provide details concerning the legislative framework and unfair commercial practices observed in **your country** in the area of immovable property, if any. Finally we would ask that you give your assessment of current enforcement and a possible need for EU action, based on your experience of the implementation of the UCPD in practice.

We appreciate you taking the time to complete this survey. The information you provide will be crucial in informing the possible future legislative process at EU level. Based on the data you provide and taking into account your views on the matter, we will analyse the application of the Directive in the field of immovable property and provide recommendations, including whether the exemption under Article 3(9) should be kept or removed. This analysis will feed into the Report on the application of the Directive which the European Commission will undertake under Article 18 of the UCPD.

This questionnaire is targeted to Ministries and government agencies responsible for the enforcement of Directive 2005/29/EC in the field of immovable property, ombudsmen and ADR schemes, consumer organisations, European Consumer Centres and national business associations.

Please complete the online questionnaire not later than 24th June 2011.

Clarifications:

All the questions relate to the situation since the Directive was implemented into your national legislation, unless specified otherwise. When completing the questionnaire, please consider the following clarifications

- The following questions relate to the business-to-consumer (B2C) segment and unfair commercial practices in other fields than immovable property are **excluded** from the scope of the study, as are rules and regulations related to business-to-business transactions and/or rules which provide for purely contractual protection to consumers or which regulate other aspects such as conditions of establishment or authorisations regimes.
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market is referred to throughout as the 'UCPD' or 'the Directive'.
- Immovable property is defined according to Directive 94/47/EC as 'any building or part of a building for use as accommodation to which the right which is the subject of the contract relates'.
- The 'Black List' referred to is Annex I of the UCPD.
- 'Cross-border' dimension means the consumer and the business are located in different Member States.
- ADR refers to Alternative Dispute Resolution

If you have any further queries, do not hesitate to contact:

Harriet Gamper: ucpd-study@civic-consulting.de

Phone +49-30-2196-2295

Fax +49-30-2196-2298

TECHNICAL REMARKS

Thank you for filling out this questionnaire online. You may complete this questionnaire in one sitting, or close it and return to the same question you closed it on, at a later time from the same computer. Each page that you fill in will be saved automatically when you proceed to the following page. For this purpose, please ensure that you have activated the cookies on your computer.

I. Identification

1. Please identify yourself**a. What is the name of your organisation?****b. In which country is your organisation located?****c. What category does your organization belong to?****d. Questionnaire completed by:****e. E-mail address:****f. Phone number:**

Note: Personal identification data (d,e,f) will only be used for the purposes of this study (in case there are clarifications needed), and will not be communicated to any third party.

2. Please describe the work of your organisation in relation to the application of the UCPD in the field of immovable property (tick all that apply):

- Responsibility for enforcement of the Directive in the field of immovable property
- Responsibility for enforcement of the Directive in the field of immovable property and other goods and services
- Provide guidance on the application of the Directive to businesses in the field of immovable property
- Provide guidance to consumers on their rights under the Directive
- Collect complaints
- Provide a complaints resolution service between businesses and consumers
- Resolve complaints online
- Resolve cross-border complaints
- Take legal action against businesses you consider to have breached the Directive
- Involvement in a code of conduct or self regulatory regime
- Other tasks (specify)

3. Which (other) agencies in your country are responsible for enforcing the UCPD in the field of immovable property? Please list:**II. Legislative framework****4. Please specify the national implementation legislation(s) of the UCPD (ideally in the national language and in English) and the year of implementation:**

Note: this legislation is hereafter referred to as the national implementation legislation of the UCPD.

5. Does national legislation ban commercial practices in the area of immovable property which are not included in the Black List (Annex I) of the UCPD?

- Yes No Don't know

If 'Yes', which practices are banned?

Are these practice(s) banned because of EU legislation other than the UCPD?

- Yes No Don't know

Please specify the EU law and the national implementation legislation:

Please specify the national law banning this practice(s):

Legislative framework 2

Questions 6,7,8 displayed contingent on the answer to Question 1.c

6. When you are dealing with a problem related to misleading actions in immovable property, do you (tick all that apply):

- Apply the national implementation legislation of the UCPD (listed above)?
- Apply EU legislation other than the UCPD?
- Apply a national legal provision not based on any EU legislation?

Comments:

Please specify the EU legislation other than the UCPD to which you refer:

Please specify the national legal provision to which you refer:

Comments:

Why do you apply this national legal provision? Tick all that apply.

- It goes beyond the level of protection provided by the UCPD (please specify)
- It is more specific
- It is easier to obtain a result under this legislation than the UCPD
- It is better known and understood by enforcers
- It is better known and understood by businesses

It is better known and understood by consumers

- There is existing case law relating to this legislation
- Other (please specify)

Comments:

7. When you are dealing with a problem related to misleading omissions in immovable property, do you (tick all that apply):

- Apply the national implementation legislation of the UCPD (listed above)?
- Apply EU legislation other than the UCPD?
- Apply a national legal provision not based on any EU legislation?

Comments:

Please specify the EU legislation other than the UCPD to which you refer:

Please specify the national legal provision to which you refer:

Comments:

Why do you apply this national legal provision? Tick all that apply.

- It goes beyond the level of protection provided by the UCPD (please specify)

- It is more specific
- It is easier to obtain a result under this legislation than the UCPD
- It is better known and understood by enforcers
- It is better known and understood by businesses
- It is better known and understood by consumers
- There is existing case law relating to this legislation

- Other (please specify)

Comments:

8. When you are dealing with a problem related to aggressive practices or the use of harassment, coercion and undue influence in immovable property, do you (tick all that apply):

- Apply the national implementation legislation of the UCPD (listed above)?
- Apply EU legislation other than the UCPD?
- Apply a national legal provision not based on any EU legislation?

Comments:

Please specify the EU legislation other than the UCPD to which you refer:

Please specify the national legal provision to which you refer:

Comments:

Why do you apply this national legal provision? Tick all that apply.

It goes beyond the level of protection provided by the UCPD (please specify)

It is more specific

It is easier to obtain a result under this legislation than the UCPD

It is better known and understood by enforcers

It is better known and understood by businesses

It is better known and understood by consumers

There is existing case law relating to this legislation

Other (please specify)

Comments:

Legislative framework 3

Contingent on the organization category chosen in Section I (Identification) either question 9 or question 9.ALTERNATIVE is shown.

The question sequence flow is as follows:
9 -> 9.a -> 9.b -> 10 -> 11

OR:

9.ALTERNATIVE -> 9.a -> 11

9. Are there any other national legal provisions concerning unfair commercial practices in the field of immovable property which you have not considered in the previous answers and which are not based on the UCPD?

Yes No Don't know

9.ALTERNATIVE Are there any other national legal provisions concerning unfair commercial practices in the field of immovable property which go beyond the level of protection provided by the UCPD and other relevant EU legislation?

Yes No Don't know

9.a Please describe these legal provisions

9.b Please indicate whether:

- These legal provisions are based on EU legislation other than the UCPD
- These legal provisions are based on national legislation that goes beyond the level of protection provided by EU legislation

Comments:

10. Please think about the legislative process when the UCPD was implemented into national law: was there discussion concerning maintaining or introducing stricter national provisions in the area of immovable property?

- Yes No Don't know

If 'Yes', please describe:

11. Is there important case law regarding the UCPD in your country (this includes case law which existed before the UCPD was implemented and which still applies now)?

- Yes No Don't know

If 'Yes', please list references if available:

12. Where stricter national provisions compared to the UCPD exist regarding commercial practices in the field of immovable property:**a. Do you think these stricter provisions are necessary and justified?**

- Yes No Don't know

Please explain:

b. Do you consider these to be best practice compared to the UCPD?

- Yes No Don't know

Please explain:

III. Most common unfair commercial practices**13. Have you observed unfair commercial practices in the area of immovable property in your country since implementation of the UCPD into national law?**

- Yes No

Most common unfair commercial practices - loop

Contingent on Question 13.k Questions 13.a through 13.k are repeated up to nine times.

Please provide details regarding up to ten common unfair commercial practices in the area of immovable property that you have observed in your country:

a. Please briefly describe the most common practice (2-3 lines):

b. Please select the category which best describes the practice:

- Immovable property was mis-described
- Essential information was not included in advertising for the immovable property
- There was a problem with advice given about the immovable property
- The price was not transparent
- Other features relating to the immovable property were not transparent
- Costs relating to advisers, notaries or other intermediaries were not transparent
- The consumer was subjected to harassment
- Other category (specify)

c. This constitutes a (tick all that apply):

- Banned commercial practice which is included in the Black List (Annex I) of the UCPD
- Practice banned in my country, but not included in the Black List (Annex I) of the UCPD
- Misleading action
- Misleading omission
- Aggressive practice
- Other unfair commercial practice

Comments:

d. Do you collect complaints regarding this practice?

- Yes No

How frequently have you received complaints regarding this practice?

- Very frequently Rather frequently Sometimes Never

Please specify the total number of complaints received by your organisation regarding this practice during the last 3 years:

2008	<input type="text"/>
2009	<input type="text"/>
2010	<input type="text"/>

To which sector did the complaints most often relate?

- Buying property Renting property Timeshare Don't know

Comments:

e. Please estimate the percentage of complaints regarding this practice which have a cross-border

dimension:**f. Please estimate the percentage of complaints regarding this practice which relate to the online environment:****g. What is the evidence that this is an unfair commercial practice?**

- Complaints data
- Court cases
- Decisions by enforcement bodies
- Warnings issued by enforcement bodies
- Decisions or recommendations made by ADR bodies
- Other

h. Was a consumer loss suffered due to this practice?

- Yes No Don't know

What type of loss (tick all that apply)

- Financial loss
- Time loss
- Loss of confidence
- Other loss (please specify)

Please explain and refer to the evidence indicating the loss:

Are you able to quantify this loss?

- Yes No

If 'Yes', please explain:

i. Have you taken actions regarding this practice?

- Yes No

Please specify actions taken (tick all that apply):

- Referred consumer(s) to relevant enforcement body
- Referred consumer(s) to other relevant body such as ADR or ombudsman
- Took administrative decision
- Initiated procedure for judicial decision
- Issued guidance for businesses
- Issued a public warning about the trader or the practice

Other actions

Comments:

In cases where administrative or judicial decisions were taken, please specify the number of decisions taken in 2010:

j. Did you take action using the national implementation of the UCPD?

Yes No

If 'No', COULD you have taken action using the UCPD?

Yes No Don't know

Please explain:

k. Have you observed another commercial practice in the area of immovable property in your country that you consider to be unfair?

Yes No

Most common unfair commercial practices II

l. Have you observed the emergence of new commercial practices in the online environment in the area of immovable property which you consider to be unfair?

Yes No Don't know

If 'Yes', please explain:

m. Have you observed commercial practices in the area of immovable property in other EU Member States, which you consider to be unfair?

Yes No Don't know

If 'Yes', please explain:

IV. Enforcement and self regulation

14. How is the UCPD enforced in your country in the field of immovable property?

- By means of public law
- By means of private law
- By means of criminal law
- Using ADR (as a requirement before pursuing legal remedies)

Comments:

15. Who can bring an action under the national legislation implementing the UCPD?

- Public authorities
- Ombudsman
- Organisations representing consumer interests
- Competitors
- Trade associations
- Individual consumers

Comments:

16. Do you consider the enforcement system regarding unfair commercial practices in the area of immovable property in your country to be effective?

- Very effective Fairly effective Not very effective Not at all effective Don't know

Please explain your answer:

17. What are the main obstacles for enforcing unfair commercial practices legislation in the field of immovable property in your country, when enforcing against (please comment):

- a) Commercial practices which are banned in all circumstances
- b) Misleading actions
- c) Misleading omissions
- d) Aggressive practices
- e) Other unfair commercial practices

18. Are there any special problems relating to the cross-border enforcement of unfair commercial practices legislation in the field of immovable property?

- Yes No We do not deal with cross-border transactions

If 'Yes', please describe the special problems encountered relating to cross-border enforcement:

19. Would you say you apply a different concept of "consumer" in immovable property when compared to the concept of "consumer" in general (for example, do you require different standards on transparency, possibly taking into account a lack of knowledge about the subject matter)?

- Yes No Don't know

If 'Yes', please explain:

20. Codes of conduct and self regulation relevant for immovable property (please tick if applicable):

We belong to a code of conduct or self regulatory regime

- We administer a code of conduct or self regulatory regime
 Neither

Please give the name of the code of conduct or self regulatory regime:

Does the code of conduct or self regulatory regime go further than the provisions of the UCPD?

- Yes No

If 'Yes', please explain:

Does this code of conduct or self regulatory regime go further than the provisions in your national law(s) which relate to unfair commercial practices?

- Yes No

If 'Yes', please explain:

Do you consider self regulation to be effective in the field of immovable property in your country?

- Very effective Fairly effective Not very effective Not at all effective Don't know

Please explain your answer:

21. ADR Bodies

a. Do you consider ADR (conciliation, mediation, etc.) to be effective in the field of immovable property in your country?

- Very effective Fairly effective Not very effective Not at all effective Don't know

If 'Not very effective' or 'Not at all effective', please describe:

b. Do you think there is a need for development and/or an increased use of alternative dispute resolution mechanisms in relation to cross-border transactions in the field of immovable property?

- Yes No Don't know

If 'No', please describe:

V. Concluding questions

22. Do you think the UCPD provides effective protection for consumers in the area of immovable property?

- Very effective Fairly effective Not very effective Not at all effective Don't know

If 'Not very effective' or 'Not at all effective', do you think this lack of effectiveness is (tick all that apply):

- due to gaps in the UCPD due to lack of use of the existing provisions by enforcers

Please explain your answer:

23. Do you think your national provisions provide more effective protection for consumers than the UCPD alone would?

- Yes No Don't know

Please explain your answer:

24. Are you aware of any legislative gaps in the UCPD in general that are relevant for the area of immovable property and require action at EU level?

- Yes No

If 'Yes', please specify the gaps and which action is needed in your view:

25. How important is it in your view to keep the exemption for immovable property under Article 3(9) of the Directive, which would allow national regulators to adopt or maintain stricter provisions for immovable property than the rules contained in the UCPD?

- Very important Fairly important Not very important Not important at all

Please explain your answer:

26. Would it be beneficial to remove the Article 3(9) exemption and have a higher degree of convergence in the area of immovable property?

- Yes No Don't know

Please explain your answer:

27. Which consequences do you expect if the Article 3(9) exemption were to be removed in the area of immovable property?

Costs of operators in immovable property operating only in our country can be expected to:

- Decrease very significantly Decrease fairly significantly Remain similar Increase fairly significantly Increase very significantly Don't know
-

Costs of operators in immovable property operating in multiple EU countries can be expected to:

- Decrease very significantly Decrease fairly significantly Remain similar Increase fairly significantly Increase very significantly Don't know
-

Cross-border competition between operators in immovable property operating in the EU can be expected

to:

Decrease very
significantly



Decrease fairly
significantly



Remain similar



Increase fairly
significantly



Increase very
significantly



Don't know



Level of protection of consumers in our country can be expected to:

Decrease very
significantly



Decrease fairly
significantly



Remain similar



Increase fairly
significantly



Increase very
significantly



Don't know



Please explain your assessment:

28. Please add any other general comment that you may have regarding your experience with the implementation of the UCPD at national level and other issues covered by this questionnaire

Dear respondent,

By clicking next, you will submit your answers, and will not be able to change them. You will also not be able to complete the questionnaire again.

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ANNEX IV: Overview of stakeholders consulted and survey respondents

The following tables show stakeholders consulted during interviews, as well as those who responded to Civic Consulting's survey questionnaires:

Table 18: List of interviewees:

Organisation	Category	Interview
Eurofinas	European federation	Exploratory
European Banking Federation	European federation	Exploratory
European Insurance and Reinsurance Federation	European federation	Exploratory
European Advertising Standards Alliance	European advertising self-regulation federation	Exploratory
Prof. Dr. Jules Stuyck	Katholieke Universiteit Leuven	Exploratory
Financial Ombudsman Service, UK	Ombudsman	Exploratory
Greek Consumer Ombudsman	Ombudsman	Exploratory
Office of Fair Trading, UK	Enforcement body	Exploratory
Financial Services Authority, UK	Enforcement body	Exploratory
Danish Consumer Council	Consumer organisation	Exploratory
UFC-Que Choisir, France	Consumer organisation	Exploratory
<i>Which?</i>	Consumer organisation	Exploratory
European Property Foundation	European organisation	In-depth
Federal Ministry of Labour, Social Affairs and Consumer Protection	Austria (enforcement body)	In-depth
FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation	Belgium (enforcement body)	In-depth
Ministry of Economy	Bulgaria (national Ministry)	In-depth
Consumer Protection Commission	Bulgaria (enforcement body)	In-depth
Financial Supervision Commission	Bulgaria (enforcement body)	In-depth
Cyprus Property Action Group	Cyprus (non-governmental organisation)	In-depth
Czech Trade Inspection Authority	Czech Republic (enforcement body)	In-depth
Danish Financial Services Authority	Denmark (enforcement body)	In-depth
Consumer Ombudsman	Denmark (ombudsman)	In-depth

General Directorate for Fair Trading, Consumer Affairs and Fraud Control	France (enforcement body)	In-depth
Federation of German Consumer Organisations	Germany (consumer organisation)	In-depth
Centre for Protection Against Unfair Competition	Germany (enforcement body)	In-depth
Central Bank of Ireland	Ireland (enforcement body)	In-depth
Competition and Market Authority Italy	Italy (enforcement body)	In-depth
Consumer Rights Protection Centre	Latvia (enforcement body)	In-depth
State Consumer Rights Protection Authority	Lithuania (enforcement body)	In-depth
Consumer Authority Netherlands	Netherlands (enforcement body)	In-depth
Office of Competition and Consumer Protection	Poland (enforcement body)	In-depth
Polish Financial Supervision Authority	Poland (enforcement body)	In-depth
Portuguese Insurance and Pension Funds Supervisory Authority	Portugal (enforcement body)	In-depth
Ministry of Justice of the Slovak Republic	Slovakia national Ministry)	In-depth
Association of Service Users	Slovakia (non-governmental organisation)	In-depth
Catalan Consumer Agency	Spain (enforcement body)	In-depth
Consumers' Union of Spain	Spain (consumer organisation)	In-depth
Property Ombudsman	UK (ombudsman)	In-depth

Table 19: List of survey respondents, financial services:

Country	Organisation
Austria	European Consumer Centre Austria
	Federal Ministry of Labour, Social Affairs and Consumer Protection
	Federal Ministry of Economy, Family and Youth

Belgium	FPS Economy, SMEs, Self-Employed and Energy, DG Enforcement and Mediation
Bulgaria	Commission for Consumer Protection
Cyprus	Competition and Consumer Protection Service
Czech Republic	European Consumer Centre Czech Republic
	Czech Trade Inspection Authority
	Czech Banking Association
Denmark	Finance and Leasing - the Association of Danish Finance Houses
	Danish Bankers Association
	Danish FSA
	Danish Mortgage Credit Complaint Board
Estonia	Consumer Protection Board of Estonia
Finland	Finnish Consumer Agency and Ombudsman
	Finnish Financial Supervisory Authority
France	UFC-Que Choisir
	French Federation of Insurance Companies
	French Banking Federation
	General Directorate for Fair Trading, Consumer Affairs and Fraud Control
Germany	Centre for Protection against Unfair Competition
	Federation of German Consumer Organisations
Greece	General Secretariat of Consumer Affairs
	Hellenic Bank Association
Hungary	Hungarian Competition Authority
Iceland	Icelandic Consumer Agency
Ireland	Central Bank of Ireland
Italy	Italian Banking Association
	National Association of Insurance Companies (ANIA)
	Competition and Markets Authority
Latvia	BTA SE
	Consumer Rights Protection Center
Lithuania	State Consumer Rights Protection Authority

Luxembourg	European Consumer Centre Luxembourg
	ABBL
	Commission de Surveillance du Secteur Financier
Malta	Malta Financial Services Authority
Netherlands	Netherlands Authority for the Financial Markets and the Department of Finance
Norway	Norwegian Consumer Ombudsman
Poland	Konferencja Przedsiębiorców Finansowych
	Transcom WorldWide CMS Poland LLC
	Polish Financial Supervision Authority
	Office of Competition and Consumer Protection
Portugal	Lisbon Arbitration Centre for Consumer Conflicts
	Portuguese Insurance and Pension Funds Supervisory Authority
	Bank of Portugal
Romania	European Consumer Centre Romania
	National Authority for Consumers' Protection
	Romanian Banking Association
Slovakia	Association of Service Users
	Ministry of Economy of the Slovak Republic, Slovak Trade Inspection
Slovenia	Market Inspectorate of Republic of Slovenia
Spain	Consumers' Union of Spain
	Catalan Consumer Agency
Sweden	National Board for Consumer Disputes
	Swedish Consumer Agency
	Swedish Bankers Association
UK	Citizens Advice
	Finance & Leasing Association
	Financial Services Authority
	Office of Fair Trading
	<i>Which?</i>

Table 20: List of survey respondents, immovable property:

Country	Organisation
Austria	European Consumer Centre Austria
	Federal Ministry of Labour, Social Affairs and Consumer Protection
	Federal Ministry of Economy, Family and Youth
Belgium	Federal Public Service Economy, SME's, Self-Employed and Energy, DG Enforcement and Mediation
Bulgaria	Commission for Consumer Protection
Cyprus	Competition and Consumer Protection Service
Czech Republic	European Consumer Centre Czech Republic
	Czech Trade Inspection Authority
Denmark	Enterprise and Construction Authority
	Danish Consumer Ombudsman
Estonia	Consumer Protection Board of Estonia
Finland	Finnish Consumer Agency and Ombudsman
France	General Directorate for Fair Trading, Consumer Affairs and Fraud Control
Germany	Centre for Protection against Unfair Competition
Greece	General Secretariat of Consumer Affairs
Hungary	Hungarian Competition Authority
	Hungarian Authority for Consumer Protection
Iceland	Icelandic Consumer Agency
Ireland	Property Services Regulatory Authority
Italy	Competition and Markets Authority
Latvia	Consumer Rights Protection Center
Lithuania	State Consumer Rights Protection Authority
Luxembourg	European Consumer Centre Luxembourg
	Ministry of Economy and Foreign Trade - Directorate for Internal Market and Consumers
Netherlands	Netherlands Consumer Authority
Norway	Consumer Ombudsman Norway

Poland	Office of Competition and Consumer Protection
Portugal	Lisbon Arbitration Centre for Consumer Conflicts
Slovenia	Market Inspectorate Of Republic Of Slovenia
Spain	Consumers' Union of Spain
	Catalan Consumer Agency
Sweden	Swedish Consumer Agency
UK	Property Ombudsman
	<i>Which?</i>
	Office of Fair Trading