Central and Eastern European Countries after and before the Accession

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1. Introduction

E-commerce\(^1\) plays a significant role in trade of goods and provision of services. It is a form of trade which pervading every segment of the modern market environment. E-commerce develops new type of relationship with consumers that creates B2C (business-to-consumer) market as an integral part of retail market presenting transactions of products and services to consumers over Internet. In this way traditional business models are changed because mediating role of retail companies is gradually being replaced by intensified straightforward linkages between businesses and consumers, increasing cross-border trade, facilitating competition and lowering prices.\(^2\)

However, this intensification of the trade throughout blossoming of the e-commerce is a significant regulatory challenge due to the peculiar nature of the e-commerce. Namely, it eases provision of trade and services as economic subjects satisfy consumers’ preferences by offering them tailor-made products. At the same time this raises questions of effective consumers’ rights protection in this changing environment. Indeed, there are several challenges accompanying the e-commerce such as increased consumers’ exposure to various threats, insufficient market transparency and lack of information about products. These elements decrease consumers’ confidence towards this type of trade, consequently hindering further integration of the EU Internal Market.

The paper analyzes consumer protection in the domain of e-commerce by focusing on appropriate insurance of legal certainty and satisfying level of consumers’ confidence. In that regard the elaboration

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\(^1\) The term e-commerce is used in the text to describe a form of trade encompassing business activities from supply of goods and services from the provider, to their delivery to the final consumer. Some authors define it as presenting all information technologies, which speed up production process and make it simpler (shopping over Internet or on-line shopping). For more details see, Tepš, Nina, “Elektronička trgovina – određivanje nadležnosti u potrošačkim sporovima” (E-commerce – determining the authorities in consumer’s disputes), Pravo i porezi, vol. 14, no. 6, 2005, p. 61. Business to consumer e-commerce (B2C) is in the focus of our interests because although it represents just one segment of the much larger e-commerce, it has the largest impact on the consumers, because the consumers have been most directly involved in this type of e-commerce. Apart from B2C e-commerce, there are for example B2B e-commerce (business to business) or B2G (business to government), etc. Some other terms in the text have to be defined as well. In that regard, distance shopping means a purchase made by consumers via the Internet, by telephone of by post, while sellers are situated either in the country of consumer’s residence or some other country.

is based on relevant European and Croatian legal and institutional framework. Having in mind the spread of e-commerce among Croatian consumers as well as the level of their awareness on their rights as consumers, the second part of the paper deals with selected aspects of implementation and interpretation of the Directive on electronic commerce relevant for Croatia as a future EU Member State. Finally, the third part focuses on Croatian preparedness in selected interpretation issues of the Directive on electronic commerce in the context of its future integration into the Internal Market of the EU. This part of the paper assesses the level in which relevant data are recorded in Croatia and reveals some major flaws that undermine Croatian preparedness for efficient interpretation of the Directive. The paper stresses the importance of the consumer protection associations (and consumer counselling centers (CCC) as vital stakeholders in enhancing legal certainty and consumers' confidence in e-commerce. Furthermore, the paper reveals significant issues of the functioning of consumer protection system in Croatia, especially if taking into consideration the threats of e-commerce for consumers' confidence and required legal certainty.

2. E-commerce and consumer protection in the EU

2.1. Defining the basic terms, legal and institutional framework

At the beginning the definitions of basic terms used in this elaboration need to be presented. In that regard, the definition of the “information society services” means any information society service, i.e., any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of service. This definition determines in a more detailed way the term “at distance” explaining it as a service provided without the parties being simultaneously present. The term “by electronic means” understands the service which is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means. The term “at the individual request of recipients of services” is defined in more details as a service which is provided through the transmission of data at individual request. The notion of consumer is defined as any natural person who enters into the legal matter or acts on the market with the purposes which are not aimed on personal business activity or on the pursuit of an independent economic activity. However, the notion of services provider is defined through the

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5 The relevant provisions of Croatian legal acts (more specific the Art. 2, p. 2 of the Croatian Electronic Commerce Act) have incorporated such definition of the information society services.

6 Art. 3, p. 1 of the Consumer Protection Act and Art. 2, p. 8 of the Electronic Commerce Act. Such definition follows the notion of consumer set by the Directive on electronic commerce, where consumer is defined as any natural person who is acting for purposes which are outside his or her trade, business or profession (see Art. 2 of the Directive on electronic commerce).
provisions of the Directive on electronic commerce, as any natural or legal person providing an information society service.\footnote{This definition is incorporated into the text of the Directive on electronic commerce, in a way of implication to the definition provided by the Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of Information Society Services. The same wording has been taken over by the Art. 2 of the Electronic Commerce Act.}

In order to provide analysis on the EU consumer protection in e-commerce it is necessary to elaborate the \textit{relevant acts at the European level}. Among the main strategic documents stands the current EU Consumer Policy Strategy 2007–2013 (Strategy) which strongly emphasizes consumers’ protection in the e-commerce. The Strategy aims to empower EU consumers through providing them with accurate information, market transparency and confidence coming from effective protection. Furthermore, the Strategy aims to enhance consumers’ welfare in terms of choice, quality and safety, as well as provide them with effective protection from serious risks and threats, that they cannot tackle as individuals.\footnote{European Commission, “EU Consumer Policy strategy 2007–2013: Empowering consumers, enhancing their welfare, effectively protecting them”. Brussels, 13. 3. 2007, COM (2007) 99 final, p. 13.} The goals of improving consumers’ welfare, market transparency and effective protection related to the e-commerce have been integral part of the EU’s policy-planning within the Lisbon Agenda as well, with the main aim to fully utilize potentials of Internal Market, improve competition and overall increase of the EU competitiveness. Thus, the same goals are included in the new Europe 2020 strategy that explicitly stresses the importance of consumers’ confidence to buy goods and services on-line for growth and innovation.\footnote{European Commission, “Europe 2020: A strategy for smart, sustainable and inclusive growth”. Brussels, 3.3.2010, COM (2010) 2020, p. 20.} One of the main focuses of the Europe’s 2020 Integrated Guideline no. 6 is improvement of consumer environment by fostering open and transparent competition.\footnote{Guideline 6: Improving the business and consumer environment and modernising the industrial base in European Commission, in \textit{European Commission, “Europe 2020: Integrated guidelines for the economic and employment policies of the Member States”}. Brussels, 27.4.2010, SEC (2010) 488 final, p. 11.} All mentioned strategic documents have stated the importance of the e-commerce for further consolidation of Internal Market.

However, when speaking about consumer protection in the e-commerce at the EU level, the Directive on electronic commerce presents the central act that aims to ensure European citizens and entrepreneurs to take full advantages of all benefits provided by the e-commerce. Considering the disparities between the national provisions of the Member States, which are regulating the provision of information society services, the absence of proper coordination of relevant provisions results in the legal uncertainty and the betrayal of the consumers’ trust. One of the main issues which contribute to the greater legal uncertainty is the lack of capability of the Member States to handle and control services originating from other Member States. In that regard, the Directive on electronic commerce specifies the scope of the term “coordinated field” describing it as the requirements which the provider of a service needs to satisfy in respect of:

a) taking up of the information society services activity (requirements on qualifications, notification and authorization),

b) the pursue of the information society services activity relating to the behavior of the services provider, quality and content of the service, as well as concerning the liability of the services provider.\footnote{Art. 2 of the Directive on electronic commerce.} Having this in mind it can be said that the coordinated field covers only requirements on on-line shopping, on-line advertising, on-line contracting and on-line information activities, while it does not extend to the area of requirements on goods (for example, labelling requirements,
safety conditions, liability of goods, transport and delivery of goods, as well as requirements relating to the services which are not provided by electronic means). Here the intention of the European Union to leave the space for information society services to be regulated at the national levels of Member States is clearly visible.

For the purposes of better determination of the scope of the Directive on electronic commerce, it is necessary to explain which areas are excluded from its application. Hence, the field of taxation, as well as questions relating to information society services covered by the Directives on the protection of individuals with regard to the processing of personal data and on the free movement of such data\textsuperscript{12} and processing of personal data and the protection of privacy in the telecommunications sector\textsuperscript{13} are excluded from the scope of the Directive on electronic commerce. Furthermore, the issues of practices and agreements from the cartel law, next to the activities of notaries or equivalent professions insofar the pursuit of these activities is directly connected with the exercise of public authority are also excluded from the application of the Directive on electronic commerce. The areas of gambling activities, lotteries and betting where activities in question involve a stake with monetary value in games of chance as well as representation and defense of clients before the courts do not fall in the scope of the Directive on electronic commerce.\textsuperscript{14} Although being the central act which regulates e-commerce, it should be pointed out that the Directive on electronic commerce does not prejudice the level of protection provided for the public health and consumer interests through the acts on European level.\textsuperscript{15}

The European Consumer Centres Network (ECC-Net) is the institutional framework relevant for rising of consumers' confidence in the phenomena of e-commerce. Provision of information on consumer rights, counselling and support in realization of these rights are just some of the activities which help to reduce legal uncertainty and suspicious attitude of consumers towards e-commerce. ECC-Net is an EU-wide network co-sponsored by the European Commission and the Member States, made up of 29 centres, one in each of 27 EU Member States and also in Iceland and Norway. They handle over sixty thousand cases every year originating from the cross-border shopping problems.\textsuperscript{16} These cases cover complaints not only originating from e-commerce but include other types of transactions as well. However, the data clearly show that complaints stemming from e-commerce have a predominant role with 55.9% of all cases in 2009.

\textsuperscript{12} Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.


\textsuperscript{14} Art. 1, p. 5 of the Directive on electronic commerce.


Graph 1: Complaints per type of transaction in 2009


The bodies linked through the ECC-Net provide information, advice and support to the consumer on their rights when they are buying services in another EU country, Iceland and Norway. These services are free or charge, and they also include giving legal and practical advice in the cases when consumer wants to make a complaint against a trader located in another EU country. In these cases, bodies linked through the ECC-Net can assist consumer, contact trader on his behalf and direct consumer to a dispute resolution scheme or propose other solutions. However, these bodies cannot handle cases where the trader is located in the same country as consumer as these cases are then forwarded to national consumer organizations.17 In this way securing of information and helping the consumers in their complaints and settlement of disputes contributes to the EU's single market utilization and, at the same time, protects consumers' health and safety. Also, bodies linked through ECC-Net are important because they provide information on domestic and the EU legislation and jurisdiction and develop comparative analyses regarding prices that is also a consequence of their intensified cooperation with other European networks such as: FIN-NET (Financial Network), SOLVIT and European Judicial network in civil and commercial matters.18

The EU accession of the Central and Eastern European (CEE) states during the 2000s caused emergence of bodies from the ECC-Net in these countries, and their active consumer protection role in cross-border cases. For instance, the European Consumer Center (ECC) in Poland was established in January 2005 by the joint EU's and Polish state's financing and it functions as an expert group, tightly cooperating with European and domestic organisations of consumer protection and other organisations


solving certain problems of consumers. Its tasks have so far included raising knowledge on available legal means, legal consultancy and inspections regarding cross-border cases. Also, ECC Poland has popularized out-of-court disputes settlements, informed entrepreneurs and other opinion-making groups about consumers’ rights and duties and in generally enhanced consumers’ awareness regarding their rights.\(^{19}\) Thus, ECC Poland established itself as a principal focal point regarding cross-border matters that was repeated in other CEE states such as Slovakia, Slovenia and Romania. For instance, in 2009 ECC Slovakia intensively offered assistance and advices for consumers regarding their cross-border complaints and disputes that included both Slovak consumers that purchased their products and services outside Slovakia, and foreign consumers that purchased the same in Slovakia. Also, it performed educational activities, established strong media presence and endorsed alternative dispute resolution schemes in cross-border cases.\(^{20}\) In 2010 ECC Slovenia similarly informed and assisted consumers in resolving their cross-border disputes and performed educational and public campaigns with the aim to enhance consumers’ rights awareness.\(^{21}\) For instance it assisted 837 consumers and dealt with 264 consumer complaints in 2010 (an increase in comparison with the 2009).\(^{22}\) While the largest number of difficulties was found in the e-commerce domain. Namely, it is important to emphasize that 63% of all cross-border cases related to the e-shopping (i.e. consumers experienced difficulties due to non-deliverance of the goods they had already ordered and paid for) despite the offered intervention largely remained unresolved.\(^{23}\) Finally, ECC Romania has raised awareness about all peculiarities of the e-commerce in the Romanian society, and has clearly offered information about the related consumer protection measures.\(^{24}\)

These new ECCs have been established by the joint financial efforts from the national state administrations and the European Commission. Nevertheless, their relation towards the state administrative bodies is not clear enough. In the cases of the Czech Republic, Slovakia and Poland, ECCs are integral part of the state administration. For example, the ECC is in the Czech Republic embodied in the Czech Trade Inspectorate,\(^{25}\) in Slovakia it is established at the Ministry of Economy and Construction\(^{26}\) while in Poland it is situated at the Competition and Consumer Protection Office, a central government administration body.\(^{27}\) However, the ECCs’ linkage towards the state apparatus has been weaker in the cases of Slovenia and Romania. Namely, the ECC in Slovenia operates under the auspices of the Slovenian Consumers’ Association\(^{28}\) an independent, non-profit, internationally recognised

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19 Ibid.
23 Ibid., p. 10–11.
28 ECC Slovenija: Annual Report 2010., p. 3.
non-governmental organization\textsuperscript{29} that is similar to Romania whose ECC is logistically supported by another NGO, the Romanian Association for Consumer Protection.\textsuperscript{30}

Thus, it is obvious that the bodies linked through the ECC-Net have an important role in resolving disputes linked to the cross-border acquisition of goods and services. This particularly relates to the e-commerce domain as the dominant sphere in entire volume of complaints. In other words, the advisory and mandatory roles of these bodies have an important place in increasing legal certainty and consumers' confidence in the e-commerce and therefore are important actors in underpinning the proper implementation of the Directive on electronic commerce.

2.2. Consumer protection as justification through the case law

Having in mind that the maintenance of the free provision of the information society services\textsuperscript{31} has been set as the general objective of the Directive, it is necessary to find the balancing point between restrictions which have to be set in order to protect consumers on one side and freedom to provide information society services on the other. The importance of the proper implementation as well as interpretation of the Directive on electronic commerce is even greater if the consolidation and integration of the Internal Market are taken into consideration. The coordination of national rules of the Member States, regulating electronic commerce actually facilitates the functioning of Internal Market to a great extent, thus making it less fragmentized. The restrictions on the freedom to provide information society services (originating from another Member State) are forbidden in the coordinated field of the application of the Directive on electronic commerce.\textsuperscript{32} However, Member States are permitted to derogate from this obligation from listed reasons.\textsuperscript{33} The list of grounds for derogation has closed character, which means that only grounds which are explicitly named in the Directive on electronic commerce can be used for justifying the restrictions at national level. It is evident that the concept of the Directive on electronic commerce puts the objective of consumer protection on the list of potential reasons, being capable to justify the restriction in question. So, in case the free provision of services is hindered or prevented through the application of restrictive national measures, the consumer protection can be used as the excuse for derogation. The Directive on electronic commerce aims on provision of guarantees of consumer protection interests through its Article 1, p. 3, as well as through its recitals of the preamble.\textsuperscript{34}

In case of derogation from the basic obligation of the Member States on establishment or maintenance of restrictions, which are capable to restrict the freedom of provision of information society services, the measures have to fulfil cumulatively few requirements. First of all, they have to be necessary due to the mentioned reasons, as well as taken against the information society service which prejudices named

\textsuperscript{29} ZPS Zveza Potrošnikov Slovenije (Slovene Consumers' Association)
\textsuperscript{30} Centrul European Al Consumatorilor Romania (The European Consumer Centre Romania)
\textsuperscript{31} Art. 1, p. 2 of the Directive on electronic commerce.
\textsuperscript{32} Art. 3, p. 2 of the Directive on electronic commerce.
\textsuperscript{33} Art. 3, p. 4 of the Directive on electronic commerce determines the following reasons as potential ground for derogation: public policy, particularly prevention, investigation, detection and prosecution of criminal offences; protection of minors; fight against any incitement to hatred on the grounds of race, sex, religion, nationality and violations of human dignity of individuals; protection of public health; public security, which includes safeguarding of national security and defense; protection of consumers, as well as investors.
\textsuperscript{34} Recital no. 7, 10 and 11 of the preamble of the Directive on electronic commerce.
objectives or present a serious or grave risk of prejudice to those objectives, and proportionate for the preservation and protection of those objectives.35

The implementation of the Directive on electronic commerce aims at the elimination of various obstacles and blurred situations, which diminish the level of legal certainty and maintain the satisfactory level of the confidence of consumers. Certain examples from well established case law can be useful in order to make closer how the interpretation of the Directive on electronic commerce establishes a balance between maintenance of free provision of information society services on the one hand, and restrictions created on national level on the other, which sometimes needs to be tolerated in order to keep the required level of consumer protection, on the other. Furthermore, selected examples from the case law can serve for analyses of the attempts for preservation of the consumers’ confidence, along with the required level of legal certainty. In this regard, the dispute in the main proceedings between the German Federation of Consumer’s Associations and automobile insurance company which provides services exclusively through the Internet can be mentioned. The European Court of Justice (Court) was deciding on the obligation of the services provider (in this case automobile insurance company) to provide its telephone number, next to postal and electronic e-mail address while operating with the consumers in the e-commerce. The subject of the Court’s interpretation concerns the Article 5 of the Directive on electronic commerce, which determines the minimum information requirements which the services provider has to ensure to the recipients of the service and competent authorities in direct and permanently accessible way. More precisely, according to the Article 5 the information which has to be provided by services provider mean: the name of the services provider, the geographic address at which services provider is established, and the details of the services provider, including his electronic mail address, which allows direct communication with the services provider, in a direct and effective manner. In the relevant case, the provision of needed information is in the phase when the contract between the services provider and consumer as services recipient is not signed yet. Exactly the interpretation of the notion of “rapid, direct and effective means of communication”, which the services provider is obliged to ensure in addition to his electronic mail address, was in the focus of the Court’s observations. According to the Court, the communication over the telephone can be regarded as the form of direct and effective communication. However, according to the interpretation of the Court, the use of the word “directly” in the wording of the Directive on electronic commerce cannot be regarded as necessarily requiring communication in the form of an exchange of words and actual dialogue. Furthermore, the practical implications of the interpretation of the term “effective communication” do not mean that the response given to a question posed has to be instantaneous. In other words, the communication would be effective enough if it permits adequate information to be obtained within a period of time which is compatible with the needs and expectations of the consumer as the recipient of the service. However, it does not mean that these kinds of information which services provider must ensure for the services recipient before the contract is concluded have to include telephone number.36

The relevant case law shows the tendency of the Court to preserve protection of consumers while interpreting the main elements of the Directive on electronic commerce. The preservation of the intention incorporated into the EU law on encouraging the development of e-commerce, without limiting it to the Internal Market, is also visible through the interpretations provided by the Court. The example of such interpretations can be found in the previously analyzed case, where the services recipient was deprived from the access to the electronic network. In this case the Court determines that the

35 Next to this derogation possibility, it is necessary to point out the existence of the fields where the provisions of this Directive do not apply. See for more Annex of the Directive on electronic commerce.
obligation of the services provider is to ensure the access to a non-electronic means of communication, which enable effective communication.\textsuperscript{37} According to the Opinion of the Advocate General\textsuperscript{38} certain threats to the consumers cannot be found in this case. The consumer approaches undertaking with an aim of getting information on the services which the undertaking provides by using the Internet. According to him, no contractual relationship carries any possibility of seriously harming interests of consumers. The main argument for this kind of interpretation is the fact that the consumer chooses the services provider which has the required characteristics, while the media used by the services provider are incorporated in the offer and have additional, not necessarily crucial, characteristics that can influence the decision of the consumer. Freedom to choose services provider on the market (with all additional conditions and characteristics, which consumer prefers) is actually the main argument which supports the interpretation of the Court.

Furthermore, on the list of the reasons for derogation, the public health protection and even the protection of minors can be observed in close connection with consumer protection through the case law.\textsuperscript{39} Although not being explicitly mentioned, consumer protection can be observed as integral part on these grounds, in a way of analyzing the position of patients and children as consumers. The selected cases actually show how the Court was creating its interpretations on the grounds other than consumer protection, although the protection of consumers was always somewhere in the background. In the case Ker-Optika v. ANTSZ Dél-dunántúli Regionális Intézete Pécsi the Court was judging on the selling of the contact lenses via the Internet. The observations of the Court relating to the scope of the Directive on electronic commerce, determine the selling of contact lenses as belonging to the coordinated field encompassed by the Directive,\textsuperscript{40} especially concerning on-line offer and the conclusion of the contract by electronic means. However, considering that the coordinated field does not cover requirements applicable to the supply of goods in respect of which the contract is concluded by electronic means, the national provisions regulating the requirements of the supply of goods which is sold by using the Internet in another Member State are not encompassed within the scope of the Directive on electronic commerce.\textsuperscript{41} In this case the Court underlined the objective of the protection of public health, as being ranked (next to the life of humans) among main assets and interests protected by the Treaty, while the Member States have to decide on the level of protection provided for this kind of objective. In other words, the great range of discretion of the Member States is granted in this field.\textsuperscript{42} In this case the justification relied on


\textsuperscript{39} For example, see the cases C-244/06, Dynamic Medien Vertriebs GmbH v. Avides Media AG, 14 February, 2008, C-108/09, Ker-Optika bt v. ANTSZ Dél-dunántúli Regionális Intézete, 2 December, 2010, C-322/01, Deutscher Apothekerverband eV and 0800 DocMorris NV, Jacques Waterval, 11 December, 2003.

\textsuperscript{40} In this case the Court has established that the national legislation prohibiting the selling of contact lenses over the Internet can not be justified with the objective of public health, considering it goes beyond what is necessary to accomplish the objective of public health protection. In that regard, the restrictions which are applicable only in the case of the first supply of contact lenses and which require traders to make available a qualified optician to the customer, can be sufficient for public health protection. However, the national provisions on selling of contact lenses have been characterized as falling within the scope of the Directive on electronic commerce, while those which relate to the supply of the contact lenses do not fall within the scope of coordinated field under the Directive on electronic commerce. See for more, Ker-Optika bt v. ANTSZ Dél-dunántúli Regionális Intézete, 2 December, 2010, C-322/01, p. 74, 77.

\textsuperscript{41} Directive on electronic commerce, para 28–30.

\textsuperscript{42} See Joined Cases C-570/07 and C-571/07 Blanco Pérez and Chao Gómez [2010] ECR I-0000, para. 44.
the protection of public health of the contact lenses users.45 The main threat was has seen in the specific ways of use and maintenance of contact lenses. The main argument used for justification of the restriction imposed, was the necessity of selling the contact lenses by the qualified staff. The purpose of such care was the insurance of the customer to be informed on potential risks, as well as provided with advices of which kind of contact lenses to use and how to use them, as well as of recommending the proper advice of an ophthalmologist.46 In the Court’s observations apart from the main objective of public health protection, the protection of consumers (advising possibilities on proper contact lenses use and care through the Internet) was observed as well, although it was not explicitly mentioned.

Furthermore, in the case Dynamic Medien Vertriebs GmbH v. Avides Media AG,47 the Court elaborated the prohibition of sale and transfer by mail order of image storage media, which have not been examined or classified by competent authority for the purposes of protection of young people. The main issue was the lack of required age-limit label (authorized from the competent German authority) for image storage media. Again, the elaboration encompassed the Article 3, p. 4 of Directive on electronic commerce, which allows Member States to take measures necessary for the protection of public policy, protection of young persons, protection of public health and consumers. Although the main objective for justification was the protection of young people, the imperative requirement of consumer protection was pointed out as well.48

The level of implementation of the Directive into the Croatian legal framework, along with the level of Croatian preparedness for proper application and interpretation of relevant acquis are in the focus of elaboration. The Croatian capacity to provide satisfying level of legal certainty and consumers’ confidence in e-commerce, will start with analyses of two main Croatian legal acts: Electronic Commerce Act49 and the Consumer Protection Act.49

3. Consumer protection in the e-commerce on Croatian market

3.1. Legal and institutional framework

Analysis of consumer protection in Croatia in the sphere of e-commerce cannot be done without taking into consideration the development of entire consumer protection policy that has fundamentally been shaped by the EU accession process. Namely, Stabilization and Association Agreement (SAA) set clear provisions that streamlined legal approximation with the EU acquis and subsequent development of consumer protection policy in Croatia. According to the Article 74 of the SAA, Croatia agreed to align its consumer protection standards with those at the EU level through harmonization of its legislation, development of an active consumer protection policy including the increase of information and development of independent organizations and finally through effective legal protection for consumers in order to improve the quality of consumer goods and maintenance of appropriate safety standards.49 It

44 Ker-Optika bt v. ANTSZ Dél-dunántúli Regionális Intézete, 2 December, 2010, C-322/01, para. 63.
45 C-244/06, Dynamic Medien Vertriebs GmbH v. Avides Media AG, 14 February, 2008.
47 Electronic Commerce Act, Official Gazette No. 173/03, 67/08, 36/09.
48 Consumer Protection Act, Official Gazette No. 79/07, 125/07, 79/09, 89/09.
is important to mention that Article 74 defines effective consumer protection as necessary in order to ensure that the market economy functions properly, and this protection will depend on the development of an administrative infrastructure in order to ensure market surveillance and law enforcement in this field. This has clearly defined consumer protection policy as an integral part of the functioning of the EU’s Internal Market, demanding special attention and endeavors from the Croatian side. Namely, Article 74 was positioned under the SAA’s Title VI ‘Approximation of laws, law enforcement and competition rules’ that streamlined approximation of Croatian legislation and policies across all major domains of the EU Internal Market. The title’s opening Article 69 claimed that Croatia “shall endeavour to ensure that its existing laws and future legislation will be gradually made compatible with the Community acquis” and this approximation will “at an early stage, focus on fundamental elements of the Internal Market acquis as well as on other trade-related areas”. This means that Croatia obliged itself to start with the legal approximation in the domain of the EU Internal Market, including consumer protection, from the earliest stage since the SAA’s signature, thus clearly stressing it as a priority area. This prioritization of the EU’s Internal Market acquis is understandable because “Internal Market remains the EU’s pivotal point”, as each rapprochement’s strategy towards the Union has to ensure legislative and economic convergence necessary for the participation at the EU Internal Market. Therefore, it is important to understand development of both Croatian legislative and institutional framework as a process induced by the EU with the goal to ensure effective involvement in the EU Internal Market.

The first Croatian Consumer Protection Act entered into force in 2003 within the ambit of this policy dynamics, thus creating legal basis for the consumer protection policy in Croatia. Some analysts claim that this Act had revolutionary impact due to its firm citizen-focused standpoint, which represented positive change in comparison with the previous practices. Indeed, the Act constituted “game-change” in this policy domain and inaugurated basic elements of institutional scheme whose relevance will be explained further. However, our focus here is on the 2007 Consumer Protection Act (CPA) which has been passed with the aim to enhance consumers’ protection. Its provisions carried important consequences for the protection in e-commerce. Apart of the CPA, the second significant act

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50 Ibid.
51 These articles were Art. 70. Competition and other economic provisions, Art. 71. Intellectual, industrial and commercial property, Art. 72. Public contracts, Art. 73. Standardisation, Metrology, Accreditation and Conformity Assessment and Art. 74. Consumer protection.
52 Art. 69 of the SAA.
54 Consumer Protection Act, Official Gazette No. 96/03.
57 The analyses focus on relevant provisions of Consumer Protection Act, determining main definitions of the terms used in the text, besides to the relevant provisions on Croatian institutional framework on consumer protection. The selected provisions of the Electronic Commerce Act relate to the aspects of implemented Directive on electronic commerce.
58 Consumer Protection Act, Official Gazette No. 79/07, 125/07 – corrigendum, 79/09, 89/09 – corrigendum.)

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regulating the sphere of e-commerce and relevant for this analysis is Electronic Commerce Act (ECA).\textsuperscript{59} As far as the relationship of the ECA and CPA is concerned, it can be said that the first regulates the matter of consumer protection as \textit{lex specialis}, while the second grants the protection of consumers in general. However, it is important to point out that the protection granted through the ECA does not preclude nor prejudice the protection granted in other relevant provisions of Croatian consumer protection system. Exactly the same attitude is granted through the CPA, meaning that the consumer protection provided by this legal act does not preclude nor prejudice the protection provided through other laws.\textsuperscript{60} This leads to the conclusion that the intention to provide wide and complete protection of consumers (the intention incorporated into the text of the Directive on electronic commerce as well) can be recognized through relevant Croatian legal acts.

The ECA is the central legal act in the analysis of the implementation of the Directive on electronic commerce into Croatian legal system. It sets out the package of rules determining the provision of information social services, liability of the provider of the information society services and the conclusion of electronic contracts. However, the ECA incorporates the same list of exclusions from the application of the provisions of electronic commerce as the one accepted at the European level through the Directive on electronic commerce. The ECA uses the same wording as the Directive on electronic commerce concerning the provisions which regulate the general information having to be provided by the services provider.\textsuperscript{61} While analyzing the possible justifications of restrictive national measures, it can be noticed that the ECA, through its amendments in 2008, introduced the possibility for Croatian court of competent state authority to derogate from the general obligation of the free provision of information society services. In other words, certain restrictive measures can be introduced towards the services providers which have the registered seat in the EU, in case they harm, or threat to harm the public health, public security, including the safeguarding of the national security and defense, protection of consumers as well as investors, or when such measures are necessary for the reasons of prevention, investigation, detection and prosecution of criminal offences, protection of minors, and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons. It can be said that in strictly formal terms, the ECA has followed the wording of the Directive on electronic commerce. However, more important is whether such act is implemented and interpreted properly through the Croatian legal practice. The evaluation of the achievement of a satisfying level of legal certainty and consumers' confidence in e-commerce can actually provide certain conclusions on the proper implementation of the Directive on electronic commerce in the Croatian legal system. Only in this way, the transposed wording of the Directive can be evaluated as meaningful in the Croatian legal system.

Croatian EU's accession process fundamentally shaped institutional building in the domain of the consumer protection policy. The previously analyzed legal harmonization was followed by the subsequent need to strengthen administrative capacities necessary for its efficient application. These incentives to adjust Croatian consumer protection system to the EU standards and criteria were encouraged by the various EU projects, that among the others, aimed to strengthen institutional and administrative

\textsuperscript{59} Electronic Commerce Act, Official Gazette No. 173/03, 67/08, 36/09.
\textsuperscript{60} For example, the Consumer Protection Act grants the application of the Croatian Civil Law Obligations Act on the legal matters of this kind within the consumer protection system (see for more Art. 2, p. 2 of the Consumer Protection Act).
\textsuperscript{61} The list contains as follows: the requests on clearly identifiable character of commercial communications as well as on natural or legal persons on whose behalf commercial communication is made, and also on promotional offers, competitions and games (discounts, gifts etc.) where requirements for qualifying for those promotional offers, promotional competitions and games have to be easily accessible, clear and unambiguously presented.

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capacity and improve professional and technical capacities of the staff involved.\textsuperscript{62} That especially refers to the upgraded capacities of the Croatian Ministry of the Economy, Labour and Entrepreneurship (MELE) as the primary body responsible for creation and implementation of consumer protection policy that coordinates the activities of all stakeholders regarding the implementation of the National Consumer Protection Programme.\textsuperscript{63}

Regarding the responsible authorities included in this institutional scheme, CPA has explicitly determined subjects involved in the consumer protection system in Croatia.\textsuperscript{64} The analysis will focus on the three main segments of institutional framework architecture: National Consumer Protection Council (NCPC), CCCs and associations. These three segments are selected in order to get a clearer picture on the functioning of the institutional mechanisms that should properly apply legal framework, but also to facilitate the maintenance of consumers’ confidence due to well informed and advised consumers. The strategic orientation of their work is shaped by the National Consumer Protection Programme (National Programme)\textsuperscript{65} which defines consumer protection policy, its principles, objectives and selected tasks to be undertaken on prioritized areas. It is adopted by the Croatian Parliament that has so far enacted three programmes, the most recent one being the National Programme for the 2009–2012 period.\textsuperscript{66}

The NCPC is a Governmental advisory body, established in 2008\textsuperscript{67} as an Interdepartmental body that ensures greater coordination of activities among relevant stakeholders regarding consumer protection policy, initiates legislation and overall streamlines improvement within the mentioned area. Its members, together with the Council's President, are appointed by the Croatian Government for a four-year period. The NCPC comprises representatives of state administrative bodies responsible for consumer protection, representatives of Croatian Chamber of Economy, Croatian Chamber of Trades and Crafts, Croatian Employers’ Association, Commercial Court in Zagreb, consumer protection associations and independent experts in the consumer protection area. The tasks of the NCPC cover drafting of the National Programme, encouraging the amendment of the existing and passing of new regulations and laws in the consumer protection field, participating in the development of the national consumer protection policy and reporting to the Government on cases of good business custom violation.\textsuperscript{68} In this way the Government ensured high political backing of the policy and set ground for its more successful implementation. In chronological comparison with associations and CCCs the establishment of the NCPC was realized as the latest, what can be seen as the upgrading of the institutional framework.


\textsuperscript{64} The list of relevant authorities includes the Croatian Parliament, the Government of the Republic of Croatia, ministry responsible for the consumer protection, the State inspectorate and other competent inspections, National Consumer Protection Council, regional and local authorities, the Croatian Chamber of Economy, the Croatian Chamber of Arts and Crafts, the Croatian Employers’ Association, other public authorities and consumer protection associations (Art. 122 of the Consumer Protection Act).

\textsuperscript{65} Art. 121 of the Consumer Protection Act.


\textsuperscript{68} Art.123 of the Consumer Protection Act.
According to the CPA, associations are established by the consumers for promotion and protection of consumers’ rights and interests. They can join into unions in order to implement consumer protection policy, ensure mutual support and achieve common interests at the national and international level. These unions can act in the public and towards state administration bodies with the aim to protect common consumers’ interests or express their opinions on relevant legal proposals. Associations are independent in their work and must act apart of any commercial interest. In that regard, legal provisions strictly prohibit any acquisition of assets or financing from tradesmen.\(^{69}\) The Act provides a list of associations’ activities that include:

- Providing preventive protection by offering information and advice with the aim of educating consumers;
- Providing information to consumers on their rights and obligations and various market appearances;
- Undertaking accredited comparative tests of products and publishing the results in the media;
- Providing assistance to harmed consumers in their dealings with traders;
- Keeping records on customer complaints received and activities undertaken for their settlement;
- Issuing comments and proposals to the legislation drafting within the domain of consumer protection.\(^{70}\)

It is important to stress that associations undertake consumer protection activities articulated by the National Programme, especially in the domain of education, informing and counselling, and these activities are jointly undertaken with state administration bodies and regional and local authorities. Therefore, major source of associations’ funding is the state budget because their consumer protection projects have to fulfil criteria of public tenders set by the Croatian MELE.\(^{71}\)

Finally, this nexus between the state-driven funding and the consumer protection performed by the consumer protection organizations is also seen in the example of last stakeholder that is in the focus of our analysis, namely CCCs. These centres are supposed to provide organized support to the consumers, while they are established by the associations.\(^{72}\) There are four CCCs in Croatia that have been established as the projects of the associations on the basis of tenders announced by MELE in order to provide organized assistance to the consumers.\(^{73}\) CCCs should provide expert advices to the consumers, keep records about the number and type of the given advices and regularly submit working reports towards MELE and relevant inspectorates.\(^{74}\) In this way, the relevant ministry simply transferred the advisory role towards the associations driven by the rationale that the non-governmental sector would enjoy greater consumers’ trust than if the role remained in the realm of state-based counselling. MELE’s financing of these projects ensures that the associations that have established CCCs can employ additional staff, namely nine people.\(^{75}\)

At this point it is important to mention that the position of associations and CCCs has been significantly upgraded with the establishment of the Central Consumer Protection Information System

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\(^{69}\) Art. 125 of the Consumer Protection Act.
\(^{70}\) Art. 126 of the Consumer Protection Act.
\(^{71}\) Art. 127 of the Consumer Protection Act.
\(^{72}\) Art. 128, p.1 of the Consumer Protection Act.
\(^{74}\) Art. 128 of the Consumer Protection Act.
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(CCPIS) in 2008. This system was created as the outcome of the previously mentioned EU projects and it permanently linked three relevant institutions: MELE as a principal body that proposes legislative recommendations, State inspectorate as the relevant implementation authority and the CCCs, securing their better coordination and information flow. Consequently, this incorporation of the CCCs in the CCPIS provides them with a greater range of accepted inquiries and provided advices because increased collaboration efficiently reveals cases of consumer rights abuses and ensures undertaking of appropriate measures by the relevant inspectorates. In other words, both the associations and CCCs benefit from the establishment of the major information hub such as CCPIS because it enables the consumers to seek advice and legislative interpretation, as well as to submit notifications towards the State inspectorate at one place. Associations and CCCs have a great possibility now for increased engagement in the monitoring of the market behavior, drafting of the legal proposals and overall increasing of the level of consumers’ education and information. Thus, their role is indispensable in raising the level of consumers’ confidence and efficient implementation of legal provisions.

The underpinning role of the associations and CCCs as the agents of consumers’ rights protection has to be properly analyzed in the Croatian context, especially taking into consideration challenges stemming from the upcoming EU membership and participation in the Internal Market. One of the major challenges deals with the cross-border trades of services and goods, an increasingly developing form of retail that brings numerous regulatory issues in Croatia as well. Therefore, it is important to assess position of consumer protection associations and CCCs in this domain since their involvement is vital in securing efficient legislative implementation, market transparency and particularly in increasing consumers’ confidence in e-commerce.

3.2. Some remarks on practical functioning of institutional framework

Generally speaking, Croatia has significantly upgraded its institutional framework system in the consumer protection field. In favour of this statement speaks the provisional closure of the EU accession negotiation chapter 28 – Consumer and health protection in November 2009 and claims of the European Commission’s Progress Reports. The Commission has endorsed Croatian institutional building-up in the 2006–2010 period resulting in the establishment of the CCCs, upgrading of the MELE’s capacities and establishment of the NCPC as the Governmental advisory body. The institutional system was significantly upgraded with the adoption of the Consumer Protection Act in July 2007 whose modification was an opening benchmark for the Croatian negotiations. Already since then the Commission stated that the good level of legal alignment has been reached with the further challenges being its implementation and effective enforcement. However, the 2009 and 2010 reports stated that sustained efforts were necessary for further strengthening of administrative capacity in order to implement and

76 See the footnote no. 62.
79 This is based on the evaluation of the five European Commission’s Progress Reports for Croatia since 2006

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enforce the legislation.\textsuperscript{82} More precisely, the last report stated that the support for the consumer movement needs to be continued and consumers’ access to justice further improved with the aid of effective implementation of the National Consumer Protection Programme.\textsuperscript{83}

It is necessary to ensure adequate institutional capacities, which operate in transparent and efficient way, by providing information and proper interpretations of relevant Croatian acts. The role of the associations and CCCs is essential in all this.\textsuperscript{84} There is a significant space for greater cooperation between these associations that would pool their resources and enhance their advocacy capabilities with the positive consequence for the consumers’ confidence. Nevertheless, despite obvious benefits of this cooperation, associations are relatively fragmented into 25 different associations, divided into two consumers association unions.\textsuperscript{85} This fragmentation, lack of mutual cooperation between associations and the absence of single consumer association union\textsuperscript{86} downsizes relevance of the associations in the policy-process. Consequently, this weakens consumer protection and generally undermines consumers’ confidence. Also, activities and capacities of some associations should be questioned as well. Namely, according to some critics, MELE’s criteria for the funding of associations are not elaborated precisely. They claim that the ministry does not evaluate well the projects’ contents thus hindering appropriate allocation of funds and “artificially” maintaining numerous associations in force, whose existence would otherwise be questioned.\textsuperscript{87}

The second issue is the work of CCCs. Four of them were established with the main purpose of attaining basic consumer rights more efficiently. Nevertheless, there are several flaws here as well. Firstly, the same CCCs’ network has been in force since 2005, so maybe it should be enlarged facilitating the creation of new centres, thus raising the quality and spreading the scope of consumers’ protection. Secondly, the same staff works in the associations as well as in the CCCs. Therefore, although new people can be employed once the CCCs are approved, the increased work load will put pressure on the human resource and hinder the quality of the work. Regardless of the fact that CCCs can employ additional staff this is often not enough to effectively tackle the pressing needs of the consumers. Thirdly, the research has shown that the CCCs operate in fragmented way towards each other, without standardized working reports that are prepared on annual basis. They are not made public and in certain cases are very confusing, even unreadable.\textsuperscript{88} These reports do not offer relevant data on the efficiency of their work that raises serious questions about the real impact of their work and their proper evaluation.


\textsuperscript{84} For example, associations in Croatia aim to ensure consumers’ confidence by advocating consumers’ interest and rights, by providing advices and assistance to consumers through education and information activities that aim to enhance consumers’ knowledge and awareness. These activities ensure greater market transparency and efficient implementation of the legal provisions.

\textsuperscript{85} One of them is Savez “Potrošač” (Union “Potrošač”) from Zagreb and the other one is Savez udrug za zaštitu potrošača Hrvatske (Croatian Union of Consumer Protection Associations) from Split. These data are confirmed in the telephone conversation with the MELE’s official in April 2011.


\textsuperscript{87} Information based on the telephone interviews with experts from CCCs in April 2011.

\textsuperscript{88} For example, the CCC in Pula and in Split have not made public the official reports on their work in consumer protection, while CCC in Zagreb has done that, although with the Report for 2010 which is very confusing and offers only few general data in hardly systemized way. However, it has to be noticed that the Official report for 2010 provided (on request) by CCC in Pula can be described as the most helpful and organized one.

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and oversight by the relevant institutions. MELE’s inspection in 2008 stressed the need to undertake overall standardization of their work, i. e. standardization of working and financial reports, statistics as well as introduction of a single form for consumers’ complaints and answers to them. However, it seems that since 2008 there has not been visible improvement in this field, which can have negative impact on the consumers’ confidence. This is especially odd because they are exclusively funded from the MELE in order to undertake counselling activities and protect consumers in their cases towards tradesmen; still their insufficient transparency towards general public undermines the entire rationale of their work. The fourth objection deals with the fact that the CCCs’ work is of a “combined type”, that means without specialized expertise for a specific sector of the consumer protection. MELE tried to introduce specialization where each Centre would specialize in a specific field such as trade or public services thus providing narrowed focus, greater expertise and better consumers’ protection. However, CCCs opposed this initiative by rather staying non-specialized. This fourth remark is closely connected to the last remark concerning the fact that CCCs have not recognized e-commerce as a distinguished domain within the general trade at all. Such shortcomings impede appropriate consumer protection given the dynamics of e-commerce in the EU Internal Market where Croatia will soon accede. Therefore, although the adopted legal framework shows a satisfying level of formal implementation of the Directive on electronic commerce, some weaknesses of the institutional dimension can threaten Directive’s main aims, i. e. greater legal certainty and increased consumers’ confidence. Namely, total neglecting by the relevant stakeholders of e-commerce as a distinct category does not provide solid ground for informed and protected consumers and their strong confidence in e-commerce. Finally, the entire institutional system is marked by a certain degree of inter-institutional tension that does not yield benefits to the Croatian situation. It rather results in a fragmentized, vague system, lacking efficient cooperation that could significantly been improved in order to ensure greater level of consumers’ welfare.


4.1. The EU’s and Croatian consumer protection in the e-commerce: data evaluation

Croatian candidate status requires certain elaborations and comparisons regarding the consumer protection in the domain of e-commerce which can be helpful in rising Croatian preparedness for proper implementation and interpretation of the Directive on electronic commerce after its EU accession. Therefore, relevant data from the selected aspects of consumer protection in e-commerce in the EU and Croatia should be compared, considering the upcoming Croatia’s accession to the EU and the challenges stemming from the EU Internal Market. These categories include the spread of e-commerce and consumers’ confidence towards it but they also assess position of CCCs and associations in enhancing consumers’ confidence and securing their better protection. Hence, this analysis elaborates Croatian preparedness for proper interpretation of selected issues of the Directive on electronic commerce. However, the basis for analyses is very weak, considering that relevant authorities do not have systematic

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90 Ibid.
91 High official within the MELE’s Consumer Protection Department stated that in a telephone interview given on April 21, 2011.
monitoring of e-commerce. Croatia still does not have a centralized data basis that would track the volume of e-commerce in the market, level of consumers’ confidence towards it and the level of consumers’ awareness of consumer protection organizations. Finally, the analysis also shows some examples of the Croatian business practices regarding cross-border provision of services and goods on-line, as an important prerequisite for the proper implementation of the selected aspects of the Directive. It is important to assess the level in which business subjects have incorporated consumer-friendly practices that follow Directive’s objective of consumers’ confidence by providing them with enough information and support.

When analyzing the Internet access data, it is necessary to mention that last available data from 2010 show that the percentage of households who have Internet access in the EU27 is 70%. Although this data is not directly connected with the consumer protection in e-commerce, it is obvious that the Internet access is a basic precondition for the Internet purchase and increases the likelihood of its usage, therefore it is important to elaborate this data as well. The leading EU member states in this category are the Netherlands (91%) and Sweden (88%) while major laggards are Bulgaria (33%) and Romania (42%). Croatia stands relatively well with the 56% as it witnesses 5% average annual growth in the last three years.

The relevant data on the growth of e-commerce from Eurobarometer 2011 show that at the EU level there is gradual increase in the amount of Internet shopping from 27% in 2006 to 38% in 2009. However, the trend of “increase of popularity” of e-commerce has not continued after 2009, considering that it remained at 37% in 2010. In Croatia the available data show general increase in the volume of e-commerce in 2002–2007 period. This growth applies both to electronic commerce in general and business to consumer (B2C) e-commerce in particular as the category that is the most relevant regarding consumer protection due to their direct involvement. The average annual growth rates in Croatia are considerable due to the underdevelopment of this domain and the overall increase of households that have Internet access as previously analyzed.

Table 1: The volume of e-commerce in Croatia, 2002 – 2007 (in million kunas)

<table>
<thead>
<tr>
<th>Segment</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>Average annual growth rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business to (B2C) consumer</td>
<td>39,85</td>
<td>103,46</td>
<td>172,1</td>
<td>253,50</td>
<td>329,05</td>
<td>416,15</td>
<td>59,9%</td>
</tr>
<tr>
<td>E-commerce (total)</td>
<td>398,84</td>
<td>983,84</td>
<td>1659,77</td>
<td>2032,50</td>
<td>2445,05</td>
<td>2920,57</td>
<td>48,9%</td>
</tr>
</tbody>
</table>


94 The analytical report Eurobarometer provides data on shopping over the Internet (as the example of performance of e-commerce). Eurobarometer in its analysis often uses terms of Internet shopping or Internet purchase. However, on the page 15, it is clearly obvious that it does not make distinction between these two terms and e-commerce, therefore the data in the paper covering Internet shopping or purchase over Internet actually show the level of e-commerce.
95 See footnote no. 1.
Regarding the scope of the Internet purchase in the EU, the data show that one in two of the EU consumers having the Internet access at home used on-line shopping in 2010 with the bigger percentages in 2009 (54%) and 2008 (56%). That clearly confirms the linkage between the possession of the Internet access and e-commerce. For example, the rise of Internet purchase in Slovenia between 2006 and 2010 is 15% (from 14% to 29%) and in Hungary it is 13% (from 11% to 24%)\(^{97}\), although it is also important to take into account the laggards in this domain, those being Bulgaria, Portugal, Italy and Romania where the scope of purchase in 2010 was between 12% (Bulgaria) and 16% (Romania). This is important for Croatia since in Croatia there are no relevant data that would enable comparison. However, we can assume that the rise of households with the Internet access is followed by the increase of e-commerce in Croatian case as well. Therefore, some parallels with the previously mentioned EU member states could be made, although there are no firm evidence which group of these states Croatia should be affiliated to.

Furthermore, the level of cross-border Internet purchase remains relatively low at the EU level. In that regard, 7% of the EU consumers participated in cross-border online shopping, while only 4% bought goods and services from the country outside the EU (this percentage has not been changed since 2006). Eurobarometer 2011 concludes that the EU consumers have reserved attitude towards the opportunities offered by cross-border purchases, while majority of them likes to perform this face-to-face (almost half of them, meaning 48%, are more confident in participating in e-commerce with the services/goods provider from their own country). The data show that the largest cross-border online purchase is done in Malta (39%), Ireland (34%) and Cyprus (22%), thus showing greatest trust to purchase outside of their own countries. On the contrary, the weakest trust towards ordering from another EU state is shown in Romania (2%), Bulgaria and Poland (3%) with also low point for the Czech Republic, Poland and Italy (4%).

Lack of relevant data discourages the consumers’ confidence and awareness about the possibilities of e-commerce in Croatia. When we analyze the consumers’ confidence at the EU level, then consumers have greater trust when ordering from their own country in comparison with the cross-border purchasing because they are afraid of the frauds and scams in the case of latter.\(^{98}\) For example, countries with the leading trust in domestic purchasing are the United Kingdom (64%) and Finland (62%) while Luxemburg (20%), Bulgaria (25%) and Romania (27%) have the lowest trust in domestic purchasing. However, there is an increase in proportion of those with the same trust in the domestic and cross-border e-commerce. For example, consumers in Ireland and Baltic states have equal or even bigger trust in the cross-border than in domestic purchasing.\(^{99}\) Regarding Croatia, relevant state authorities, CCCs and associations do not track the level of confidence in e-commerce as a special category at all. Similarly to the previously seen flaws of the missing data, it is clear that this situation considerably undermines the proper implementation of the Directive on electronic commerce. This has negative consequences on the level of legal certainty and the consumers’ confidence in the e-commerce in Croatia.

**Consumer protection associations are particularly important in rising consumers’ confidence and informing them about consumer protection in the cross-border shopping.** Data claim that the 32% of the consumers in the EU are informed on the opportunities of counselling and informing activities in consumer protection that is 8% increase comparing to 2008.\(^{100}\) Also, it should be pointed out that over


\(^{99}\)Ibid, p. 11

\(^{96}\)In that regard, it is important to mention that 48% of consumers are more confident when they order goods and services from their own country compared with the 4% that have more confidence in the cross-border purchasing. See for more, Eurobarometer Analytical Report, March 2011, p. 6.

\(^{98}\)Ibid., p. 27.

\(^{100}\)Ibid., p. 6.
two-thirds of the EU consumers (69% of them) had confidence in consumer protection organizations to protect their rights, while 65% of them think that providers respect their right as consumers.\textsuperscript{101} The highest level of protection enabled by the existing measures of consumer protection is marked in the United Kingdom, Ireland and Austria while the lowest one is seen in Bulgaria and Greece.\textsuperscript{102}

In Croatia CCCs and associations stand at the front line in enhancing consumers’ awareness about their rights and obtaining advisory and supportive tasks in their relations with the tradesmen. CCCs as the primary advisory bodies have been receiving increasing number of complaints in the 2006–2010 period that confirms that consumers are becoming more aware of their rights and willing to protect them. For example, CCC in Osijek received 3,257 complaints in 2010 compared with 1,473 in 2006, while CCC in Pula in 2010 received 3,486 while in 2006 it received 686 complaints.\textsuperscript{103} Nevertheless, none of these bodies categorized e-commerce as a distinctive form of trade in their working reports because their categorization only recognizes sectors of public services, finance, trade, etc. Therefore, complaints in the domain of e-commerce could be encompassed by general scope of complaints in the area of trade. Recent data show that the complaints in the trade sector occupy 32.46% of all consumers’ complaints,\textsuperscript{104} thus proving their relevance for the consumer protection. Nevertheless, these cannot be taken as reliable data to prove that the consumers are becoming more aware of their rights in e-commerce. The CCC in Pula is the only exception as it could provide us with the information about the complaints in the close category to e-commerce, i.e. distance selling.\textsuperscript{105} The data clearly show the increase of the complaints in this domain because their number rose from 1 in 2008 over 11 in 2009 to 45 in 2010. However, such data are not comparative with the EU data considering the difference between e-commerce and distance selling. Furthermore, Croatian CCCs and associations while providing information and education activities for consumers have not recognized peculiarities of e-commerce at all. Their reports, documents and web-pages do not cover this increasingly propulsive sphere and their public campaigns and advisory activities remain inattentive to e-commerce.\textsuperscript{106}

In conclusion, failure to recognize category of e-commerce as a separate sphere has to be observed as serious flaw in Croatian institutional framework. Consequently, this disables recording of the statistics according to the Eurobarometer methodology in the field of e-commerce. This current impossibility to provide data that could be compared with the EU in the domain of e-commerce causes major blow to the market transparency and discourages further development of e-commerce in Croatia. The whole picture is even worse if observed in the context of the future Croatian integration into the Internal Market of the EU. Therefore, two main focuses of the Directive on electronic commerce: legal certainty and consumers’ confidence remain far from their incorporation into the Croatian market reality.

Apart from data analysis, evaluation of Croatian preparedness for proper interpretation of the Directive on electronic commerce requires the analysis of selected segments of the Croatian business practice. The analysis focuses on two sectors, namely on the on-line selling of contact lenses and automobile insurances, more precisely on business practices used by entrepreneurs and potential

\begin{flushleft}
\textsuperscript{101} Ibid., p. 7, 8.
\textsuperscript{102} Ibid., p. 60
\textsuperscript{103} These data originate from the reports issued by the four Consumer Counselling Centres in Croatia.
\textsuperscript{104} This information emerged after comprehensive insights into the above mentioned reports and then calculating the numbers of complaints in the trade sector within entire volume of complaints for the year 2010.
\textsuperscript{105} These data were given by the Counselling Centre in Pula over e-mail. For a definition of the distance selling and its division from the e-commerce see the footnote no.1.
\textsuperscript{106} The authors have analyzed activities of all consumer protection associations published at their web-sites that were operational. The starting point the MELE’s web-page that has entire list of all consumer protection associations in Croatia: <http://potrosac.mingorp.hr/en/potrosac/clanak.php?id=12388> accessed May 27 2011.
\end{flushleft}
problems which can emerge within this area. Some economic subjects in Croatia provide possibility of on-line selling of contact lenses, as well as of automobile insurances, although it is relatively new practice.\textsuperscript{107} In the analyzed areas of trade the cross-border on-line shopping of contact lenses is not possible, which implies general underdevelopment of the cross-border e-commerce. Nevertheless, regarding the Directive’s concerns, optical shops ensure that lenses are sold by the qualified personnel offering information to the customers about the usage of the lenses and potential risks. This information is usually disseminated either through web-sites or instruction manuals sent to the customers together with the lenses. However, in case of the first acquisition of lenses it is highly recommended for the consumer to visit the relevant optical shop personally because he will get a more comprehensive information about all the details of lenses usage from an ophthalmologist. Therefore, it can be concluded that on-line shopping of contact lenses in Croatia has accomplished certain level of consumer protection, although it is in early phase of e-commerce usage, and should be opened towards cross-border trade. This impossibility to order lenses on-line from Croatian optical shops in cross-border trade is important in regard of eventual future application of relevant case-law. The lack of possibility for comparisons at this moment does not diminish the value of knowledge on relevant interpretations that can be very valuable in the future. Comparisons with Croatian neighbouring countries, Slovenia and Bosnia and Herzegovina\textsuperscript{108} have shown that these states are more open to cross-border trade of contact lenses. This is a significant indicator especially if Bosnia and Herzegovina is a potential candidate for the EU, while Croatia is on the eve of its EU accession.

Regarding the automobile insurances that can be purchased on-line in Croatia, all contacted insurance companies\textsuperscript{109} comply with the Directive’s provisions on the minimum information requirement. That means that the four contacted companies offer their telephone numbers, postal and electronic address as a precondition for direct and effective communication.\textsuperscript{110} However, such compliance does not exclude the interpretations of the Directive on electronic commerce through the case law.

5. Conclusion and recommendations

The main aim of the paper is to analyze selected segments of consumer protection in e-commerce. More specifically, the focus of the analysis is the evaluation of the preparedness of Croatia to ensure complete implementation of the Directive on electronic commerce into the Croatian legal system. This Directive is important for e-commerce as a propulsive sphere of retail that brings significant regulatory challenges to welfare of the consumers. The two main aims stressed by the Directive are: establishment of the required level of legal certainty and consumers’ confidence. In that regard, the Court’s interpretations of the Directive on electronic commerce have been analysed towards the preparedness

\textsuperscript{107} Contacted optical shops were: Optical studio Monoki, Opto Centar and Optotim d.o.o. Requested information dealt with the on-line ordering of the lenses. Specific questions related to the availability of information about the usage of the lenses and their provision towards the consumers that order them on-line. Also, we aimed to find out the level of expertise these centres provide to the consumers when they order lenses for the first time. Regarding the automobile insurance companies, contacted subjects were: Euroherc osiguranje d.d., Croatia osiguranje d.d., Euroherc Allianz and Jadranosko osiguranje d.d. Those are all companies that have introduced the possibility to purchase automobile insurances on-line in the last several years. We were interested in finding out whether there is a possibility to purchase automobile insurance in Croatia from abroad.

\textsuperscript{108} Optika Salihbegović from Sarajevo, Bosnia and Herzegovina.

\textsuperscript{109} See footnote no. 107.

\textsuperscript{110} Croatian provisions regarding automobile insurance firmly stress that in order to get automobile insurance, all automobiles should first be registered in the national basis of the registered automobile cars in Croatia.
of the Croatian legal and institutional framework on consumer protection within the e-commerce sector. It is clear that Croatian legislator has managed to transpose the Directive on electronic commerce into Croatian legal system. However, it is obvious that such transposition remains only formal due to a number of reasons.

Firstly, the complete system of consumer protection provides rather fragmentized picture. The challenges and threats of e-commerce make the problem even bigger. Secondly, the institutional architecture (selected for this analysis) seems to be uncoordinated and pretty vague. Although legal preconditions have been set through the CPA, the efficiency and cooperation of the stakeholders involved is questionable especially taking into consideration fundamental role of the associations and CCCs in achieving a transparent market based on principles of legal certainty and firm confidence of consumers in e-commerce. Finally, CCCs operate in a vague way, considering that the level of their mutual cooperation is very low, and that their official reports in Croatia do not cover statistics in this domain and generally show weak understanding of this phenomenon. Therefore, the paper shows insufficient preparedness of the relevant bodies in Croatia regarding e-commerce because they do not record specific statistics about this sphere of trade that undermines consumers’ confidence.

Therefore, this paper results in the following recommendations:

- In accordance with European methodology of data records, the bodies incorporated into the Croatian institutional framework have to incorporate this methodology while estimating the spread of e-commerce, the level of consumers’ confidence and other categories required by the EU.
- Recognition of the e-commerce as a distinct category within the relevant state authorities is necessary, in order to increase consumers’ confidence into the e-commerce usage. Furthermore, the main strategic documents, such as for example National Consumer Protection Programmes and accompanied Action Plans, have to recognize the importance of e-commerce.
- Dynamic activities (provided by the CCCs and associations) towards raising of consumers’ awareness about the benefits and opportunities of the e-commerce are needed. Furthermore, active engagement in making the consumers more familiar with e-commerce within the Internal Market, by providing information activities on their rights is necessary.
- Serious devotion in planning of the establishment of the ECC Croatia, which would be an integral part of the ECC-Net after Croatia joins the EU. The ECC Croatia will represent the focal point for the settlement of cross-border disputes and increase consumers’ confidence in e-commerce, thus ending the fragmentation in this domain.
- Introduction of specialization among the CCCs where one of four of them would become specialized for the complaints in e-commerce and ensure better information and advisory service for the consumers.
- Improvement of mutual collaboration between associations and CCCs, with complete elimination of fragmentation and functioning tensions, next to the establishment of a single union of associations union in Croatia that would enable greater integrative force and policy advocacy in the domain of consumer protection.
- Complete standardization of the work of the CCCs is necessary through standardization of their working reports, making their activities transparent and available to the consumers at any time.

In this policy domain the list of proposed recommendations remains open, although their realization is conditioned by two main objectives: establishment of required level of legal certainty and consumers’ confidence.

All these proposals aim to increase consumers’ confidence in e-commerce and pave the way for its efficient utilization in Croatian context. Integration into the EU Internal Market is a process and not a single occasion, seeking further continuation of the reforms in order to fully harness benefits of the
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Therefore, upgrading Croatian preparedness for the appropriate consumers’ protection in e-commerce is an important prerequisite for the efficient participation in the EU Internal Market, especially taking into consideration that the EU Consumer Protection Policy fits into realm of “shared competences” that apart from the EU’s activities seeks firm involvement and contribution of the stakeholders at the national level. Only these collaborated efforts can ensure the appropriate level of consumers’ protection, stressing the importance of the domestic CCGs and associations in Croatia as the upcoming EU member state. Finally, the forthcoming establishment of the ECC Croatia as the focal point for cross-border transaction issues will increase consumers’ confidence in e-commerce by ending the temporary fragmentation in this domain and by securing them appropriate legal protection.

112 Art. 4 of Treaty on the Functioning of the European Union (TFEU).