REGULATORY IMPACT ASSESSMENT OF THE DRAFT LAW OF GEORGIA ON CONSUMER RIGHTS PROTECTION

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The content of this publication is the sole responsibility of the authors of the report and the international experts involved, and under no circumstances can be regarded as reflecting the views of the Committee on European Integration of the Parliament of Georgia or GIZ.

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1.1. Needs and Objectives

A Regulatory Impact Assessment ("RIA") is an analytics tool that assists decision-makers in identifying alternative ways of reaching policy goals, and assessing and comparing their positive and negative results. It is an established regulatory management tool applied by all member countries of the Organization for Economic Co-operation and Development and an increasing number of emerging economies. This instrument has been in use for almost ten years in Georgia.

From 2013 to the present, in all adopted programs, the government of Georgia ("GoG") has committed to enact an RIA. For instance, the last government program, adopted in June 2018, reaffirms, among its priorities, the necessity of enacting an RIA to ensure that the "impact of every decision on [the] economy is analyzed in advance to avoid possible negative impacts." The GIZ program, in line with Georgia’s commitment to its Agenda 2030, aims to go beyond a pure economic perspective to ensure that all three dimensions of sustainable development – economic, social and environmental – are considered.

During the last several years, the Ministry of Justice of Georgia has been working on a draft law on RIA to define the scope of and procedures relating to this instrument. Despite the fact that the draft law on RIA has not yet been adopted, the GoG already has experience conducting RIAs in respect of legislative acts initiated by the Parliament of Georgia ("Parliament") and government institutions. All these initiatives related to the practical application of RIA were implemented with the support of international donor organizations and technical assistance by international experts. This assessment tool was also used twice during elaboration of the draft consumer protection law in 2016 and 2018.

The obligation to protect consumer rights by law was first enshrined in the Constitution of Georgia in 1995 and was reflected in the 1996 Law on Protection of Consumers’ Rights. After 16 years, this law was abolished as the result of the adoption of the Product Safety and Free Movement Code. The code regulated issues such as product safety in the market and

1 Government programs are routinely approved by the Parliament during a vote of confidence in a new government (during the formation of a government). If the ruling political party is not changed and unexpected challenges are not foreseen, most commitments taken by governmental programs remain nearly unchanged and are transferred to the next governmental program.


the free movement of products, ensuring competition and facilitating the process of product movement and placement in the market. However, the Product Safety and Free Movement Code did not set out general principles protecting physical persons’ economic rights stemming from legal relations with a trader for personal purposes.4

“Deregulation reform in consumer policy resulted in the weaker party of a trading relationship – the consumer – being placed in an unequal legal position in comparison to the trader.”5 Therefore, to create guarantees for consumer rights protection and the effective enjoyment of these rights, the necessity of elaborating and adopting an independent normative act emerged again in the sphere of consumer protection. The necessity of adopting such an act was enhanced by signing the Association Agreement between Georgia and the European Union (“EU”) on 27 June 2014. Under the Association Agreement, Georgia has undertaken the commitment to (gradually, in accordance with stipulated time frames) implement reforms and ensure progressive approximation of domestic legislation with nearly 300 EU legal acts, including in the sphere of consumer protection.

In 2013, the Committee on European Integration of the Parliament ("Committee") began to work on developing a legal framework for consumer protection. By initiative of the Committee, the Parliament started deliberations on the draft Law of Georgia on Consumer Rights Protection ("Draft Law") in July 2015.6 The feedback on the Draft Law in Parliament was disparate among governmental institutions and other stakeholders. It was mainly criticized because of the fear that protection of consumer rights could be detrimental to business interests. To get a comprehensive picture of the “scale of impact of the draft law made on businesses,”7 the decision to conduct an RIA on the Draft Law was made.

By the end of 2016, the Ministry of Economy and Sustainable Development of Georgia published an RIA on the Draft Law. The RIA was developed with the financial support of the United States Agency for International Development ("USAID")—within the framework of the Governing for Growth (G4G) project “Governance for Development”—and the expertise provided by international specialists.8 The RIA report focuses on the following two issues that are linked to the alleged hazards to businesses:9

- **Consumer’s right of withdrawal from a contract**: The Draft Law envisaged empowering the consumer with the right of withdrawal from a contract concluded on the premises within seven days of delivery of the product or service (and up to 14 days in the case of distance and off-premises contracts); and

- **Establishment of a Consumer Ombudsman**: The Draft Law envisaged the establishment of the institution of Consumer Ombudsman, whose role would include protection of consumer interests and assistance in restoring infringed rights.

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9 Idem
Based on the RIA findings, a recommendation was given to extend the right of withdrawal to distance and off-premises contracts, but not to contracts concluded on the premises within seven days. According to the authors of the RIA, this approach ensured consumer rights protection where it was most needed, on one hand, and caused less harm to businesses, on the other hand. Furthermore, this option (compared to other options proposed in the RIA report) was expected to result in fewer complaints to the office of the Consumer Ombudsman, while facilitating the smooth functioning of bureaucracy and conservation of budgetary resources.

Parliamentary elections were held in Georgia in October 2016. In 2017, the new iteration of the Committee renewed work on the Draft Law. By this time, the issue of keeping up with deadlines for commitments set by the Association Agreement was on the agenda. The committee, in accordance with the requirements under the EU regulations, and in consultation with stakeholders, started a significant revision of the Draft Law.

The revised version of the Draft Law, dated July 2018, significantly differed from the version on which the 2016 RIA was conducted. During this period, stakeholder interest in issues addressed by the Draft Law remained high. In consideration of this level of interest, and to take a reasoned, consistent and evidence-based decision, on the initiative of the Committee, it was decided to conduct an RIA on selected issues regulated by the revised Draft Law.

The objectives of the Committee on European Integration in conducting the RIA are:

- to reveal and understand the nature of problematic issues regulated by the Draft Law;
- to identify alternative options for the resolution of these problematic issues;
- to assess the economic, social and environmental impacts (both positive and negative) of alternative options;
- to compare alternative options in terms of efficiency, effectiveness, compliance with EU requirements and contribution to reaching the UN Sustainable Development Goals (SDGs); and
- to ensure further improvement of proposed approaches and determine the monitoring and evaluation scheme.

By combining (a) the assessment of the transformation of the consumer policy into a coherent consumer law and (b) compliance with the UN Sustainable Development Goals, the current RIA breaks new ground and might be of interest far beyond Georgia.

With support provided by the GIZ Legal Program and the supervision provided in terms of content and methodology by two international experts on consumer protection, the RIA on the Draft Law on Consumer Rights Protection was conducted by a group consisting of lecturers from six institutions of higher education, specializing in law, economy, social sciences and environment. The GIZ Legal Program coordinated the process of conducting the RIA.
1.2. Methodology, Stakeholder Consultation and Structure of the RIA Report

Methodology

The RIA was conducted by an interdisciplinary team ("RIA Team") of academic experts specializing in law, economics, social sciences and environment protection from six Georgian universities. Supervision on methodology and content of the work of the RIA Team was provided by international experts in the field of consumer rights protection and RIA, namely Hans-W. Micklitz and Lorenzo Allio. The RIA was conducted from July 2018 to January 2019.

The study analyzed the information available for the research period: statistical data, research prepared by different organizations, normative acts, an RIA report conducted by the Ministry of Economy and Sustainable Development of Georgia in 2016, EU directives and regulations, as well as, research conducted for the assessment of the effectiveness of EU acquis in force and other documents.

Initially, for identification of problematic issues, the RIA Team first met with the initiators of the RIA – the Committee on European Integration – on nine July 2018. Further to that discussion, the RIA Team defined the working methods and time frame for the analysis and identified subsequent relevant stakeholders with which to consult (see Annexes 1 and 2). Of particular importance for the process was the two-day meeting held in July 2018 in Borjomi, where members of Parliament, judges of courts of general jurisdiction, representatives of the Ministry of Economy and Sustainable Development of Georgia, the Competition Agency of Georgia ("Competition Agency"), business associations and non-governmental organizations (NGOs) working on consumer rights protection gathered to discuss and exchange views on the dossier in the presence of the RIA Team.

Consultations with Stakeholders

Consultations with stakeholders were held throughout the process of conducting the RIA. Initially, stakeholders were mapped and classified to establish relevant approaches and methods for consultations with them.

To analyze and classify stakeholders in the RIA, and to select the methods of consultation, a matrix was used to differentiate stakeholders according to their capacity to influence the considered issue (process) and the extent to which stakeholders are affected by the issue. Specifically, four groups were identified using this type of matrix: stakeholders who are (i) less affected and have low influence; (ii) less affected but have high influence; (iii) highly affected but have low influence; and (iv) highly affected and have high influence. The objective is then to select the most appropriate consultation methods for each of these groups.

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<th>Low Capacity to Influence</th>
<th>High Capacity to Influence</th>
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<td>Less Affected</td>
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<tr>
<td>Highly Affected</td>
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The matrix avoids omitting from the consultation process stakeholders who might not have organized capacity to influence, despite being particularly affected by the issue at stake. Consumers, for example, are a group of stakeholders who, currently in Georgia, have low capacity to influence the process of drafting the Draft Law but will be directly affected by it. This matrix approach is instrumental in ensuring that “no one is left behind,” one of the five core principles of the 2030 Global Agenda (the others are an integrated approach, universality, shared responsibility, and accountability).

Detailed information on the consultations with the stakeholders – their identity, the form of the consultation, the summary of issues discussed, and dates – can be found in the annexes to the report (see Annex 2).

**Perception Survey**

Parallel to the stakeholder consultations, the RIA Team conducted a perception survey between November and December 2018 to further explore perceived or actual problematic issues on which specific information was still lacking or which required further clarification. The survey also aimed at validating assumptions and corroborating preliminary arguments and findings from the RIA analysis. The survey was commissioned by the GIZ Legal Program and conducted by the global research-consulting company ACT – Analysis and Consulting Team. Findings of the survey were incorporated into the RIA report and are also presented in the annexes to the report (see Annex 3).

**Structure of the Report**

The rest of this introductory chapter summarizes the current policy and legal framework pertaining to consumer protection in Georgia (subsection 1.3), followed by a brief description of the Draft Law, version of July 2018, since this is the basis upon which this RIA analysis is carried out. At the end of the chapter is an introduction to the problematic issues, which were selected in the framework of the RIA to be studied further (subsection 1.4).

Chapters 2 to 6 of the report expand upon five of the most critical and priority issues identified by the RIA Team, namely:
- Unfair commercial practices (particularly aggressive advertising and the concept of the vulnerable consumer);
- Obligation of the trader to provide the consumer with information;
- Time limits on the right of withdrawal for off-premises and distance contracts;
- Consumer rights in case of nonconformity of purchased goods and a time limit for the exercise of such rights; and
- Issues related to enforcement (including administrative fines for breaching the rights of the consumer group (prejudice to collective interests).

Each chapter is structured along the line of typical RIA analytical steps. For this specific RIA, each chapter first identifies critical aspects currently proposed in the Draft Law and describes the potential problematic economic and social issues related to them, as understood by the RIA Team. As a second step, each chapter analyzes the solution brought forward by the Draft

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Law with alternative approaches developed by the RIA Team. Finally, the chapter proceeds to assess the likely economic and political impacts of the proposed alternative solutions.

Chapter 7 of the report provides a cross-cutting analysis and an outlook on the interaction between the draft consumer law and the UN guidelines for sustainable consumption. The final chapter concludes with recommendations on monitoring and evaluation.

1.3. Policy and Legal Context

Georgia does not have a unified policy on consumer protection comparable to the EU’s first or second consumer program or any follow-up action plan. However, among Georgia’s policy and strategy documents in various fields, we can find policies for protection of consumers of certain products or services. In these documents, the focus is on the safety of the consumer as well as on ensuring access to essential goods and services (water, energy, internet, etc.). Below is a list of such documents and the issues they address related to the consumer sphere:

- The Social-Economic Development Strategy of Georgia – Georgia 2020 ("Georgia 2020")\textsuperscript{11} strategy, adopted in 2014, focuses on consumers’ relationships with non-banking financial institutions. Pursuant to Georgia 2020, the GoG will support the development of non-banking credit and investment institutions. To enhance consumer protection, increase transparency and improve access to information, the state shall draft and implement legislation consistent with international practices.

- 2018-2020 – Freedom, Rapid Development and Welfare\textsuperscript{12} is a program, adopted in 2018, that includes several paragraphs relating to consumer protection, namely:
  - Among the activities aimed at improving business environment, the GoG takes responsibility for ensuring product safety in the market and to start operating an appropriate system of supervision in line with best EU practices;
  - In the field of energy, implementing reforms that support competition is considered as a priority among planned activities to provide the consumer, ultimately, with high quality energy at a fair price;
  - Among the measures aimed at improving livelihood in villages, support for establishing unions of water users is mentioned; and
  - The GoG places a priority on the development of e-governance, which will offer simple, consumer oriented and high-quality e-public services to consumers.

- In June 2018, the GoG adopted the 2018-2021 Regional Development Program of Georgia.\textsuperscript{13} This program is based on economic and social cohesion policy approaches used in the EU. The objective of the program is to support enhancing competition within the country and its regions, balanced development, and decreasing drastic differences and inequality between regions. Two out of the three sub-objectives of the program are directly connected to the consumer sphere, namely, “Sustainable development, rehabilitation and broadening of infrastructural, energy and communication networks and communal ser-

\textsuperscript{11} Resolution no. 400 of the GoG of 17 June 2014 on Approval of Strategy of Social-Economic Development of Georgia; Georgia 2020 and Several Related Measures, available on the website of The Legislative Herald: \url{https://bit.ly/2RWr0nR}.


vices through secure roads” and “Support in overcoming social and territorial inequality – creating equal opportunities for every citizen, regardless of their social status and place of residence.” To achieve these objectives, the program envisages many arrangements, including elimination of digital inequality; support to development of broadband networks and services; improvement of the energy infrastructure; broadening the potential of renewable energy resources; and development of water supply, sewage and waste management.

• In 2015, the Parliament approved the State Strategy in the Energy Sector. One out of nine priorities in this policy document directly refers to the consumer. Namely, “improvement of service quality and protection of consumer interests” is set out as the main direction of state energy policy. This, in accordance with the policy, includes enhancement of the functions of the regulatory body so that it monitors service quality and regulates relations between the service provider and the consumer; sets transparent and fair tariffs so that the consumer may receive high-quality service at a fair and transparent price; elaborates social programs and targeted subsidies by the GoG, and provides socially unprotected consumers with a continuous supply of electricity. The document also states that long-term, predefined tariffs (including tariff ceilings) can be established to ensure long-term, sustainable, financial and technical development of the energy sector for different categories of consumers.

• The Strategy for Agricultural Development in Georgia 2015-2020, adopted in 2015, defines priority directions, including concrete measures that are directly or indirectly linked to the consumer sphere. Some of these measures are: supporting the further development of geographic indication schemes and appellations of origin; supporting the development of the seed and planting material certification process; improving access to agricultural machinery and input supply services; monitoring food security; establishing efficient and flexible state control over the food safety system; developing a comprehensive and efficient supervising and monitoring system for animal health; and supporting plant protection and phytosanitary controls.

• In 2010, the GoG approved the Comprehensive Strategy and Legislative Approximation Program in the Food Safety Sector. This document was adopted in response to the necessity to provide food safety in the market, which was a pre-condition for signing the Association Agreement. The document envisages implementation of institutional reforms and gradual implementation of the main legal acts of EU food safety law during the period 2010-2014. According to the Centre for Strategic Research and Development of Georgia, several acts envisaged by the legislative approximation program were adopted. However, a large part of the program was not fulfilled and thus, in 2014, the GoG postponed the fulfillment of these commitments until 2020.

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Overall, protection of the economic interests of consumers enshrined in the abolished Law on Consumer Rights is not at the forefront of the political agenda. Though there are links to consumer protection here and there, they do not take a specific direction.

At present, the situation for Georgia has changed due to two developments, which point in two very different directions. On one hand, there is the Association Agreement, which sets clear requirements that need to be fulfilled and the time frame for doing so. The protection of the economic interests of consumers is at the forefront of the Association Agreement. The United Nations (UN) Sustainable Development Goals, by contrast, do not emphasize consumer protection, but rather sustainable consumption. Below is a brief overview of these two most important documents for Georgia and the obligations thereunder.¹⁹

**EU-Georgia Association Agreement**

The Association Agreement concluded between Georgia and the EU on 27 June 2014, along with other issues, memorializes Georgia’s commitment to the gradual approximation of its domestic legislation with EU consumer law. The XXIX annex (“Consumer Policy”) to the Association Agreement refers directly to the consumer sphere (see Box No. 1); the annex includes a list of directives and regulations in the consumer sphere and timetables for their approximation in national legislation. The directives are grouped into the following thematic areas: product safety, marketing, contract law, financial services, consumer credit, redress, enforcement, and consumer protection cooperation.

**Box No 1.** Directives and regulations envisaged by the Annex XXIX of the EU–Georgia Association Agreement (Consumer Policy)

- Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers;
- Commission Decision 2009/251/EC of 17 March 2009 requiring the Member States to ensure that products containing the biocide dimethyl fumarate are not placed or made available on the market;
- Commission Decision 2006/502/EC of 11 May 2006 requiring the Member States to take measures to ensure that only lighters that are child-resistant are allowed in the market and to prohibit novelty lighters from entering the market;

¹⁹ For additional information see Prof. Hans-W. Micklitz, 2018, Legal Opinion on the Draft Law of Georgia on the Protection of Consumer Rights (as of 2017), Comparative legal studies, no. 6(2018), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).
• Recommendation on principles applicable to out-of-court settlement (98/257/EC) Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes;
• Commission recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes;
• Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers’ interests; and

This list is already outdated, as the EU has adopted various important directives that update the existing ones. The most important in the context of the protection of economic interests is EU Directive 2011/83/EU on consumer rights ("Consumer Rights Directive"). The Consumer Rights Directive merges doorstep and distant selling, and introduces a right to information that covers all services and goods. The latest Draft Law takes the new development fully into account.

According to the Centre for Strategic Research and Development of Georgia, when the Association Agreement was concluded in 2014, it did not include a schedule for legislative approximation in food-safety sector. Pursuant to Article 55 of the Association Agreement, timetables for this sector were to be submitted within six months after entering into force of the Agreement. Timetables were stipulated in February 2015 and, after agreement between the parties, were approved by Decision #1/2017 of the Georgia-EU Sanitary and Phytosanitary Subcommittee of 7 March 2017. Thus, to date, XI-B Annex of the Association Agreement defines directives and regulations, as well as timetables, for approximation in the food safety, veterinary and plant protection sector.

**UN Sustainable Development Goals**

In 2015, at the UN Sustainable Development Summit, Sustainable Development Goals (SDGs) were adopted in connection with the Sustainable Global Development Agenda for 2015-2030. This document adopted by 193 countries (including Georgia) sets 17
Goals and 169 targets for sustainable development in particularly important sectors. In addition, the signatory states have undertaken the commitment to ensure “nationalization” of the SDGs, which includes setting specific, national goals and targets for the country, in line with the SDGs. This document reaches far beyond what the EU understands as consumer law (see the list of directives in the Association Agreement). It touches upon environmental protection, a circular economy, universal access to basic products and services (now enshrined in the 2017 UN Guidelines on Consumer Protection), education and even social policy.

To implement the SDGs, the GoG, taking into consideration the country’s situation, elaborated a “National Document on Nationalization of the UN Sustainable Development Goals”. This document sets out national priorities and targets for SDGs that are relevant for Georgia. Thus, in Georgia, in the coming years, planning of the national, regional or sectoral (including in the sphere of consumer rights) development policy will be implemented in accordance with this National Document. State policy implemented in the consumer sphere can have a direct impact on Georgia’s ability to achieve the SDGs.

Table No. 1 sets out the SDGs in relation to national targets related to consumer protection in the left column; links between consumer policy and each SDG are explained in the right column.

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<tr>
<th>Table No. 1. SDGs and Georgia: Adjusted Targets Related to Consumer Protection</th>
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<tr>
<td><strong>Goal 1: End poverty in all its forms everywhere</strong></td>
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<td><strong>Target 1.3</strong> – Implement nationally appropriate measures, to achieve substantial coverage of the poor and vulnerable people [with the minimum system of social protection] by 2030.</td>
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<td>Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all the population, particularly for people leaving in poverty. Poverty is most commonly understood as the low income; however, it also has a number of extra factors such as restricted access to basic goods and services. The legitimate basic human needs that are intended to be met are: (a) access of consumers to essential goods and services; and (b) the protection of vulnerable and disadvantaged consumers.</td>
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23 This table shows only those targets that Georgia committed itself to meet (nationalized targets); there are many other international targets under each SDG relevant to consumer protection to which Georgia did not make a pledge.
Target 2.5 – By 2020, maintain the genetic diversity of seeds, cultivated plants and farmed and domesticated animals and their related wild species, through soundly managed and diversified seed and plant banks at the national level; and ensure access to fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge, as internationally agreed.

Goal 3. Ensure healthy lives and promote well-being for all at all ages

| Target 3.2 | By 2030, end preventable deaths of newborns and children under 5 years of age, with Georgia aiming to reduce neonatal mortality to at least 3 per 1,000 live births and under-5 mortality to at least 6 per 1,000 live births. |
| Target 3.3 | a – By 2030, end the epidemics of AIDS, tuberculosis and combat hepatitis, water-borne diseases and other communicable diseases. |
| Target 3.5 | Strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol. |
| Target 3.6 | By 2020, reduce the number of deaths and injuries from road traffic accidents in Georgia. |
| Target 3.9 | By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals, air, water and soil pollution and contamination. |
| Target 3.a | Strengthen the implementation of the World Health Organization Framework Convention on Tobacco Control in Georgia, as appropriate. |
| Target 3.b | By 2030, Support the research and development of vaccines and medicines for communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration on the TRIPS Agreement and Public Health, which affirms the right of developing countries to use the full provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights regarding flexibilities to protect public health, and, in particular, provide access to medicines for all. |
| Target 3.c | Strengthen the capacity of Georgia for early warning, risk reduction and management of national and global health risks. |

Issues of product safety and access to medicine and health care are most important issues in the field of consumer rights protection. Though the relevant rules of the EU and Georgia reach beyond consumer protection and are regulated by different legislation, they aim at the protection of the citizen. Consumer protection usually covers only marketized services provided through private companies, not public services.

Consumer protection is also central to the prevention of non-communicable diseases that are linked to smoking, excess alcohol consumption and poor diets.

To ensure the physical safety of consumers (to ensure that products are safe for either intended or normally foreseeable use), the government should develop and adopt appropriate standards and legal system.

Special attention should be paid to pharmaceuticals: the government should develop adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals.
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<th>Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all</th>
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| **Target 4.1** – By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes.  
**Target 4.3 a** – By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university. |
| Consumer education should be an important part of the educational and lifelong learning processes that all people receive. By giving consumers the skills and knowledge, they become active participants in the marketplace. The government should develop general consumer education and information campaigns and facilitate their implementation. In developing these programs, special attention should be given to the needs of disadvantaged consumers such as people with low incomes or with low to non-existent literacy levels. Consumer education should be able to provide all learners with the necessary skills to make informed choices about products and services and uphold human rights. |

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<th>Goal 5. Achieve gender equality and empower all women and girls</th>
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| **Target 5.4** – Recognize and value unpaid care and domestic work through the implementation and promotion of measures aimed at establishing shared responsibility within the household and family.  
**Target 5.b** – Enhance the use of enabling technology, in particular information and communications technology, to promote empowerment of women. |
| In formal terms, consumer law does not make any distinction between men and women. This does not mean that there might not be gender specific issues, in particular when men and women share a more traditional role in the management of the household. There is a link here to the phenomenon of prosumers – households as production and consumption units.  
Overall, there is a tendency of buying pre-cooked or deep-frozen food instead of cooking. Whilst this might save time, there is also a dark side to it: for example, children do not learn how to prepare food anymore.  
Of particular importance are the infrastructure services such as water and energy, which can reduce the time men and women (boys and girls) spend to obtain water or energy resources. It is also important to reduce indoor air pollution in buildings to improve health. |

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<th>Goal 6. Ensure availability and sustainable management of water and sanitation for all</th>
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| **Target 6.1** – By 2030, achieve universal and equitable access to safe and affordable drinking water for all.  
**Target 6.2** – By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations. |
| Water is essential to all life. The government should formulate or strengthen national policies to support the supply, distribution and quality of drinking water. Due regard should be paid to the choice and appropriate levels of service, quality and technology as well as the need for relevant education. The government should promote universal access to public utilities and improve rules and |
statutes dealing with provision of service, consumer information, payment of service charges (prepayment, penalties for failure to pay or delay in payment), termination and restoration of service, dispute resolution between consumers and service providers, etc., taking into account the needs of vulnerable and disadvantaged consumers.

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<th>Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all</th>
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<td><strong>Target 7.1</strong> – By 2030, Georgia achieves significant progress in ensuring nationwide access to affordable, reliable and modern energy services.</td>
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<td>Energy is a worldwide challenge both in terms of the management of available resources and the provision of access to sustainable energy; therefore, integration of energy issues into concepts and policies of sustainable consumption is of utmost importance.</td>
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<tr>
<td><strong>Target 7.2</strong> – By 2030, increase substantially the share of renewable energy in the energy mix of Georgia.</td>
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<tr>
<td>The government should encourage the design, development and use of products and services that are energy efficient; consumer education and information programs should, among others, cover efficient use of energy.</td>
</tr>
<tr>
<td><strong>Target 7.3</strong> – By 2030, significantly increase the rate of improvement in energy efficiency in Georgia.</td>
</tr>
<tr>
<td>The government should promote universal access to clean energy and formulate national policies to improve the supply, distribution and quality of affordable energy to consumers according to their economic circumstances.</td>
</tr>
<tr>
<td><strong>Target 7.a</strong> – By 2030, enhance international cooperation to facilitate access to clean energy research and technology, including renewable energy, energy efficiency, cleaner fossil-fuel technology, and promote investment in energy infrastructure and clean energy technology in Georgia.</td>
</tr>
<tr>
<td><strong>Target 7.b</strong> – By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all</th>
</tr>
</thead>
<tbody>
<tr>
<td>Georgia did not set any national targets under this goal relevant to consumer protection.</td>
</tr>
<tr>
<td>Governments should act to ensure that consumers reap the optimum benefits from their resources by way of support and promotion of distribution methods, fair business practices, informative marketing and effective protection. This way, consumers will be contributing to a more responsive and efficient economy.</td>
</tr>
<tr>
<td>Among the objectives of this Sustainable Development Goal, relevant for the purpose of this research is to promote resource-efficient production and consumption; International targets under this SDG are to improve and decouple economic growth from environmental degradation caused by use of resources.</td>
</tr>
</tbody>
</table>
Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation

**Target 9.c** – Significantly increase access to information and communications technology and strive to provide universal and affordable access to the internet by 2020. The consumer issues under this SDG are largely dealt with in the sections on water (SDG 6) and energy (SDG 7) above. In addition to that, consumer associations can play an important part in participating in the regulatory processes involving consultation with service providers, regulators and local governments.

Here, attention should be paid to mobile cellular infrastructure. To date, 95 percent of the world’s population is covered by mobile-cellular technology. The total reach of the internet coverage has also grown from just over 6 percent of the world’s population in 2000 to 43 percent in 2015. As a result, 3.2 billion people are currently linked to global networks and require protection as consumers.

Goal 10. Reduce inequality within and among countries

**Target 10.c** – By 2030, reduce the transaction costs of migrant remittances to less than 3 percent and eliminate remittance corridors with costs higher than 5 percent. State consumer protection policy has long promoted the extension of basic (essential) services to all, including poor consumers; in recent years, more attention has been paid to poor consumers’ access to basic financial services (credit, transfers). Overall, the targets for SDG 10 address the need to adopt state social protection policies, improve the regulation and monitoring of global financial markets and institutions, and strengthen the implementation of such regulations.

Goal 11: Make cities inclusive, safe, resilient and sustainable

**Target 11.6** – By 2030, reduce the adverse per capita environmental impact of cities and municipalities, by paying special attention to air quality and waste management.

The growth of cities creates particular challenges, such as congestion and air pollution, along with the need for the provision of housing and communal services that keep up with the growth in the urban population. In this context, attention should be paid to access by consumers to essential goods and services (SDG 1) and ensuring universal access to public utilities, in particular, water and energy (SDGs 6 and 7).

Targets under SDG 11 are access to safe, adequate and affordable housing fund and basic services, improved road safety, participatory settlement planning, protection from disasters (especially water related), improved air quality through green transport and better waste management.
### Goal 12: Ensure reasonable sustainable consumption and production patterns

**Target 12.8** – By 2030, ensure that people of Georgia have relevant information and awareness for sustainable development and lifestyles in harmony with nature.

Alongside government and industry, consumers have fundamental roles to play in making changes in the established patterns of consumption and production. Helping consumers to consume sustainably is central to achieving the SDGs. Consumers need to form links and understand how their consumption choices, use and disposal of products and services can reduce their overall impact on the environment. They also need to feel confident that the information they are given is both reliable and accurate.

Targets under this important goal include: reduction of food waste, improvement of chemical management, promotion of corporate responsibility, improvement of public procurement processes, promoting sustainable tourism and rationalization of fossil fuel subsidies.

### Goal 13. Take urgent action to combat climate change and its impacts

### Goal 14: Conserve and sustainably use the oceans, seas and marine resources for sustainable development

### Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.

Promotion of sustainable consumption will in turn have a positive impact on the achievement of Goals 13, 14 and 15.

### Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels

**Target 16.5** – Substantially reduce corruption and bribery in all their forms.

**Target 16.6** – Develop effective, accountable and transparent institutions at all levels.

**Target 16.7** – Ensure responsive, inclusive, participatory and representative decision-making at all levels.

**Target 16.10** – Ensure continuous public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

Consumer participation in governance – especially in the utility and other regulated industries – balances producers’ input into public policy and administration and helps to ensure that consumers’ needs are communicated.

It is important to ensure freedom to form consumer and other relevant groups or organizations; however, these associations should also be able to present their views in the decision-making processes affecting consumers; herewith; and effective consumer dispute resolution and redress are available.

There are also other cross-cutting issues such as creating effective, accountable and transparent institutions at all levels; access to information; transparency of state institutions, bribery and corruption, etc.
**Goal 17. Revitalize the global partnership for sustainable development**

**Target 17.8** – Fully operationalize the technology bank and science, technology and innovation capacity-building mechanism for least developed countries by 2017 and enhance the use of enabling technology, in particular, information and communications technology.

**Target 17.18** – By 2020, enhance capacity-building support to Georgia to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national context.

Consumer protection is a crosscutting issue that supports the implementation of many of the SDGs. Many of the targets under this SDG are relevant to consumer protection, especially those related to agriculture policy and pharmaceuticals under systemic issues and trade policy.

*Sources: Administration of the GoG (n.d.); UNCTAD, 2017; UNCTAD, 2016.*

To the extent that the Association Agreement and the SDGs are comparable, both highlight the importance of ensuring high levels of consumer welfare, in the context of guaranteeing that the individual’s and society’s basic needs are met, on one hand, and that economic rights and interests are defended, on the other.

**Regulations (Legal Norms) and Standards in the Consumer Sphere**

To date, in Georgia, the regulation of norms and standards in the consumer sphere are set out in nearly 30 legislative acts adopted by the Parliament and up to 100 bylaws adopted by the government in the form of rules, statutes and technical regulations. Among legislative acts, provisions governing the consumer sphere are included mainly in the Civil Code of Georgia (1997), the Product Safety and Free Movement Code (2012) and the Food/Animal Feed Safety, Veterinary and Plant Protection Code (2012).

The Civil Code does not explicitly contain a definition of the consumer; however, it distinguishes between entrepreneurial and non-entrepreneurial activities and therefore provides for a number of rules that regulate transactions between businesses and consumers. The Product Safety and Free Movement Code aims at protecting human life, health, property and the environment, and, among other issues, defines standards for product safety in the market and their free movement. The Food/Animal Feed Safety, Veterinary and Plant Protection Code provides for the traceability of food/feed, animals, plants, products of animal and plant origin, veterinary drugs, pesticides and agrochemicals during production, processing and distribution.


27 Non-exhaustive list of these acts is available on the website, specially dedicated to consumer rights protection by the Center for Strategic Research and Development in Georgia (CSRDG), available at: [http://momxmarebeli.ge/?rec=120](http://momxmarebeli.ge/?rec=120).

1.4. The 2018 Version of the Draft Law and the Main Issues Selected for RIA

The 2018 version of the Draft Law was reviewed by the RIA Team during the assessment period. By this time, the Draft Law was undergoing changes with input from the interested stakeholders. However, the main approach and regulation mechanism proposed by the Draft Law remained within the ambit of protection of the economic interests of consumers. Compared to the 2016 draft, the 2018 version is, broadly speaking, more in line with the EU directives that it is meant to implemented. Issues regulated by the Draft Law are briefly described below:

The purpose of the Draft Law is to provide a high level of consumer protection and to ensure that this level of protection is enforced by means of regulation mechanisms.

The goal of the Draft Law is to protect the economic interests of consumers. Typically, a consumer protection law does not deal with human health and safety, which is seen as a separate field of action, or with environmental protection: it is not a risk management regulation. Instead, the Draft Law:

- Focuses on commercial practices, contracts and their conditions;
- Enacts, particularly before the conclusion of a contract, general obligations of the trader to provide the consumer with information as well as requirements related to the nature, content and form of the information;
- Prescribes special requirements for off-premises and distance contracts. The Draft Law defines such contracts and how they are concluded; it also sets out additional obligations of the trader with regard to information in respect of off-premises and distance contracts;
- Empowers the consumer with the right of withdrawal from off-premises and distance contracts and sets time limits for the enjoyment of the right of withdrawal and for returning a product; it also prescribes exemptions from the right of withdrawal;
- Prescribes the terms of legal guarantees and the rights and obligations of the consumer and the trader in case of a lack of conformity with contract, and sets time limits for the enjoyment of the rights by the consumer in such cases;
- Prescribes grounds for when standard contract terms can be deemed unfair and void;
- Defines and explains the characteristics of unfair commercial practices, including misleading actions, misleading omissions and aggressive commercial practices;
- Establishes a government institution responsible for enforcement, the Competition Agency [or Competition and Consumer Rights Protection Agency, as it is intended to be called in the future], and sets out the powers and obligations of this agency; and
- Prescribes exceptions related to the scope of the law, i.e., areas in which some mechanisms envisaged by the Draft Law will not apply.

Further to the fact-finding consultation phase carried out, the RIA Team identified five problematic issues. The issues are outlined below in short and developed in greater detail in the related Chapters II-VI:

1. Unfair Commercial Practices

In Georgia, the legislation regulating consumer sphere, namely, the Law of Georgia on Advertisement (1998), envisages some provisions aimed at protecting a consumer from im-
proper advertising (“unfair, unreliable, unethical, obviously false and other advertising”).

It is important that the legislation in force and the new legal regulations introduced by the Draft Law related to unfair commercial practices are consistent and comply with each other.

The Draft Law fully implements the relevant EU directive. However, it places a special emphasis on aggressive commercial practices. This gives rise to the question of an appropriate benchmark against which commercial practices should be measured – the vulnerable and/or the average consumer.

2. Obligations of the Trader to Provide the Consumer with Information

The Draft Law includes several long articles that define the kind of information and the manner in which the trader should provide it to the consumer before concluding a contract. There is an opinion regarding these provisions that obligations to provide information can result in higher prices of goods and have an impact on traders and consumers.

Besides, there are divergent opinions related to the adequacy of the content, timing and form of information that should be provided. The Draft Law envisages obligations to provide information prior to concluding a contract, but says nothing about the necessity to inform consumers after the contract is concluded. At issue is the incompatibility between the pre-contractual rights and obligations and contractual needs of a consumer.

3. Time-Limits Related to the Right of Withdrawal for Off-Premises and Distance Contracts

The Draft Law empowers the consumer to withdraw from off-premises and distance contracts. The consumer is entitled to withdraw from a contract without giving any reason within a period of 14 calendar days from the day on which the consumer acquired physical possession of the product (or from the day of the conclusion of a service contract). The consumer, within the stipulated time limit, must notify the trader of his/her decision to withdraw from the contract. The consumer must send back the product to the trader immediately, and not later than 14 calendar days from the day he/she has sent a notification to the trader. Thus, in total, the consumer has up to 28 days to send back the product (a maximum of 14 days for notification and additional maximum 14 days for sending the product back).

Some stakeholders shared the opinion that a 28-day period is excessive and not suitable for the Georgian context (considering the country’s size and the development of quality of service delivery in Georgia) and stated that the provision is likely to cause an unreasonable and disproportionate increase in costs to be incurred by the trader (and, to a great extent, in product prices). It is worth mentioning that such a long period was considered problematic and was an object of analysis in the earlier RIA conducted by the Ministry of Economy and Sustainable Development in 2016.

4. Time Limit for the Enjoyment of the Rights of the Consumer in Case of Lack of Conformity with the Contract; Time Limit for Legal Guarantee

The Draft Law vests a consumer with the right, in case of defective (nonconforming) goods, to bring the goods into conformity with the contract, request the trader to replace or repair the goods free of charge, reduce the price or withdraw from the contract. The consumer
enjoys this right for two years from the delivery of goods to the consumer by the trader. This means that, if nonconformity becomes apparent within six months after acquiring physical possession of a product, it is presumed that the defect existed at the time of sale of the product (unless proved otherwise by the trader).

Some stakeholders are of the opinion that a two-year legal guarantee is too long and will have an adverse impact on the price of certain products, which will also impact traders and consumers.

An important clarification needs to be made in this context: it is necessary to legally distinguish a legal guarantee period and a prescription. A legal guarantee period is the time the consumer has to claim his/her rights against the trader; a prescription period is the time period the consumer has to enforce his/her rights in court. Directive 99/44 does not make this clarification. However, paragraphs 1 and 2 of Article 5 deliberately allow Member States to limit the prescription period to two years, calculated from the date of delivery of the product. The present report does not engage in a deeper debate of the manner in which the legal guarantee period and prescription period are designed in the GCC. This is a rather complicated issue that needs to be discussed separately.

5. Enforcement

Enforcement is currently under discussion, as it was at the time of consideration of the Draft Law. The 2016 version of the Draft Law envisaged the establishment of the institution of Consumer Ombudsman. This new institution was supposed to be responsible for the enforcement of the Draft Law. The RIA conducted in 2016 focused on costs necessary for the effective functioning of this institution, and also on whether the Ombudsman would be capable of responding effectively to large numbers of appeals.

The current version of the Draft Law does not envisage the establishment of a new institution. Instead, a legal entity of public law, the Competition Agency, referred to as the Competition and Consumer Rights Protection Agency in the Draft Law, is responsible for the enforcement of the law. Empowering the Competition Agency with new functions raised the question of the Competition Agency’s capacity to exercise the power vested in it.

The amount of the fine that may be imposed on a trader when a decision of the Competition Agency is not enforced or is enforced inadequately is one of the problematic issues related to enforcement. The method of calculation of the amount of fine is also controversial.

The abovementioned five problematic issues are examined in the next chapters of the report.

1.5. Assumptions and Limitations

An RIA should, ideally, be based on robust data and facts. However, in Georgia this type of data does not exist to the degree necessary to fully meet the requirements of the RIA. An impact assessment was mandated with regard to three of the five issues. It was unfortunately not possible to initiate an impact assessment on unfair commercial practices and enforcement.
That is why the current report takes into consideration other data, especially from the EU, where RIA as a tool is very well developed. Since the early 2000s, the European Commission has developed an ever more sophisticated policy on impact assessment in general and on consumer law in particular. The European Consumer Law with which Georgia is supposed to integrate its legal system has undergone major changes since 2000. These amendments either have been or will be preceded by RIAs. Hence, the current RIA might benefit from the impact assessments initiated by the EU Commission to fill gaps in data wherever possible. A major source of information in this regard is the current European Commission’s regulatory fitness and performance (REFIT) evaluation of the six consumer directives, which is not yet completed, but which has yielded extensive legal, economic and social information in the five problem areas under scrutiny here.

However, the RIA takes these EU documents\(^{29}\) fully into account without questioning or challenging the methodology chosen by the consultants or the results proposed. The emphasis was on whether and to what extent the existing data is of relevance for the particular situation in Georgia. Due to the insufficient knowledge base in Georgia, the authors of this document strongly encourage the government to initiate – if needed, with the support of the donor community and other stakeholders – research on the potential impact of the Draft Law on commercial practices and enforcement in Georgia.

2.1. Introduction

The Draft Law on Protection of Consumer Rights provides for a ban on aggressive commercial practices. What are the means of measuring commercial practices? When can commercial practices be considered as aggressive? Who is the target of this Draft Law and its prohibitions: the “average” or the “vulnerable” consumer? Georgia, as an Associate Member of the EU, has the obligation to implement consumer rights legislation. In order to determine which categories of consumers should be affected by the Draft Law, it is important to analyze the social and economic situation of Georgian citizens and also the judgments of the EU, Member States and the European Court of Justice (ECJ).

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 “concerning unfair business-to-consumer commercial practices in the internal market” ("Unfair Commercial Practices Directive") is one of the most important pillars of EU consumer law, due to its broad scope of application. ³⁰ The directive implements regulations that prohibit misleading and aggressive business practices that affect the economic behavior of consumers. The Unfair Commercial Practices Directive provides a definition of an unfair commercial practice in its Article 5.1:

“A commercial practice shall be unfair if: a) it is contrary to the requirements of professional diligence, and (b) it materially distorts or is likely to materially distort the economic behavior 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.”³¹

Thus, unfair commercial practice infringes or may infringe professional diligence and materially distorts consumers’ economic behavior. EU law does not require that a consumer have already suffered from an unfair commercial practice. It is enough if the commercial practice might affect the consumer negatively. There has been a highly contentious debate during the EU legislative process about who is the subject of the regulation. Relying on the case law of the ECJ, the European Commission wants to include the average consumer as the addressee of protection against unfair commercial practices. In the end, a distinction was made between the “average consumer” and the “vulnerable consumer”. Only the concept of vulnerable consumer is legally defined in Article 5(3); the average consumer is defined in the recitals of the Unfair Commercial Practices Directive. The consequences for the yardstick that should be applied in Georgia will be discussed below.

³¹ Ibid., Article 5.
Unfair commercial practices, according to the Unfair Commercial Practices Directive, consist of misleading actions, misleading omissions and aggressive commercial practices. Practices become misleading if they contain false information or if they are likely to deceive an average consumer. Misleading information can be about existence, nature, price, calculation of price, characteristics of the product, identity of the product, etc. Omission and the concealment of facts that are important for decision-making are also considered unfair commercial practices. Articles 8 and 9 regulate aggressive commercial practice. The distinguishes between harassment, coercion and undue influence which affects the consumer’s freedom of choice and could make him/her take a decision he/she would have not taken otherwise.

The chapters below define the categories of consumers, considering their social and economic characteristics, and provides for a legal, social and economic analysis on just aggressive commercial practices. This chapter will enable policy makers in the area of consumer rights to define both the notion of aggressive commercial practices and the characteristics of the consumers.

2.2. Definition of the Problem

**Legal Issues**

The Law of Georgia on Protection of Consumers’ Rights, abolished in 2012, did not specify different types a consumer, but merely used the term “consumer”. It did not directly regulate aggressive commercial practices but included strict provisions on providing reasonable information to consumers.

The current Law of Georgia on Advertisement prohibits misleading and unethical advertising, and advertising which aims at deceiving the consumer as well as advertisement that is contrary to good faith.

Under Article 8 of the Unfair Commercial Practices Directive, “a commercial practice shall be regarded as aggressive if, in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force, or undue influence, it significantly impairs or is likely to significantly impair the average consumer’s freedom of choice or conduct with regard to the product and thereby causes him or is likely to cause him to take a transactional decision that he would not have taken otherwise.”

The definition of aggressive commercial practices is further clarified in Article 9 of the Unfair Commercial Practices Directive, notably, “in determining whether a commercial practice uses harassment, coercion, including the use of physical force, or undue influence, account shall be taken of: (a) its timing, location, nature or persistence; (b) the use of threatening or abusive language or behavior; (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer’s judgment, of which the trader is aware, to influence the consumer’s decision with regard to the product; (d) any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise

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33 Ibid Article 3.3.
rights under the contract, including rights to terminate a contract or to switch to another prod-
uct or another trader; (e) any threat to take any action that cannot legally be taken.”

(a) Time, location, systematic nature;
(b) The use of threatening or abusive language or conduct;
(c) Misuse by the trader of a particular accident or similar circumstance in order to influ-
ence the consumer’s decision, which deprives consumers of the ability to judge and make decisions about the product;
(d) Disproportionate objections by the trader to prevent the consumer from exercising
ights under the contract, including the consumer’s right to withdraw from the contract
or to choose another product or other trader;
(e) Any threat of unlawful conduct.

The Draft Law implements the Unfair Commercial Practices Directive’s main principles re-
garding aggressive commercial practices. However, the Draft Law has legal gaps concerning
the definition of the term “consumer” in the rules governing unfair commercial practices.

In its regulation of contracts and entry into contracts, the Draft Law uses the term “consum-
er” without any specifications. However, the chapter on commercial practices distinguishes
between the average consumer and vulnerable consumer. The term “vulnerable consumer”
is defined in section 3 of Article 24, under which “commercial practices, which are likely to
materially distort the economic behavior only of an identifiable group of consumers, who
are particularly vulnerable to the practice because of their mental or physical infirmity
or age, shall be assessed as unfair from the perspective of the average member of that
group.” Other articles on unfair commercial practices mention the “average consumer”
as a benchmark for applying the regulations, and the Draft Law uses the term average con-
sumer as it is used in the Unfair Commercial Practices Directive.

The Unfair Commercial Practices Directive, in recital 18, offers the necessary clarification as follows:

“It is appropriate to protect all consumers from unfair commercial practices; however, the
Court of Justice has found it necessary in adjudicating on advertising cases since the enact-
ment of Directive 84/450/EEC to examine the effect on a notional, typical consumer. In line
with the principle of proportionality, and to permit the effective application of the protec-
tions contained in it, this Directive takes as a benchmark the average consumer, who is
reasonably well informed and reasonably observant and circumspect, taking into account
social, cultural and linguistic factors, as interpreted by the Court of Justice, but also contains
provisions aimed at preventing the exploitation of consumers whose characteristics make
them particularly vulnerable to unfair commercial practices. Where a commercial practice
is specifically aimed at a particular group of consumers, such as children, it is desirable that
the impact of the commercial practice be assessed from the perspective of the average
member of that group. It is therefore appropriate to include in the list of practices which are
in all circumstances unfair a provision which, without imposing an outright ban on advertis-
ing directed at children, protects them from direct exhortations to purchase. The average
consumer test is not a statistical test. National courts and authorities will have to exercise

36 The Draft Law on Consumer Rights Protection, Article 20.3.
their own faculty of judgment, having regard to the case-law of the Court of Justice, to determine the typical reaction of the average consumer in a given case.”

The Unfair Commercial Practices Directive, therefore, stresses that, under some circumstances, the benchmark for application can be the vulnerable consumer based on various factors, such as social, cultural and linguistic. The Draft Law does not exhaustively illustrate the problem of unfair commercial practices and mainly concentrates on “mental or physical infirmity or age,” which we find a rather limited way of identifying the vulnerable consumer. Thus far, the Draft Law is not formally in line with the requirements of the Unfair Commercial Practices Directive.

**Social Issues**

To define the benchmark of “consumer” in relation to aggressive commercial practices, it is necessary to define the type of consumer that appears predominantly in Georgia. This definition will establish a proper base not only for protection against aggressive commercial practices but also for further development of the Draft Law. Three characteristics are crucial to understanding the Georgian consumer.

**First**, Georgia was occupied for 70 years by the Soviet Union, in which competition did not exist and consumer rights were not guaranteed. This lack of competition and the state-controlled market negatively affected the development of an informed and reasonable consumer.

**Second**, unlike most other post-Soviet countries, the 1990s were the most difficult period in Georgia’s modern history. The country experienced a coup, several years of a bloody civil war and disputes over Georgia’s Abkhazia and Tskhinvali (South Ossetia) regions, and later a war between Russia and Georgia. Georgia’s GDP was diminished by 70 percent, the currency devalued and the people became poor. These were followed by years of corruption. Even though legal acts were enacted on competition and consumer protection, it became difficult to execute these acts in practice due to the high rate of corruption.

**Third**, after the 2003 Rose Revolution, the new government concentrated more on development of businesses than on protecting consumer rights. The anti-monopoly body was dissolved and more efforts were made to promote businesses than to protect competition and consumers. Only after Georgia started the process of approximation of the Georgian legislation with EU law were the development of consumer protection and competition legislation and the creation of new institutions regulating competition and consumer rights put on the agenda.

The Soviet era and the last 25 years negatively affected the development of the average consumer in Georgia. Only after Georgia started to harmonize its legislation with the EU directives was the creation of a new law on consumer protection placed on the agenda. This provides for an opportunity to decide the appropriate benchmark for consumer protection based on analysis of the characteristics of the Georgian consumer.

For the aforementioned reasons, Georgia’s consumers are, on average, exceptionally vulnerable and, therefore need strong protection against unfair commercial practices. The

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Georgian consumer is neither reasonably informed nor reasonably observant and circum-
spect, and is therefore highly vulnerable to unfair commercial practices.  

To measure and derive conclusions appropriately about the vulnerability of Georgian con-
sumers, we must look through some of the statistical evidence that defines the vulnerable
nature of Georgian consumers. The tables below set out the following information:
a) Consumer price index in Georgia (Table No. 2);
b) Regional consumer price index (Table No. 3);
c) Vulnerable employment (Table No. 4);
d) Data on employment and unemployment according to the National Statistics Office of
Georgia (Table No. 5);
e) Distribution of employment by economic activity (Table No. 6);
f) Percentage of population using the internet in the region (Table No. 7);
g) Number of citizens receiving pension packages and social assistance packages; num-
ber of internally displaced persons (IDPs); number of ethnic minorities; access to in-
ternet; number of self-employed; number of unemployed in active labor force; and
population of Georgia (Table No. 8).

This list and the information set out in the below tables provide a range of statistical data and
enable us to arrive at the factual conclusion: that consumers in Georgia are more vulnerable
than their counterparts in EU countries, where the principle of “average consumer” is ap-
plied. In Georgia, the average consumer is better represented by a “vulnerable consumer”.

In Table No. 2, showing inflation and the consumer price index, data on average prices of a
basket of consumer goods and services is given from 2000 to 2018. According to this table,
the consumer price index has risen by 234.33 percent compared to the base period 1996.

**Table No. 2. Consumer Price Index in Georgia**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Month (March)</td>
<td>October</td>
<td>October</td>
<td>October</td>
<td>October</td>
<td>October</td>
<td>October</td>
</tr>
<tr>
<td>100 GEL (assuming inflation)</td>
<td>141.69</td>
<td>171.43</td>
<td>242.35</td>
<td>280.64</td>
<td>307.18</td>
<td>334.33</td>
</tr>
<tr>
<td>Consumer price index change compared to base period</td>
<td>41.69%</td>
<td>71.43%</td>
<td>142.35%</td>
<td>180.64%</td>
<td>207.18%</td>
<td>234.33%</td>
</tr>
</tbody>
</table>

Source: National Statistics Office of Georgia

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39 The year and month of adoption of the Law of Georgia on Protection of Consumers’ Rights (March 20, 1996) is taken as the base period to compare the consumer price index with other periods. All successive periods are compared to the base period.

Table No. 3. Consumer Price Index in the Europe and Central Asian Region (1994-2017)

Source: World Bank, Consumer Price Index, Europe and Central Asia region, 2017

Table No. 4. Vulnerable Employment Rate


Table No. 4 shows World Bank data on the rate of vulnerable employment in the region for 2017. According to World Bank methodology, vulnerable employment is defined as self-employment, which is more common in agricultural sector. According to the World Bank, agricultural workers are least likely to have formal work arrangements and least likely to have social protection and social safety guarantees to guard against economic problems;


often they are incapable of generating enough savings to offset the damage caused from
economic crisis. According to the data from National Statistics Office of Georgia (Table Nos.
6 and 7), 43 percent of the employed are self-employed in agriculture, hunting and forestry,
and fishing. This sphere of employment is considered to be more vulnerable than any other
spheres. Therefore, it appears that almost half of the population of Georgia are involved
in vulnerable employment. Thus, as mentioned above, the consumer price index has risen in
Georgia more than in EU countries, and more than 40 percent of the population are involved
in vulnerable self-employment.

Table № 5. Employment and Unemployment Statistics (thousands of people)

<table>
<thead>
<tr>
<th>Year</th>
<th>Active population (labour force)</th>
<th>Employed</th>
<th>Unemployed</th>
<th>Unemployment rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>1,982.7</td>
<td>1,683.0</td>
<td>299.7</td>
<td>15.1</td>
</tr>
<tr>
<td>2006</td>
<td>1,912.9</td>
<td>1,618.0</td>
<td>293.9</td>
<td>15.4</td>
</tr>
<tr>
<td>2007</td>
<td>1,908.7</td>
<td>1,577.3</td>
<td>331.4</td>
<td>17.4</td>
</tr>
<tr>
<td>2008</td>
<td>1,944.7</td>
<td>1,643.5</td>
<td>347.4</td>
<td>17.9</td>
</tr>
<tr>
<td>2009</td>
<td>1,944.7</td>
<td>1,627.8</td>
<td>343.1</td>
<td>18.3</td>
</tr>
<tr>
<td>2010</td>
<td>1,971.8</td>
<td>1,611.0</td>
<td>340.8</td>
<td>17.4</td>
</tr>
<tr>
<td>2011</td>
<td>1,970.9</td>
<td>1,627.8</td>
<td>343.1</td>
<td>17.4</td>
</tr>
<tr>
<td>2012</td>
<td>1,988.2</td>
<td>1,643.5</td>
<td>347.4</td>
<td>17.9</td>
</tr>
<tr>
<td>2013</td>
<td>1,998.6</td>
<td>1,659.4</td>
<td>355.2</td>
<td>18.3</td>
</tr>
<tr>
<td>2014</td>
<td>1,989.4</td>
<td>1,643.4</td>
<td>355.2</td>
<td>18.3</td>
</tr>
<tr>
<td>2015</td>
<td>1,978.6</td>
<td>1,659.4</td>
<td>355.2</td>
<td>18.3</td>
</tr>
<tr>
<td>2016</td>
<td>1,964.6</td>
<td>1,694.4</td>
<td>290.2</td>
<td>14.6</td>
</tr>
<tr>
<td>2017</td>
<td>1,983.1</td>
<td>1,706.6</td>
<td>276.4</td>
<td>14.0</td>
</tr>
</tbody>
</table>

Source: National Statistics Office of Georgia

Table № 6. Distribution of Employment by Economic Activity

<table>
<thead>
<tr>
<th>Economic Activity</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, hunting &amp; forestry, fishing, fisheries</td>
<td>736.5</td>
</tr>
<tr>
<td>Industry</td>
<td>137.5</td>
</tr>
<tr>
<td>Construction</td>
<td>82.0</td>
</tr>
<tr>
<td>Trade; car repair, household goods and personal items</td>
<td>174.1</td>
</tr>
<tr>
<td>Hotels and restaurants</td>
<td>37.4</td>
</tr>
<tr>
<td>Transport and Communications</td>
<td>82.6</td>
</tr>
<tr>
<td>Financial activities</td>
<td>30.7</td>
</tr>
<tr>
<td>Real estate transactions, leases and customer service</td>
<td>40.7</td>
</tr>
<tr>
<td>State governance</td>
<td>88.3</td>
</tr>
<tr>
<td>Education</td>
<td>151.5</td>
</tr>
<tr>
<td>Health care and social assistance</td>
<td>67.4</td>
</tr>
</tbody>
</table>

### Table 7. Percentage of Population Using the internet in European Countries and Georgia (2017), World Bank

<table>
<thead>
<tr>
<th>Country</th>
<th>Percentage (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Norway</td>
<td>90</td>
</tr>
<tr>
<td>Sweden</td>
<td>90</td>
</tr>
<tr>
<td>Netherlands</td>
<td>89</td>
</tr>
<tr>
<td>Denmark</td>
<td>87</td>
</tr>
<tr>
<td>Austria</td>
<td>87</td>
</tr>
<tr>
<td>Belgium</td>
<td>87</td>
</tr>
<tr>
<td>Finland</td>
<td>87</td>
</tr>
<tr>
<td>France</td>
<td>87</td>
</tr>
<tr>
<td>Germany</td>
<td>87</td>
</tr>
<tr>
<td>Spain</td>
<td>85</td>
</tr>
<tr>
<td>Italy</td>
<td>85</td>
</tr>
<tr>
<td>Portugal</td>
<td>85</td>
</tr>
<tr>
<td>Greece</td>
<td>85</td>
</tr>
<tr>
<td>Croatia</td>
<td>85</td>
</tr>
<tr>
<td>Hungary</td>
<td>85</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>85</td>
</tr>
<tr>
<td>Poland</td>
<td>85</td>
</tr>
<tr>
<td>Estonia</td>
<td>85</td>
</tr>
<tr>
<td>Slovenia</td>
<td>85</td>
</tr>
<tr>
<td>Latvia</td>
<td>85</td>
</tr>
<tr>
<td>Lithuania</td>
<td>85</td>
</tr>
<tr>
<td>Lithuania</td>
<td>85</td>
</tr>
<tr>
<td>Russia</td>
<td>85</td>
</tr>
<tr>
<td>Ukraine</td>
<td>85</td>
</tr>
<tr>
<td>Georgia</td>
<td>60</td>
</tr>
</tbody>
</table>


At the same time, according to the World Bank, 60.49 percent of population of Georgia uses the internet. This rate places Georgia in one of the last places in the region compared not only to Member States but also to its closest neighbors and post-Soviet states. “Consumers who are internet users actively engage with virtual services and try to educate themselves regarding brands and products through social media, get to know others’ experiences and reviews before making their own choice. This is particularly true for the younger segment of the consumer society.” Therefore, citizens who do not use the internet are deprived of the opportunity to educate themselves and use social media to increase their awareness. Thus, almost 40 percent of the population of Georgia do not have the opportunity to enhance their consumer skills; as a result, they are more vulnerable than average consumers.

Table No. 8. Number of Citizens Receiving Pensions and Social Support; Number of IDPs; Number of Ethnic Minorities; Population of Georgia

<table>
<thead>
<tr>
<th>Year</th>
<th>Receiving pensions (elderly age)</th>
<th>Receiving social support</th>
<th>Ethnic minorities facing linguistic barrier</th>
<th>Number of IDPs</th>
<th>Population who do not have Access to the internet</th>
<th>Number of unemployed in active labor force</th>
<th>Number of total self-employed active labor force</th>
<th>Juveniles</th>
<th>Population of Georgia</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>732067</td>
<td>166046</td>
<td>300000 (approx.)</td>
<td>273411</td>
<td>1473564 (approx.)</td>
<td>1983000 (approx.)</td>
<td>736500 (approx.)</td>
<td></td>
<td>316 (approx.)</td>
</tr>
<tr>
<td>2018, January 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3729600 (approx.)</td>
</tr>
<tr>
<td>% of total population</td>
<td>19.62%</td>
<td>4.452%</td>
<td>8.0437%</td>
<td>7.33%</td>
<td>39.51%</td>
<td>13.9%</td>
<td>19.74%</td>
<td>4.826%</td>
<td></td>
</tr>
</tbody>
</table>

Source: National Statistics Office of Georgia

From the data set out in table 8, it is clear that:

- 9.62 percent of the population receives old age pensions;
- 4.452 percent of the population receives social support;
- 8.0437 percent of the population faces linguistic barriers;
- 7.33 percent of the population is internally displaced;
- 39.51 percent of the population does not have access to the internet;
- 13.9 percent of the population is part of the active labor force, but is unemployed;
- 19.74 percent of the population is a part of the active labor force and are self-employed in agriculture, hunting and forestry, and fishing; and
- 4.826 percent of the population is under 18.

Note that overlaps in percentages are not calculated; therefore, it is possible that the same individuals can be in various groups. This can reduce the total number of vulnerable consumers, but makes some of them even more vulnerable.

The above data shows that Georgia’s consumer price index is higher than the price index of Member States, usage of the internet is still low; nearly 20 percent of the labor force is self-employed in agriculture; a sizeable percentage of the population consists of individuals receiving pensions and social support, who have linguistic barriers and/or are IDPs. Due to economic and social conditions, these individuals are vulnerable by definition.

The Unfair Commercial Practices Directive and the Draft Law on Consumer Rights Protection highlight that the basic features that make a consumer more vulnerable are the age, social and linguistic factors. Based on these three characteristics, we can say that more than 40 percent of the population of Georgia are vulnerable consumers. As mentioned above,

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EU law does not require a consumer to have already suffered from an unfair commercial practice: it is sufficient that the commercial practice might affect the consumer negatively. Thus, even in the most optimistic view, the abovementioned facts and statistics are enough to describe conditions in which commercial practices can affect consumers negatively.

Under EU regulations, the average consumer is regarded as being reasonably well informed and reasonably observant and circumspect. But based on the problems associated with Georgia and that are affecting the country, it is difficult to speak about average consumers and make the average consumer the benchmark for application of the Draft Law. The approximate number of vulnerable consumers is higher than the approximate number of average consumers.

**Economic Issues**

We were mainly discussing the social reasons for why consumers in Georgia are vulnerable. To provide a complete picture of consumer vulnerability, the analysis needs to be broadened, in particular in economic aspects.

Customers in Georgia face difficulties in almost all spheres, including food and product safety, financial services, etc. The statistics of international organizations permit an assessment of Georgian consumers’ vulnerability. For example, according to the Programme for International Student Assessment (PISA), citizens of Georgia have low reading (Georgia occupies the 62\textsuperscript{nd} position among 70 countries) and financial literacy results.\textsuperscript{50} In 2018, in PISA’s worldwide ranking, in average scores for math, science and reading, Georgia was in 60\textsuperscript{th} place out of 70 countries.\textsuperscript{51}

During an interview with representatives of Georgian business associations (Annex 2), the representative mentioned that businesses are more vulnerable than consumers. This means that businesses in Georgia have low awareness of consumers’ vulnerability, which makes consumers even more vulnerable.

“Vulnerability triggers are not just limited to customer circumstances (service sector). They can also include macro-economic factors such as a rise in interest rates. Therefore, it is helpful to model some potential scenarios relevant to customer base, such as different levels of increase in interest rates and the impact they could have on customers’ vulnerability”.\textsuperscript{52} Not including the factors mentioned above, other factors such as currency fluctuations—the Georgian Lari (GEL) is steadily devaluing against the US Dollar (USD) and Euro (EUR)—can also affect consumer vulnerability, as this adversely influences economic conditions for consumers.

The Georgian currency suffered hyperinflation in 1990’s, followed by the adoption of a new currency, the Lari, which is steadily depreciating against the US Dollar and Euro (Table No. 9), as the products imported into Georgia are mostly produced either in EU or other countries outside the former Soviet Union (Table No. 9). As the Lari becomes weaker, high-quality imported products (from the EU and the US) get more expensive and less available. This forces consumers to buy low quality goods.

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\textsuperscript{50} Programme for International Student Assessment, (PISA), 2015, available: https://bit.ly/3b3poxK.


Table No. 9. GEL to USD and to EUR\textsuperscript{53}

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 US Dollar</td>
<td>1.2633</td>
<td>1.9759</td>
<td>1.9168</td>
<td>1.4903</td>
<td>1.6513</td>
<td>2.3667</td>
<td>2.5044</td>
</tr>
<tr>
<td>1 Euro</td>
<td>-</td>
<td>-</td>
<td>2.3816</td>
<td>2.1887</td>
<td>2.1235</td>
<td>2.6175</td>
<td>2.9797</td>
</tr>
</tbody>
</table>

Table No. 10. Imported Products (in USD)\textsuperscript{54}

<table>
<thead>
<tr>
<th>Year</th>
<th>From Europe</th>
<th>From Countries of the Former Soviet Union</th>
<th>Other Countries (including the USA, Turkey, and China)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>284,889.7</td>
<td>272,296.5</td>
<td>194,037.4</td>
</tr>
<tr>
<td>2000</td>
<td>218,618.6</td>
<td>229,433.7</td>
<td>261,456.8</td>
</tr>
<tr>
<td>2004</td>
<td>659,116.5</td>
<td>653,715.0</td>
<td>531,511.4</td>
</tr>
<tr>
<td>2008</td>
<td>1,764,268.9</td>
<td>1,998,028.6</td>
<td>2,539,242.8</td>
</tr>
<tr>
<td>2012</td>
<td>2,431,589.5</td>
<td>2,060,106.4</td>
<td>3,564,683.2</td>
</tr>
<tr>
<td>2016</td>
<td>2,214,866.5</td>
<td>1,981,193.2</td>
<td>3,097,966.9</td>
</tr>
<tr>
<td>2017</td>
<td>2,200,338.4</td>
<td>2,314,212.7</td>
<td>3,424,721.9</td>
</tr>
</tbody>
</table>

Source: National Statistics Office of Georgia

“Financial Conduct Authority (FCA) says vulnerability can be caused or exacerbated by enterprises interactions, that differs from the individual customer needs.”\textsuperscript{55} Customers’ personal circumstances and characteristics in the market create a situation where vulnerable customers:

• have significantly less opportunity than typical customers to defend or represent their interests in the energy market;
• there is significant likelihood that damage can be incurred or it can be more substantial than of typical consumer.

FCA’s Financial Lives and Consumer Approach documents extend this notion and apply to temporary or intermittent vulnerabilities. Hence, according to the FCA, vulnerable consumers are: “People who can easily be identified as a category that has significantly less opportunity to engage in market relations; and/or people, which suffers from disproportionation if things go badly.”

Vulnerability can come in a range of guises, and can be temporary, sporadic or permanent in nature. It is a fluid state that needs a flexible, tailored response from enterprises. Many people in vulnerable situations would not diagnose themselves as ‘vulnerable’. We can all

\textsuperscript{53} The National Bank of Georgia, GEL exchange rate against selected currency, Available at: https://bit.ly/391RPe5.

\textsuperscript{54} National Statistics Office of Georgia, available at: https://bit.ly/33soF6E.

become vulnerable. To enable firms to identify potential vulnerability and prioritize their efforts, one option is for firms to use a risk factor approach. Multi-layered vulnerability and sudden changes in circumstances are particular indicators of high risk. The impact of vulnerability is strong and many people are trying to cope with difficult situations and limited resources, energy and time. Stress can affect state of mind and the ability to manage effectively. In such conditions, being confronted by a complex telephone menu system that gives no option of talking to a person; a call handler without time or inclination to listen, or a system that fails to record what can be distressing circumstances and forces the customer to repeat themselves at each point of contact, can all create a spiral of stress and difficulty, resulting in detriment.\(^{56}\)

In sum, the legal, social and economic analysis shows that the consumer in Georgia is vulnerable and is less able than the average consumer to protect and represent his or her interests. The consumer price index is behind all the EU countries; average monthly earnings are low; internet use of the internet is low; almost 20 percent of the labor force is self-employed in agriculture; a sizeable percentage of Georgian population are individuals receiving pensions and social packages and/or have linguistic barriers and/or are IDPs. According to PISA results, citizens of Georgia have low reading and financial literacy results.\(^{57}\) In 2018 PISAs worldwide ranking, in terms of average scores for math, science and reading, Georgia was in 60\(^{th}\) place among 70 countries.\(^{58}\)

The current Draft Law, which makes the average consumer as a benchmark of application, does not consider the vulnerable nature of Georgian consumers.

### 2.3. Existing Legal Framework and Alternatives

The sub-chapter below discusses the existing practices in Georgia and the EU in the field of aggressive commercial practices and offers suggestions for better regulation of problematic issues.

#### 2.3.1. The Georgian Experience

Georgia does not have much experience with the protection of consumer rights. On the contrary, the last 25 years were marked with severe violations of consumer rights in the financial, construction, food and technological spheres: “Georgian consumers lack the experience of living in a normally functioning market economy, lack consumer culture and any kind of effective economic education that could prepare them to navigate into the complex terrains of modern markets and make optimal choices.”\(^{59}\)

After the Law of Georgia on Protection of Consumers’ Rights was adopted in 1996, the Anti-Monopoly Agency began to implement consumer protection mechanisms. These functions did not last long, as both the agency and the law were abolished.

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Currently, the National Food Agency conducts inspections to monitor food quality and through this tries to protect consumer rights. However, these functions do not include fighting against aggressive commercial practices.

2.3.2. Comparative Experience in Member States

This sub-chapter discusses the Latvian, Estonian, Czech and Nordic experiences, and also analyzes a number of measures set out in the directives and experience of the EU.

In Latvia, by decision of the Latvian Consumer Protection Authority (which is confirmed by Latvian courts), the use of pre-ticked boxes (pre-selected graphs) by an airline was considered unfair on the grounds that it was aggressive and not in compliance with professional diligence. This decision was taken before the enactment of the Consumer Rights Directive, which has a specific provision on the use of pre-ticked boxes in its Article 22.\(^60\)

According to the Czech National Bank (“\textit{CNB}”), “an aggressive (and hence unfair and prohibited) commercial practice means conduct which, taking account of all circumstances, by harassment, coercion or undue influence significantly impairs the consumer’s ability to decide freely.”\(^61\) Furthermore, we can find that the CNB gives specifics of aggressive commercial practices, “in determining whether a commercial practice is aggressive, account must be taken of:

1. its timing, location and persistence,
2. any use of threatening or abusive behavior,
3. the exploitation of any misfortune of the consumer or similar event; and
4. any onerous or disproportionate barriers to the consumer exercising his rights, and any threat to take illegal action.”\(^62\)

Additionally, the CNB implements activities to fight customer vulnerability by improving financial literacy to enhance consumer protection. For example, “in 2008 Czech National Bank provided schools with more than 4,000 free manuals for teachers and workbooks for primary and secondary school pupils, as well as organizing several dozen seminars for teachers. In 2011, the CNB distributed free financial literacy workbooks to primary schools whose representatives had shown interest in teaching financial literacy by attending the seminars for teachers. Also, in 2011, the CNB provided schools free of charge with an animated film “Of Money and Men”, which teaches children, while keeping them entertained, about the CNB’s history and its role in the Czech economy. In 2012–2013, under the motto “Twenty Years of Protecting the Czech Koruna”, the CNB prepared an interactive exhibition for schools to present the work of central bankers and thereby indirectly increase pupils’ interest in finance and economics. The CNB also promotes financial education in the regions in partnership with selected universities. Since 2010 it has also been co-organizing lectures for senior citizens.”\(^63\) CNB, as a consumer protection entity in its specific sphere, works actively to protect the rights of consumers against aggressive commercial practices. Raising


\(^{62}\) Ibid.

\(^{63}\) Ibid.
awareness is the major method used for this and the target audience consists of mostly adults and citizens of retirement age.

The Estonian Consumer Protection Board defines aggressive commercial practice as follows: “a commercial practice is deemed to be aggressive if a trader or service provider limits your freedom of choice by harassing, coercing or unduly influencing you to buy his or her goods or services”. For example, a trader or service provider creates an impression that you cannot leave until a contract is formed, makes you unwanted solicitations by phone or e-mail, demands payment for the goods supplied but not solicited by you, etc.

The Estonian Consumer Protection Board cites a number of examples of aggressive commercial practice:
- A representative of a trader or service provider visits you in your home ignoring your request to leave or not to return.
- A trader or service provider creates an impression that you have already won, will win, or will on doing a particular act win a prize or other equivalent benefit. In fact, there is no prize or other equivalent benefit, or receiving the prize is contingent upon you paying money.
- A trader or service provider informs you that, if you do not buy the goods or services, the trader’s job or livelihood will be in jeopardy.”

In the Republic of Ireland (Ireland), the Citizens Information Board is a statutory body that supports the provision of information, advice and advocacy on a broad range of issues, including consumers’ rights. According to the Citizens Information Board, “aggressive commercial practices are defined as practices involving harassment, coercion or undue influence that impair your freedom of choice and affect your purchasing decisions. The Consumer Protection Act, 2007 (of Ireland) sets out some examples of aggressive practices (but the list is not exhaustive). Aggressive commercial practices include:
- Sales tactics that try to intimidate or coerce consumers.
- The use of threatening or abusive behavior.
- Practices that try to take advantage of vulnerable consumers. (A vulnerable consumer is one whom the trader could foresee as vulnerable because of mental or physical infirmity, age or credulity.)
- The imposition of onerous or disproportionate non-contractual barriers by the trader when the consumer wishes to end the contract or exercise a contractual right, or switch to another product or trader.
- Threats to take legal action when the trader has no basis for such action.”

Another example of international experience defining aggressive commercial practices is the Hampshire County Council in the United Kingdom (UK), according to which “if you go ahead with a purchase because a trader has affected your judgment by using harassment, coercion or undue influence – also known as high-pressure selling – this is an aggressive

commercial practice. An example of this would be a doorstep salesperson who pressures you into having your driveway cleaned.”

The Nordic countries have banned several types of commercial practices by implementing the EU Privacy and Electronic Communications Directive 2002/58/EC (“ePrivacy Directive”) and Article 13(1) into national legislation. Although the context is different, the ePrivacy Directive sets out rules to ensure security in the processing of personal data, notification of personal data breaches and confidentiality of communications. It also bans unsolicited communications where users have not given their consent. Direct marketing through automatic calling machines, facsimile machines or electronic mail is thus allowed only upon the prior consent of the consumer (opt-in). For other means of distance communication, the regulatory choices differ somewhat. In Denmark and Sweden, direct marketing via any other means of individual communication is subject to an opt-out regime. In Finland the opt-in rule is extended also to text, voice and picture messages. In Norway the opt-in rule covers all means of individual distant communication, with the exception of individual communication with a natural person via telephone, which does not require prior consent. The sending of unaddressed advertising via post boxes is subject to an express opt-out rule. The Unfair Commercial Practices Directive could thus imply sharpening of the control on unsolicited commercial communications by telephone in Denmark and Sweden.”

2.3.3. EU Requirements on Aggressive Commercial Practices and the Definition of “Consumer”

The Unfair Commercial Practices Directive provides a single definition of aggressive commercial practices that can be applied across the EU. The directive prevents traders from adopting selling techniques which limit the consumer’s freedom of choice or conduct with regard to the product, thereby distorting their economic behavior. Annex I of the directive provides a full list of activities (31 activities) that are classified as unfair. Out of those activities, 24-31 are classified as aggressive. The aggressive commercial practices are:

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.
25. Conducting personal visits to the consumer’s home ignoring the consumer’s request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.
26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation.
27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.
28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them.

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29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC ("Distance Contracts Directive").

30. Explicitly informing a consumer that if he does not buy the product or service, the trader’s job or livelihood will be in jeopardy.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either: there is no prize or other equivalent benefit, or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.”

Following the adoption of the directive, the European Commission published a document that analyzes the Unfair Commercial Practices Directive and gives examples. In the document, the European Commission explains the above-mentioned list by adding additional examples of prohibited commercial practices. Below are several examples from the guide:

- **Bait Advertising** – Sellers are not allowed to advertise products/services at a very low price when they do not have enough stock available. They must tell customers how many items are available for sale and for how long offers remain valid.

- **Phony Free Offers** – Sellers must communicate the real prices of their goods and services. They may not portray a paying service as “free” or offer you an additional “free” service when in fact the real costs of such “free” services are already included in the regular price.

- **Manipulation of Children** – Sellers cannot tell your child to ask you to buy their products. Direct appeals like “Go buy the book now” or “Get your parents to buy you this game” are banned. This ban applies to all media, including television and—most importantly—internet.

- **False Claims About Cures** – Whenever a product is advertised as therapeutic—curing allergies, reversing hair loss, helping you lose weight, etc. —you have the right to know if such claims have been scientifically confirmed. In many cases, claims like these are not medically backed up and are simply too good to be true.

- **Hidden Advertisements in Media** – You have the right to be informed if a newspaper article, TV program or radio broadcast has been “sponsored” by a company as a way to advertise its products. This must be made clear by images, words or sound.

- **Pyramid Schemes** – These are promotional schemes that you pay to join in exchange for the opportunity to receive compensation. That compensation, however, comes primarily from your bringing new people into the scheme. The actual selling or consumption of products plays a minor role. At some point, pyramid schemes collapse, and the last to enter lose their investment.

- **False Offers of Prizes, gifts** – Traders may not advertise “free” prizes or gifts, and then require you to pay in order to claim them. If you receive a letter or e-mail that says: Congratulations, you have won a prize, be cautious because this might well be an unfair practice.

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• **Phony Special Advantages** – Sellers may not claim that they are granting you special rights, when in fact you already enjoy those rights under the law.

• **False Use of Limited Offers** – When sellers tell you that a particular offer will only be available for a very limited time, they might be trying to pressure you to buy before taking the time to make an informed choice. It is unfair to claim that an offer is limited in time when that is not in fact the case.

• **Persistent Unwanted Offers** – Under EU law, companies **may not make persistent and unwanted offers to you by telephone, fax, email or any other media suitable for distance selling.**

Enforcement bodies and courts of different EU members take into consideration all the circumstances about the case while deciding matters of aggressive commercial practices. The definition of aggressive commercial practice at the national level seems to be more comprehensive compared to the EU definition. We interpret this awareness as an argument that shows the link between aggressive commercial practices and the degree of vulnerability of the consumer. This assumption allows us to refer back to studies that looked deeper into who the consumer is under EU law.

**The Benchmark of the Consumer**

The term “average consumer” and its usage in EU consumer law has been the subject of a good deal of research. Generally, the meaning of the word “consumer” is linked to the weaker part of the market. Consumers need protection.

According to one EU consumer law expert, “EU law does not have a single unanimously recognized consumer image, but instead it employs various models. For example, only the Unfair Commercial Practices Directive offers three different consumer types that vary according to the degree of vulnerability. As a benchmark, the directive takes the concept of ‘the average consumer’, who is reasonably well informed and reasonably observant and circumspect.” This image is the most widely shared concept of the average consumer within EU legal acts and it has been adopted by EU courts as well. In addition to the benchmark of average consumer, the directive also considers “consumers whose characteristics make them particularly vulnerable to unfair commercial practices [...] taking into account social, cultural and linguistic factors.”

The ECJ uses several terms for the consumer, for example, the “alert consumer” is the illustration of a powerful consumer. Later, “alert consumer” was transformed into “average consumer”. There are studies which question the approach of an “average consumer” on the grounds that it is not realistic.

In *Gut Springenheide*, the ECJ stated that, in order to make a final decision, the national courts must take into account the presumed expectations of a consumer, which means an average consumer “who is reasonably well-informed and reasonably observant and circumspect”.

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The latest court practice, which goes far beyond the formality of the concept of an “average consumer”, is based on the *Teekanne* case. In this case, the court stipulated that “such information of the ingredients list is not able to correct a consumer’s erroneous or misleading impression created by the overall labelling taken as a whole.” This narrative is a step towards understanding the “average consumer” in less normative way, and “opens up to arguments about the real-world vulnerability levels of consumers.”

“The average consumer benchmark is more a normative programmed model of the consumer than the actual one. In support of this theory, Duivenvoorde argued that even the usage of the term, such as ‘reasonably’ instead of ‘normally’ is an indication that the described consumer is rather theoretical. If we share the position of EU courts that consumers are well informed, circumspect, attentive to the details and able to take economically justified choices after conducting a thorough assessment, then claims about their vulnerability seem not very well grounded. According to Shultz and Holbrook, there are two types of consumer vulnerability: economic and cultural. If economic vulnerability corresponds to objective lack of access to resources and a limitation in skills and abilities, cultural vulnerability refers to consumers’ ignorance and lack of knowledge, which makes them at risk of manipulation by businesses. Under the average consumer benchmark, established by EU law, consumers’ economic difficulties are recognized and considered, but their cultural vulnerability is totally invisible.

As different countries have different goals, the image of a consumer also differs among jurisdictions. This argument seems even more appealing when one considers that there are a multitude of consumer images offered by EU law. According to their policy objectives, each EU directive or decision seems to develop its own version of the mainstream consumer image by adding a new layer or characteristic. In addition to the average consumer benchmark, we can find other consumer categories in the EU consumer acquis, such as “the hasty consumer”, “children”, “the consumer with a lower level of knowledge than the business”, “the ignorant consumer”, “the negligent consumer”, the “casual consumer” and so forth. According to Stuyck, a wide variety of different concepts can be partially justified by the vast scope of consumer activities and the different situations they might encounter. While these images might be justified by EU policy objectives, they fail to meet the rationale of consumer law itself. Building legislation around a false consumer image leads to the above-discussed problem of defining consumer narrowly, delimiting the circle of beneficiaries of consumer protection, and eventually leaving a range of market failures out of state intervention, thus threatening the well-functioning and competitiveness of the market.”

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79 For more information on the average consumer and other images of consumer, please, refer to Z. Gvelesiani, *The Necessity of Consumer Law for Effective Competition and a More Robust Enforcement of a Competition Law (A Comparative Analysis of the EU and Georgian Legal Systems)*, 2018.
2.3.4. Possible Alternatives

2.3.4.1. Draft Law Proposal

The Draft Law proposes a separate chapter on unfair commercial practices, which includes several articles on the prohibition of unfair commercial practices, misleading commercial practices expressed through misleading actions or through misleading omissions, aggressive commercial practices and commercial practices that are in all cases considered unfair.

Basically, these articles are in accordance with EU directives, with regard for example to the legal definition of unfair commercial practices in Article 20 of the Draft Law, which is in compliance with the Unfair Commercial Practices Directive. As discussed above, Article 24 of the Draft Law prohibits such practices. Commercial practices are also considered unfair under the Draft Law if they are misleading and aggressive.

The Draft Law includes a legal definition of misleading commercial practices that is defined as false information intended to deceive the average consumer.

The Draft Law also stipulates that commercial practices will be considered a misleading practice if, given all the actual circumstances and limitations of the means of communication, the actual content of the information does not contain the essential information needed by the average consumer to make an informed decision on the transaction.

Further, the Draft Law defines aggressive commercial practices, which significantly infringe or may infringe the right of the average consumer to freely choose or change his/her behavior towards the product.

Article 24 of the draft Law also prohibits the unfair commercial practices, such as:

• creating the impression that the consumer cannot leave the premises until a contract is formed;
• being at the consumer’s home, ignoring the consumer’s request to leave or not to return except in circumstances in which it is necessary to fulfill a contractual obligation;
• making persistently unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances where it is necessary to fulfill the contractual obligation;
• including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them;
• explicitly informing a consumer that if he/she does not buy the product or service, the trader’s job or livelihood will be in jeopardy;
• creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit or taking any action in relation to claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

One of the problems of the Draft Law is that its Article 24 identifies vulnerable consumers based on their physical, mental and age characteristics, and thus excludes above-discussed social and economic grounds for defining the vulnerable consumer. The Draft Law is concentrated on an average consumer.
The initiators of the Draft Law should consider that average consumers in Georgia are vulnerable consumers. The protection of the right of consumers should be the priorities of any country, especially for emerging economies. Most commonly, the primary means to frame such protection is through regulation. Furthermore, in relation to its accession process to the EU, Georgia has committed to elaborate an effective legal framework for consumer protection, which seeks to define and defend consumer rights (especially the rights of vulnerable groups) on the one hand, and to duly respect freedom of trade and economic activities on the other hand.

2.3.4.2. Alternative Options

Though the Draft Law is principally in line with the Unfair Commercial Practices Directive, due to the political, economic and social reasons discussed so far, several important changes should be implemented in the Draft Law.

(1) The Draft Law should be oriented towards the vulnerable consumer. The benchmark for consumer rights protection in Georgia should be the vulnerable consumer and not average consumer. Below are two conditional categories of vulnerable consumers, namely:

Category I
Based on the international practice and legal research, the “vulnerable consumer” in Georgia can be based on several criteria such as age, disability, social vulnerability, chronic diseases, internally displaced persons receiving monthly assistance, citizens of Georgia who do not know the state language, people who do not have access to the internet, and other criteria that can affect vulnerability.

Category II
Based on international practice and legal research (and without referring to Category I), average consumers will be vulnerable consumers in the following industries/business sectors: online markets; the mortgage market; the securities market; healthcare institutions; supermarkets; electronic and home appliance markets; pension funds; financial industries, including banks; insurance companies; energy companies; natural monopolies (for example, railway company, public transport, etc.), state entities that provide services, and other spheres and companies. In these business sectors, consumers need specific knowledge not to be vulnerable, or the providers are monopolies.

(2) As mentioned above, the list of unfair commercial practices given in Article 24 of the Draft Law should be extended to covering other aggressive commercial practices as it is provided in the EU directive.

Article 24.3 of the Draft Law does not address all prohibited unfair commercial practices, such as pyramid schemes, which are quite widespread in Georgia. The list of prohibited business practices should be enlarged and cover, for example: depriving consumers of the right to amend the contract proposed by the trader; formatting the contract terms in small print that is almost impossible to read; providing information with different content, using different sources such as telephone conversation, information on an official website and

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80 For several reasons, such as: product availability in large quantities and a wide variety of choices, with similar appearance and design and not enough time for taking decision (for example, CJEU (case C-405/01), Colegio de Oficiales de la Marina Mercante Española v. Administración del Estado (Asociación de Navieros Españoles (ANAVE), Intervening) available at: https://bit.ly/2w5Sc9.
personal interview; acquiring medicines at pharmacies when sellers (who are not professional physicians) are trying to convince consumers to buy different pharmaceuticals which are claimed to have similar ingredients or are cheaper; and pharmacy employees’ providing professional advice to consumers that can only be given by licensed physicians. In such cases, healthcare opinions are given by unlicensed representatives and used for commercial gain, causing potentially detrimental effects to consumers’ health.

(3) It should be obligatory for large firms (that will be enlisted in Category II) to create a strategy on protecting vulnerable customers, for example, supermarkets, companies selling electronics, financial industries, etc. The Competition Agency can develop this document through the principle of comply or explain. This initiative can be part of a social initiative and should be monitored by the Competition Agency on the principle of “naming and praising.”

2.4. Impact Assessment and Data Collection

The Draft Law provisions on unfair commercial practices are in accordance with the Unfair Commercial Practices Directive. However, in order to assess the possible impact of the Draft Law on Unfair Commercial Practices given the lack of data from Georgia, we turn to the numerous studies on EU law and practice.

One of the studies conducted under REFIT (“REFIT Study”) assesses several key issues of the Unfair Commercial Practices Directive, including the usage of the terms “average” and “vulnerable” consumers in light of unfair commercial practices.81

The impact assessment considers the practical benefits of specific protection for “vulnerable consumers”. Whether enforcement authorities or courts at EU and national level have recognized new categories of vulnerable consumers not listed in the Unfair Commercial Practices Directive are the key questions raised in the study.

The REFIT Study states that Article 5.3 of the Unfair Commercial Practices Directive provides for special protection of consumers who are particularly vulnerable because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee. However, in its 2013 communication on the application of the Unfair Commercial Practices Directive, the commission announced that “further efforts need to be made to strengthen the enforcement of the Directive in relation to these categories of vulnerable consumers. In 2016, the commission paid particular attention to the “vulnerable consumer” benchmark in the revised Unfair Commercial Practices Directive guidance document.82

According to the REFIT Study, the vulnerable consumer benchmark, defined by the Article 5(3) of the Unfair Commercial Practices Directive, is in practice limited and rarely used, since the average consumer benchmark is accepted as a normal consumer benchmark and the vulnerable consumer as the exception. In addition, where the practice is directed towards the specific target group, the modeled average user benchmark of Article 5(2) is widespread. National courts and enforcement authorities tend to apply the modulated aver-

82 Ibid p. 43.
age consumer benchmark instead of “vulnerable consumer”. The study states that, in applying this modulated benchmark, all circumstances of the case and the vulnerability of the concerned person are often taken into account. Accordingly, the study showed that there is a tendency toward elaborating new categories of vulnerable consumers by the relevant bodies and courts. The study further states that the benchmark of the average consumer is considered to allow, in practice, a significant degree of flexibility in its application, while the vulnerable consumer benchmark lacks flexibility and its beneficial nature has not yet been proven.

The REFIT Study also indicated that “in a general context (i.e. not necessarily regarding unfair commercial practices) the concept of ‘vulnerable consumers’ has been used in Member States most notably in respect of persons with mental or physical conditions, elderly people, children and young persons, but also in respect of unemployed persons, migrants and poor and indebted people. For example, in Greece, there have been many legislative initiatives for the protection of vulnerable consumers during the last years in response to the financial crisis, e.g. related to over-indebted households, which has generated a great influx of cases both for courts, consumer associations, and relevant authorities.”

2.4.1. Impact Assessment on the Example of Other Countries - Bulgaria’s Experience

The REFIT Study consist of four parts; the second part describes the experience of each Member State. Presented below is the Bulgarian experience from the REFIT Study, an analysis of which would be useful for Georgian policymakers.

Bulgarian lawmakers amended the Bulgarian consumer protection act to comply with Unfair Commercial Practices Directive requirements (in a new Section III of Chapter IV). Prior to this amendment, the national legislation did not have any specific provisions on unfair practices in Business to Consumer (B2C) transactions. The REFIT Study analyzes the use of the terms “average” and “vulnerable” consumer by courts in order to assess the practice of the courts. The study assesses the application of the concept of “average consumer” in court practice.

The study showed that no particular problems regarding the concept of the “average consumer” have been reported by stakeholders and the case law did not reveal any disputes stemming from its practical application. Bulgarian courts defined the average consumer as “reasonably well informed, observant enough and cautious”, in accordance with the European standard. As for the term “vulnerable consumer”, introduced by the Unfair Commercial Practices Directive, the key question asked by the REFIT Study was whether the enforcement authorities had recognized new categories of vulnerable consumers not listed in the Unfair Commercial Practices Directive. The study showed that in Bulgarian practice

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83 Ibid., 44.
84 Ibid., 252.
85 Ibid 44.
86 Ibid 108.
87 Idem.
88 Study for the Fitness Check of EU consumer and marketing law, Final report part 2- country report. 110.
89 Idem.
“vulnerable consumers” were mainly considered to include elderly people, children and disabled persons. As for the new categories, “no other categories of ‘vulnerable consumers’ (such as poor/indebted persons) have been recognized. This, however, could change soon, given the 2012 amendment of Bulgaria’s Energy Act (EA), which introduces a definition of ‘vulnerable customers’ in the energy sector. Besides, according to the fact that a significant part of Bulgarian population is below the threshold of ‘energy poverty’ (meaning facing difficulties such as keeping their homes warm in the winter and cool in the summer), it can be expected that a new category of vulnerable consumers in the energy sector gets recognized in Bulgarian case-law and legal literature in the coming years (energy poor)”.

Therefore, based on the examples from Bulgaria, and also from other member states (for example, Greece), we conclude that the vulnerable consumer is not merely a social term, but also a normative concept. Based on the social and economic conditions of the consumer (which are discussed above based on both Georgian and foreign experience), the state can implement measures to guarantee minimum safety standards for vulnerable consumers, as well as enact protection measures from aggressive commercial practices.

2.4.2. Conclusion

The RIA Team concludes that the vulnerable consumer should be the benchmark in the Draft Law. As the EU data indicated, in different Member States and the EU itself the benchmarks, “average” and “vulnerable consumers, are used at national level. The usage of “vulnerable consumer” as a benchmark instead of “average consumer” might have a number of practical benefits. Notably, some Member States are starting to introduce new legislation regarding the vulnerability of consumers.

If “vulnerable consumer” becomes the benchmark in the chapter on unfair commercial practices in the proposed Draft Law, rather than “average consumer”, as is suggested by the RIA, further analysis to assess the costs and benefits of the vulnerable consumer benchmark in comparison to that of the average consumer would be recommended.

90 Ibid. 100.
3.1. Introduction

Provision of information required for consumers to make informed decisions about the fitness of a product for its intended use is considered to be one of the major factors determining the protection of consumer rights in a country. Consumer access to information adequate for making informed choices is considered a legitimate need under the UN Guidelines on Consumer Protection.91

Access to information for consumers for making informed choice is one of the main pillars of consumer protection laws and regulations around the world. In addition to ensuring statutory guarantees for consumers to have full information regarding products and terms of transactions, it has been argued whether there is a need to distinguish information between: (1) the stages of contractual relationships, (2) considering the characteristics of the vulnerable and the average consumer.

In the EU, until the enactment of the Consumer Rights Directive, traders in Member States were only required to provide specific information in certain cases. The Consumer Rights Directive, however, introduced for the first time a general information obligation under Article 5 and it provides some leeway for Member States in what should be the appropriate benchmark of protection (see in Chapter 2 of this report, where we analyzed the situation in Georgia in terms of vulnerability of consumers). For the purposes of the definitions under the EU regulation, and taking into consideration international practices and impact assessments gathered from foreign countries, the RIA Team has concluded that the benchmark of protection in Georgia should be a vulnerable consumer.

Before describing the problem in Georgia, we need to consider the overall legal framework in which access to information in business-consumer relations is generally regulated. As transactions between traders and consumers are a specific kind of civil law transaction, legal relationships related to the conclusion of contracts, the rights and obligations of parties are covered by the general provisions of a country’s civil law. The same is true in Georgia, where such relationships are regulated by the Civil Code of Georgia. Although the application of civil codes to consumer relationships is a generally accepted practice, international best practices demonstrate that limiting regulation to general civil law acts is not sufficient to ensure due protection of consumers. Consequently, the right to access information is often regulated by specific laws and regulations dedicated to consumer protection, which, therefore, set standards higher than those applicable to general business-to-business contracts governed under civil codes or equivalent acts.

The next section of the report discusses access to information as an example of the current RIA problem in Georgia and assesses the Draft Law and EU legislation to better protect right of a consumer to access to information.

3.2. Definition of the Problem

Georgia does not have a specific law governing consumer relationships. As a result, the issue of whether lack of adequate access to adequate information is a significant problem in Georgia is analyzed by considering the existing legal framework under the Civil Code of Georgia and certain other legal acts.

To determine the significance of the problem, we have relied upon the Consumers’ Approach Study in Urban Centers of Georgia, conducted by the Center of Strategic Research and Development of Georgia92 (“2015 Consumer Approach Study”), and Sociological Study Report, prepared by ACT at the request of GIZ (“2018 Sociological Study”).93 The 2015 Consumer Approach Study was carried out through the EU-funded project “Raising Awareness of Local Actors on Association Agreement Implications for Georgian Consumers,” which aimed at studying the needs and approaches of consumers in relation to the food trade, utility services, transport and gas station services, and non-food products. The quantitative research was conducted in 11 self-governing cities in Georgia and 1,140 respondents were interviewed in total.

According to the 2015 Consumer Approach Study, one of the breaches identified in Georgian hypermarkets was the absence of product descriptions in the Georgian language and difference between indicated prices and actual prices paid by consumers. The importance of adequate information for deciding about purchase of non-food items, such as household electronic devices, was identified as one of the most problematic issues. Consumers responded that they had experienced cases of violation of their rights or misconduct by traders in relation to selling products that would not meet their needs. Consequently, the lack of access to adequate information for making an informed choice can be considered to be a problem in Georgia.

In order to provide consumers with information for making informed choices, the adequacy of information provided is of the utmost importance. As explained by John A. Howard, there are four criteria for evaluating whether the information provided to consumers is adequate, namely, whether it is truthful, intelligible, relevant and complete (the “Howard Test”).94 For the purposes of the present Report, we will be relying on the Howard Test to evaluate the regulatory regime contemplated by the Draft Law for ensuring the adequacy of provided information.

A study commissioned by the European Consumer Organization (“BEUC Study”) argues that providing consumers with information without giving them tools for comprehending

92 Consumers’ Attitude Study in Urban Centers of Georgia, conducted by Center of Strategic Research and Development of Georgia, 2015, available at: https://bit.ly/33Dh8CI.
such information is ineffective and “creates false sense of security and trust.” Moreover, the BEUC Study posits that, unless efforts are made to ensure due communication of information, mere availability of information can be counter-productive. The BEUC Study suggests that the provision of information is not an act, but rather a process that involves different stages, which requires provision of information in steps, considering the appropriate timing and mode. Taking into account the fact that consumers are real and not ideal, it is suggested to differentiate between public transparency (requiring availability of information for all stakeholders) of information and personal transparency (which requires information personalized for consumers for making transactional decisions).

The Federation of German Consumer Organizations has published an evaluation of the EU consumer regulations in 2017. The evaluation concluded that the average consumer does not have the means to comprehend lengthy and complex information. Because of this, the evaluation proposes to differentiating the levels of information required at different stages, namely, advertisement, pre-contractual, immediately before concluding a contract, at contract formation and in the post-contractual stage.

A Study on Consumers’ Attitudes Towards Terms and Conditions (“T&C Study”), carried out under the EU Consumer Program (2014-2020) within the framework of a service contract with the Consumers, Health, Agriculture and Food Executive Agency (Chafea), acting under the mandate of the European Commission, evaluated the lengths and complexity of terms and conditions usually used by leading online companies. As a demonstration of the inadequacy of standard terms and conditions, the study refers to the word count results published by the UK Consumers Association, which found that in some cases terms and conditions are longer than Shakespeare’s longest plays (PayPal’s terms and conditions have 36,275 words while Hamlet has 30,066 words). The T&C Study demonstrated that readership of terms and conditions, privacy notices, end-user license agreements and other click-through agreements is in general low. The research shows that when information is not voluminous or complex, ad when it is presented in a uniform format (default exposure), the likelihood that consumers will read the information is higher. In terms of the adequacy and comprehensiveness of information, the technical means of provision of information should also be considered, for example, different electronic devices (personal computers, tablets, telephones, etc.) have different capacities to comprehend and provide information in different forms. Therefore, it is possible that information available on the website of a trader is more comprehensible when accessed through a personal computer than when viewed on a mobile device. As regards adequacy of information, the need to provide information step-by-step, as discussed above, should be taken into account.

96 Ibid.
97 Ibid., p. 6.
98 Ibid., p. 8.
99 Presentation of pre-contractual information and standard terms and conditions Comments and ideas by Verbraucherzentrale Bundesverband (vzbv), available at: https://tinyurl.com/v2hoouu.
102 Ibid., p. 20.
The 2017 Study of Consumer Behavior on the Georgian Internet Market, conducted by Ekaterine Urotadze through her conference paper, demonstrated that the level of information was considered by 37 percent of consumers as a major factor influencing decision-making. Moreover, while the availability of information was important for 32 percent, 31 percent emphasized the simplicity of the provided information.\(^{104}\)

For the purpose of understanding the situation in Georgia, we reviewed the standard terms and conditions published by popular Georgian shopping websites. The review was conducted on the most popular shops, based on the popularity of top search queries in Google Search. The following table summarizes the results:

**Table No 11.** Terms and Conditions of Major Online Shops in Georgia

<table>
<thead>
<tr>
<th>Company</th>
<th>Information Content</th>
<th>Form of Information Presentation</th>
<th>Word Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wishlist.ge</td>
<td>The general terms and conditions of the platform provide the terms for product replacement, return, transportation and delivery conditions. The major product related information and terms of sale are provided on the individual product pages with a link to a separate section on the website on terms and conditions.</td>
<td>The conditions are presented in a simple and intelligible form with only terms of transportation highlighted in bold.</td>
<td>540</td>
</tr>
<tr>
<td>Gigant.ge</td>
<td>The website provides information on delivery and payment terms, warranty and return policy.</td>
<td>Information on delivery and payment terms, warranty and return policy is provided in separate links and sections, which are short and easy to comprehend. The information is presented in bullet points without any text highlights or visual effects.</td>
<td>874</td>
</tr>
<tr>
<td>Deals.ge</td>
<td>Information about product, warranty and delivery terms is provided.</td>
<td>Information is provided with links from the selected product page in separate sections for warranty and delivery terms. Bold text highlights important terms.</td>
<td>654</td>
</tr>
<tr>
<td>Bee.ge</td>
<td>Information about product, warranty and delivery terms is provided.</td>
<td>Information is provided with links from the page of selected product in separate sections for warranty and delivery terms. The page uses different visual effects to highlight important terms.</td>
<td>653</td>
</tr>
<tr>
<td>Shop.ge</td>
<td>No information is provided about warranty and delivery terms. The relevant links are not operational.</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

\(^{104}\) Ekaterine Urotadze, Marketing Research of Consumer Behavior on the Georgian Internet Market, p. 3, available at: [https://tinyurl.com/t9o5vn5](https://tinyurl.com/t9o5vn5).
Based on the research on major retailers in different sectors, it can be concluded that the simplicity and manner of providing product- and service-related information in Georgia varies, depending on the branding efforts of traders. Based on the examples of Georgian online shops of international brands operating in Georgia, difference in intelligibility and simplicity of mode of provision of information is visible, which is indicative of greater energy and time having been spent on foreign platforms rather than Georgian websites. This analysis shows that the terms and conditions of Georgian online shops are not as extensive as those of the foreign web platforms discussed above. However, fewer words in major terms and conditions cannot be considered to be proof that Georgian consumers are in a better position in terms of intelligibility of information.

This report analyzed the vulnerability of Georgian consumers from the perspective of definitions of vulnerable and average consumer provided in the Unfair Commercial Practices Directive. As shown above (see Chapter II on unfair commercial practices), 40 percent of Georgian consumers are vulnerable; consequently, “vulnerable” consumer is taken as the benchmark.
A 2018 sociological study conducted for the purposes of gathering information under this RIA has identified an overall lack of awareness by both Georgian consumers and traders of their rights and obligations in consumer transactions. Particularly telling is the degree to which consumers are informed about return policies. According to the study results, the majority of the surveyed population (70 percent) do not consider themselves informed about the terms of return of non-defective goods purchased on the street and from online sellers. However, 83 percent of those who believe that they are aware of return policies state that their information source on the issue is the seller itself. Other information sources that were mentioned include friends/relatives/coworkers (24 percent), social media (14 percent) and TV (5 percent).

Table No 12. Awareness of Population about Return Policy

<table>
<thead>
<tr>
<th>Information Source</th>
<th>Awareness Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is aware about the product return policy (Consumers)</td>
<td>30%</td>
</tr>
<tr>
<td>Is aware about the product return policy (Vendors)</td>
<td>83%</td>
</tr>
<tr>
<td>Friends/Neighbors/Coworkers</td>
<td>24%</td>
</tr>
<tr>
<td>Social Networks</td>
<td>14%</td>
</tr>
<tr>
<td>TV</td>
<td>5%</td>
</tr>
</tbody>
</table>

Another finding of the study also indicates low awareness of both consumers and sellers. In particular, 59 percent of consumers are totally unaware that return of non-defective goods that are purchased on the street, or at the market, and are adequate to the deal is regulated by the Georgian Civil Code and, by law, consumers have a week’s period to return the item. Furthermore, 39 percent of street sellers are unaware of this.

Only a small share of respondents think that they may return the purchased non-defective, adequate to the deal items to street sellers or online/remote sellers (18 percent and 16 percent, respectively). As for the return time frames, majority of consumers (67 percent) think they have only one to three days in order to return non-defective items that are adequate to the deal concluded. It should be noted that 54 percent of sellers share the same opinion about the terms of return. According to majority of those representing sellers of all categories, it is important to make consumers aware of the seller’s repair/replacement/return policy of faulty goods at the time of making the purchase. As for their real experience, 12 percent of sellers state that they do not provide such information to consumers at all, while giving such information verbally is the most widespread practice (67 percent).
We can conclude that Georgian consumers lack access to the information required to make informed consumer decisions. In addition, it was established that attitude of traders to the substance and form of information is not consistent and often radically differs from one trader to another. Thus, regulatory intervention in this direction is justified.

3.3. Existing Legal Framework and Alternatives

3.3.1. The Georgian Experience

There is no specific legal act in force in Georgian legislation regulating access to information in consumer transactions.

The Civil Code of Georgia lays down the general obligation to disclose information in Article 318. Under this provision, “the right to obtain information can arise from an obligation. Disclosure of information shall be mandatory when it is required in order to determine the contents of an obligation and when a contracting party can impart the information without prejudicing his/her rights. The recipient of the information shall reimburse the obligor for the expenses of such disclosure.”

Specific rules are determined for some transactions. For example, for contracts related to tourist services, the Civil Code of Georgia sets out the obligations of the service provider in relation to provision of information at different stages of the contractual relationship. At the pre-contractual stage, the traveler shall be provided with the following information “in writing or in any other form acceptable to the traveler”:\(^{105}\)

- the cost, payment methods and schedule;
- the destination and goals, the vehicles to be used and their specifications;
- the type, location, category, service quality, classification and other main features of accommodation;
- food;
- itinerary;
- passport and visa requirements as well as necessary health requirements for travel;
- visits, tours and/or other services included in the package; and

\(^{105}\) Article 657.1 of the Civil Code of Georgia.
• if a certain number of travellers required to organise the travel cannot be gathered, information about the deadline for informing the traveller.

In addition, the travel organizer shall provide the following information to the traveler “within a reasonable period of time before the travel begins”: 106
• times and places of stopovers;
• names and telephone numbers of the travel organizer or its local representative or, if there is no such representative, of the local travel agencies and/or relevant offices that the traveler can approach for assistance;
• if a minor is traveling, the means for establishing direct contact with the minor or the person responsible for the minor; and
• the traveler’s duties in relation to the reimbursement of expenses incurred as a result of the termination of the contract by the traveler, as well as expenses for assisting the traveler in cases of repatriation, accident and/or illness.

In addition to the abovementioned norms, the Product Safety Code determines the obligation of the producers and distributors (not traders) to provide the following information to consumers in the Georgian language 107:
• Name and type of the product;
• Brand name and address of the producer and name of the country of production;
• Product expiry date (if applicable) (end date of product use or date of manufacture and shelf life) which consumer properties deteriorate over time;
• Product weight and/or volume (if applicable);
• List of major consumption characteristics of product (if applicable);
• Terms and conditions of effective and safe use of the product, as well as special storage conditions (if applicable); and
• In case of reservation by the manufacturer/distributor, warranty period and/or other obligations; actions to be taken by the consumer after expiration of the term of use and expected consequences in case of non-fulfillment

The Product Safety Code does not provide for any other obligations of a trader and is therefore limited to the minimum requirements set out in the above list.

There are provisions related to access to information in different special laws, other than the Product Safety Code.

Under Article 62 of the Law of Georgia on Communications, the provider of an electronic communication service is obliged to include the following information in a service contract:
• Name and address of provider;
• Conditions on the type, quality and timing of initial service delivery;
• Terms of restriction and termination of service;
• Terms for rectification of defects;
• Detailed information about service fees and rules for introducing new service fees;
• Conditions regarding term, termination and renewal of service contracts;
• Quality assurance provisions;

106 Article 657.2 of the Civil Code of Georgia.
• Compensation mechanisms for ensuring the quality of service provided by the contract and for non-compliance with these quality indicators; and
• Provisions on complaint processing and dispute resolution.

However, the Law of Georgia on Communications does not determine the obligation of the providers to ensure provision of information at the pre-contractual or post-contractual stage.

Based on the above analysis, it appears that Georgian legislation does acknowledge the principle for differentiating the information as per different stages of contractual relationship and content. However, the lack of a common approach towards the consumer leads to different standards of protection or treatment in different spheres. In order to evaluate the existing Georgian legal framework for access to information, we can rely on the Howard Test, as well as the timeliness requirement set out above. The applicable Georgian legislation does not provide a general obligation of traders to provide adequate information to consumers regarding products and terms of sales. Consequently, the existing legal framework fails to meet the “relevance” or “completeness” criteria under the Howard Test. Moreover, as there is no general obligation to ensure the intelligibility and promptness of the information, the legislation can be considered to be insufficient according to these criteria as well. However, as to the criterion of “truthfulness”, we can assume that it is the general obligation of any contracting party, including traders, to provide true information under the civil code, due to the possibility that the transaction could be invalidated if concluded based on an essential mistake or deceit.108 One can conclude that the current Georgian legislation, based on the deregulation principle of consumer information rights and other rights, does not meet even minimum standards for the protection of consumer rights.

3.3.2. Comparative Experience of Member States

In order to demonstrate the experience of foreign countries in terms of consumers’ access to adequate information, we have relied upon the Study on the Application of the Consumer Rights Directive 2011/83/EU (“Consumer Rights Directive Implementation Study”).109 The Consumer Rights Directive Implementation Study was carried out “to assess the effectiveness, efficiency, coherence, relevance, and EU added value of the Consumer Rights Directive.”110

The implementation of the Consumer Rights Directive has dramatically changed the quality of the information to be provided to consumers. In addition, the term for withdrawal in case of failure of a trader to provide information about the right of withdrawal for distance and off-premises contracts has increased from three to 12 months in 26 Member States.111 It has been determined that, in terms of access to information, the situation has been improved in all Member States after the implementation of the Consumer Rights Directive.112

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108 Articles 72 and 81 of the Civil Code of Georgia.
111 Ibid., p. 27.
112 Ibid., p. 47.
The Consumer Rights Directive Implementation Study identified two major problems that have become apparent since the implementation of the Consumer Rights Directive by the Member States. These problems are:

- Lack of awareness and understanding of the provisions in the Consumer Rights Directive among consumers and traders; and
- Inadequate compliance with the obligation to provide all relevant information, information as to the right of withdrawal, etc.

Pre-contractual information requirements for distance and off-premises contracts and the right of withdrawal were identified to be the key safeguards for improving consumer protection after the adoption of the Consumer Rights Directive.

Comprehensive review of the application of the Consumer Rights Directive and problems encountered in practice have demonstrated the gap created in trading conducted through online marketplaces and free online services. This applies to online platforms that provide environment for suppliers, such as Amazon, to market their goods and deliver them to consumers. However, the Consumer Rights Directive does not determine the obligation of online platform operators to inform consumers the criteria they use for the (default) ranking of information they present to consumers, such as offers by competing third party suppliers. It is not clear whether it is the online trader who should be responsible for providing information or the trader itself, and how the liabilities are distributed in case of conflict between the trader and platform operator; whether there should be a difference in the platforms providing services to professional companies or individuals using the platforms to advertise and market their services or goods, for example, AirBnB. The same is the case for free online services, such as social media accounts and free cloud storages such as Google or Microsoft OneDrive. Although various countries look at this issue differently, the majority supports extension of the scope of the Consumer Rights Directive to those services as well to ensure uniformity in all consumer transactions.

The Consumer Rights Directive Implementation Study also evaluated the effectiveness of the requirements for providing pre-contractual information and argued that simplification of the content of pre-contractual information under the Consumer Rights Directive would be suggested by, for example, linking the information to websites. It has been suggested to use icons and pictograms to point consumers’ attention to the model form of information to make it more comprehensible and easier to understand. The study showed that 40 percent of consumers agreed that provision of information in graphic format would make the information easier to comprehend. From the perspective of traders, it was found that 32 percent of trade associations agreed to the use of non-binding icon model (note that the total number is ten as 22 trade associations responded to this question): 46 percent disagreed with the use of an icon model.

113 Ibid., p. 102.
114 Ibid., p. 161.
115 Ibid., p. 162.
116 Ibid., p. 163.
117 Ibid., p. 167.
118 Ibid., p. 168.
119 Ibid., p. 169.
Although consultation under this study has supported the use of a graphic model with icons for presenting pre-contractual information, the findings of the behavioral experiment seem to suggest very little added value in terms of adding icons and their understanding. Thus, it cannot be recommended that the use of model forms with icons should be made compulsory but there can be merit in promoting it on a voluntary basis for specific sectors and product categories, similar to the present suggestions given in the Consumer Rights Directive guidance.\textsuperscript{120}

For the purpose of providing further clarity on the matter, we analyzed the experience of Bulgaria in terms of the implementation of the Consumer Rights Directive. The Consumer Rights Directive has been transposed into Bulgarian law by the Consumer Protection Act of 25 July 2014, amending the Consumer Protection Act of 10 June 2006.

Before the implementation of the Consumer Rights Directive, the situation in Bulgaria regarding consumer protection was considered to be somewhat close of the situation in Georgia. The Bulgaria for Citizens Association (founded by Meglena Kuneva, former EU Commissioner for Consumer Affairs) conducted a survey in March 2012 found that nearly half of Bulgarians complained that their consumer rights had been violated in the past year and that they had not been familiar with the laws and mechanisms protecting their rights. Most cases of infringement emerged from trade, food and mobile phone operators’ sectors. It identified that low level of consumer protection in the country was closely related to reduced purchase power of the population.

An EU report on consumer empowerment published in 2011 underlines key findings about consumers’ subjective feelings regarding their empowerment (1) their feelings of confidence as consumers; (2) the extent to which they feel knowledgeable; and (3) the level of protection they perceived themselves to have as consumers. The results show that Bulgarian citizens face difficulties in their capacity as consumers: 64 percent of the respondents do not feel confident as consumers; 72 percent of the respondents do not feel knowledgeable as consumers; and 81 percent of the respondents feel unprotected as consumers.\textsuperscript{121}

With regard to the changes in the previous legislation and the new provisions of the directive, the Consumer Protection Act of 25 July 2014 sets out the following:

On information requirements (Articles 5 and 6 of the Consumer Rights Directive): The previous legislation did not cover some aspects such as information requirements in regard to duration of the contract, conditions for terminating the contract and complaints or issues relating to digital content. Contracts for the supply of water, gas, electricity central heating and digital content (not delivered through a durable medium) were not mentioned either. The new legislation (Consumer Protection Act of 25 July 2014, Articles 4 and 47) covers the Consumer Rights Directive almost verbatim (Articles 5 and 6 of the Consumer Rights Directive) and, as in the directive, distinguishes between premises, off-premises and distance contracts. In addition to the implementation of the Consumer Rights Directive, Bulgarian law determines further requirements for on-premises contracts such as requirements for

\textsuperscript{120} Ibid., p. 171.

\textsuperscript{121} Corina Ene, Lecturer, PhD, Petroleum-Gas University of Ploiesti, Faculty of Economic Sciences, Consumer Protection in Bulgaria: EU Challenges, Economics of Agriculture, 2/2012, UDC: 366.5(497.2):EU; available at: https://tinyurl.com/qwrk4zy.
information on availability of goods or services, possible hazards in regard to using goods or services, terms of use of goods or services together with other goods and services and expiry date of the goods, when applicable.\textsuperscript{122}

Since the implementation of the Consumer Rights Directive, case-law of Bulgarian national courts has been noteworthy. In \textit{Bulsatcom EAD v. Bulgarian Consumer Protection Commission}, the Gabrovo Administrative Court held that provision of information regarding specific prices of certain services only in the FAQ section on a trader’s website was not sufficient to support the conclusion that the trader had provided requisite information in a clear and comprehensive manner. In addition, the court determined that the fact that the violation found by inspectors was not related to a specific contract does not exclude the liability of the trader for not providing the information required by the law to consumers.\textsuperscript{123}

### 3.3.3. EU Requirements

The directive envisages an absolute duty to provide information only for distance and off-premises contracts.\textsuperscript{124} The provisions related to the burden of proof, incorporation into the integral part of the contract and cost-related matters are applied only to distance or off-premises contracts.\textsuperscript{125}

The Consumer Rights Directive lays down the time frame for the provision of information prior to the conclusion of a contract. Therefore, the minimal duties of the trader with respect to provision of information are performed at the time of concluding a contract with the consumer. Consequently, a question arises: in order to increase the level of protection and awareness of the consumer, to what extent is it reasonable to shift the whole burden of provision of information on to the pre-contractual stage and to relieve the trader from the liability to provide information to the consumer after concluding a contract.

Under Article 5 of the Consumer Rights Directive, before the consumer is bound by a contract other than a distance or an off-premises contract, or any corresponding offer, the trader shall provide the consumer with the following information in a clear and comprehensible manner, if that information is not already apparent from the context:

- the name of the product, manufacturer, the main/essential characteristics to the extent appropriate to the medium (size, capabilities);
- the identity of the trader (name), the geographical address at which he/she is established and his/her telephone number;
- the total price of the goods or services inclusive of taxes or, where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges will be payable;
- where applicable, the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader’s complaint handling policy;

\textsuperscript{123} Ibid., p. 248.
\textsuperscript{124} Article 6.1, Directive 2011/83/EU.
\textsuperscript{125} Articles 6.5 and 6.6, Directive 2011/83/EU.
• in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable;
• the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
• where applicable, the functionality, including applicable technical protection measures, of digital content; and
• where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of.

For distance or off-premises contracts, Article 6 of the Consumer Rights Directive determines additional information provision requirements as follows:
• the main characteristics of the goods or services, to the extent appropriate to the medium and to the goods or services;
• the identity of the trader, such as his trading name;
• the geographical address at which the trader is established and the trader’s telephone number, fax number and e-mail address, where available, to enable the consumer to contact the trader quickly and communicate with him efficiently and, where applicable, the geographical address and identity of the trader on whose behalf he is acting;
• if different from the address provided in accordance with preceding point, the geographical address of the place of business of the trader, and, where applicable, that of the trader on whose behalf he is acting, where the consumer can address any complaints;
• the total price of the goods or services inclusive of taxes, or where the nature of the goods or services is such that the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated, as well as, where applicable, all additional freight, delivery or postal charges and any other costs or, where those charges cannot reasonably be calculated in advance, the fact that such additional charges can be payable. In the case of a contract of indeterminate duration or a contract containing a subscription, the total price shall include the total costs per billing period. Where such contracts are charged at a fixed rate, the total price shall also mean the total monthly costs. Where the total costs cannot be reasonably calculated in advance, the manner in which the price is to be calculated shall be provided;
• the cost of using the means of distance communication for the conclusion of the contract where that cost is calculated other than at the basic rate;
• the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the services and, where applicable, the trader’s complaint handling policy;
• where a right of withdrawal exists, the conditions, time limit and procedures for exercising that right in accordance with Article 11(1), as well as the model withdrawal form set out in Annex I(B);
• where applicable, that the consumer will have to bear the cost of returning the goods in case of withdrawal and, for distance contracts, if the goods, by their nature, cannot normally be returned by post, the cost of returning the goods;
• that, if the consumer exercises the right of withdrawal after having made a request in accordance with Article 7(3) or Article 8(8), the consumer shall be liable to pay the trader reasonable costs in accordance with Article 14(3);
• where a right of withdrawal is not provided for in accordance with Article 16, the information that the consumer will not benefit from a right of withdrawal or, where applicable, the circumstances under which the consumer loses his right of withdrawal;
• a reminder of the existence of a legal guarantee of conformity for goods;
• where applicable, the existence and the conditions of after-sale customer assistance, after-sales services and commercial guarantees;
• information regarding the existence of relevant codes of conduct, as defined in point (f) of Article 2 of Directive 2005/29/EC, and how copies of them can be obtained, where applicable;
• information regarding the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;
• where applicable, the minimum duration of the consumer’s obligations under the contract;
• where applicable, the existence and the conditions of deposits or other financial guarantees to be paid or provided by the consumer at the request of the trader;
• where applicable, the functionality, including applicable technical protection measures, of digital content;
• where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; and
• where applicable, the possibility of having recourse to an out-of-court complaint and redress mechanism, to which the trader is subject, and the methods for having access to it.

The analysis of the EU requirements under the Consumer Rights Directive represents one of the bases for evaluating the new regulatory regime introduced by the Draft Law in Georgia, which will be evaluated in the forthcoming sections of this report.

3.3.4. Proposed Alternatives

3.3.4.1. Draft Law Proposal

Provisions of the Draft Law regarding access to information are the essential components of implementation of the norms of the Consumer Rights Directive. However, there is a crucial difference in the context of contracts that are distance or off-premises contracts. The Draft Law lays down an obligation of the trader to provide the listed information to the consumer in all cases, whereas the directive calls for this obligation only in those cases “if that information is not already apparent from the context”.

Under Article 5 of the Draft Law, the right to receive information is one of the fundamental rights of the consumer. Consequently, it is one of the purposes of the regulation of this sphere to provide legislative guarantees for consumers’ right to receive information and to regulate the duties of traders.

Article 5 of the Draft Law sets out a general rule for supplying information to the consumer and lists the types of information that the consumer must be provided with at the pre-contractual stage. Prior to conclusion of the contract, the trader must provide the following information to the consumer:

• name of the product and the producer, essential/major characteristics of the product, taking into account the nature of the medium holding the information (including its volume and capacities);
• the name (enterprise name) of the trader and address (legal address), contact information of the trader, to enable the consumer to communicate with the trader promptly and efficiently; and, where applicable, contact details of the trader on whose behalf the person is acting;
• the enterprise name and address of the entity providing services related to the replacement and/or repair of the product and other technical services, if different from the legal address of the trader;
• the full price of the product, indication of major and additional costs (including transportation, shipping, installation, etc.). In addition, if due to the nature of the product, the calculation of such price is not possible beforehand, the rules for calculation of price and information that there can be additional costs;
• where applicable, the terms for payment, delivery and performance and the trader’s complaint/claim handling rules, if the consumer submits a complaint;
• where applicable, the existence of a legal guarantee and a commercial warranty, also the conditions of after sales services;
• where applicable, the obligations of the consumer regarding the minimum term of contract;
• where applicable, information about deposit or other financial guarantees and terms that the consumer has to pay at the request of a trader;
• where applicable, the duration of the contract or, if the contract is of indeterminate duration or of determinate duration but can be extended for indeterminate duration, the right of withdrawal;
• the functional characteristics of the content of a digital product, including technical protection measures, where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of; and
• the right of withdrawal, where applicable.

Under the Draft Law, the information provided to the consumer becomes an integral part of the contract; the trader shall be liable for providing inaccurate or misleading information and breach of the duty of disclosure shall result in the shift of the burden of proof to the trader. According to the Draft Law, daily transactions are excluded from the obligation to provide information if the transaction is executed upon its conclusion.

Article 9 of the Draft Law sets out the terms for providing of additional information for off-premises and distance contracts and obliges the trader to provide to the consumer the following information:
• the factual address of the trader (the factual address of the enterprise), if different from the factual location of the trader (legal address of the enterprise), as well as email and telephone number (if any), on which consumer will be able to contact the trader promptly and efficiently. Also, the factual address and name of the trader on whose behalf he/she operates;
• in the case of a contract of indeterminate duration, an installment sale or a contract containing a subscription, the total price shall include the total cost per billing period. Also, if it is impossible to calculate the full price in advance, the procedure for calculating it.
- the cost of using the means of distance communication for the conclusion of the contract, where that cost is not included in the base price;
- where the right of withdrawal exists, the conditions, time limit and rules for exercising that right;
- information that, if, in accordance with Annex 1 of the law, a right of withdrawal is not provided, the consumer will not benefit from the right of withdrawal;
- if, under Article 14 of the Law, it is not possible to withdraw from the contract, the information that the consumer is not authorized to withdraw from the contract;
- information that, in case of withdrawal, the consumer shall be obliged to bear the costs of return of the product;
- information about the code of conduct and its availability;
- where applicable, information on the limitation of the customer’s financial liability;
- where applicable, information about the statute of limitation of the consumer’s obligations; and
- where possible, information about legal redress and conditions for receiving compensation.

Under the Draft Law, the mentioned information becomes an integral part of the contract and may not be amended unless the parties otherwise agree in an express form.

As explained earlier, there are no general consumer rights regulations in Georgia. Traders doing business in general trade, other than specifically regulated fields, have no obligation to inform consumers. Consequently, this issue is regulated by the free market. The policies and approaches of traders in terms of providing information differ from trader to trader depending on experience, turnover, international connections and overall social responsibility. After the adoption of the Draft Law, traders will have to comply with new set of information requirements compared to the absence of regulatory burden existing under the current regulatory framework. Consequently, to ensure the new obligations with respect to provision of information and compliance with the law, it is supposed that traders, particularly those trading by distance, will accumulate all information in one document. We believe that the new contractual obligations are accompanied by the risk of involuntary breaches. To avoid such a risk, traders may load information sheets or sections of the website with other unnecessary information in addition to the requested information. There is thus a danger that consumers will instinctively agree to receive and disclose information without actually analyzing the information.

The Draft Law does not prescribe traders’ duty to provide important information to the consumer after conclusion of the contract, which gives the right to traders to decline requests of consumers to provide explanations or specifications at a moment when, in reality, the need for information arises. Such an imbalance between obligations of provision of information at pre-contractual and post-contractual stages is problematic. It can make it difficult to ensure due standard of consumer awareness and therefore diminish the impact of the Draft Law.

To better explain the problem, we should take into account that the consumer, normally, needs different types of information at different stages, namely, advertisement, pre-contractual, during concluding of a contract and after concluding of a contract. Let us compare Article 8.2 of the Consumer Rights Directive and Article 9 (2) of the Draft Law. Article 8.2 of
the directive obliges traders to ensure that, prior to the consumer placing an electronic order, the description of the goods and other important information is well defined and clear; under the Draft Law, at the same stage the trader is obliged to explain to the consumer that placement of the order should result in the obligation to pay.

To ensure balancing out the stages of provision of information, the mode of provision of such information and other issues of communication should also be taken into account. As noted above, to ensure a proper standard of awareness, the information provided must be adequate, clear and comprehensible to the consumer.

The Draft Law sets the following standards for the mode and content of providing information:
- Article 6.1. – the trader is obliged to ensure indication of sales and unit prices on the product in a plain and intelligible form;
- Article 8.1 – a plain and intelligible form; and
- Article 9.2 – in the state language, written, plain and intelligible form, on paper or through other media.

The Draft Law sets out a simple general standard for providing plain and intelligible information. In this respect the Draft Law is based on the standard of the Consumer Rights Directive, which normally uses the following terminology: clear and comprehensible, clear and prominent, and clear and legible. In view of the allocation of the burden of proof, in each specific case the trader is responsible to ensure that the information is provided in a clear and intelligible manner.

Based on our analysis of Georgian consumer behavior, we now assess whether the general standard set out by the Draft Law should or can be made more detailed. With regard to compliance with obligations, a balanced approach should be adopted that gives consideration to the logistical and financial burden on traders. To assess the adequacy of the information requirement in the legal framework envisaged by the Draft Law, we apply the Howard test and the timeliness criterion. The Howard Test considers information to be adequate if it is truthful, intelligible, relevant and complete. As to the requirements that information be truthful and complete, the Draft Law overregulates by obliging traders to inform consumers of all details about products or services. As to the requirement of relevance and timeliness, the Draft Law can be criticized from the perspective of whether provision of that amount of information at the pre-contractual stage is relevant and timely for making an informed choice as to the purchase of a product or service. It can be argued that consumers do not need so much information at the pre-contractual stage, where they are mostly focused on the product description, warranty and return policy. Information about the identity of the trader, contact information and rules for making complaints usually become more relevant in the later stages of contractual relationship, after entry into the contract and delivery of the goods or services. The Draft Law should also be evaluated on whether it affords sufficient guarantees to ensuring the intelligibility of information.

3.3.4.2. Alternative Options

After evaluating the existing legal framework, the new legal regulations proposed by the Draft Law and the EU’s experience, the RIA Team proposes balancing the statutory requirements for providing information with non-binding instruments adopted by private sector
organizations and enforcement mechanisms to more effectively accomplish the goal of an informed consumer.

The Draft Law provides a completely new regulatory framework for access to information by traders and consumers. After the adoption of new regulations under the Draft Law, traders will have to revise their policies, prepare, process and present more information about their products that they usually would, learn about new requirements and obtain advice as to the form and substance of information to ensure meeting with the legislative standards of “plainness” and “intelligibility”. It is expected that traders will be burdened by the new regulations, especially given that, at present, there is no consumer protection legislative framework in Georgia. It might not be justified to increase the regulatory burden by obliging traders to abide by higher or more specific standards for the intelligibility and timeliness of information, in addition to the criteria established under the Draft Law. Under the Draft Law, it is the obligation of traders to ensure that information is provided in the Georgian language in a plain and comprehensible fashion; however, the Draft Law does not define the criteria plain and comprehensible.

In evaluating the EU experience with regard to access to information after the implementation of the Consumer Rights Directive, adoption of a binding requirement to providing information has been identified as a subject of debate. Consequently, at the stage following adoption of the Draft Law, a further increase in the regulatory burden might have a counter-productive effect, since it could result in increased ignorance about the new regulations in the market.

Based on the above analysis, the RIA Team proposes that:

- The enforcement authority adopt the compliance guidelines and non-binding recommendations for traders as to the form and content of providing information at the pre-contractual stage. These recommendations might include a suggestion to use different visual tools to enhance the intelligibility of information and ensure that consumers understand the provided information;
- Traders’ associations adopt the compliance guidelines on the “comply or explain” principle. Such self-regulatory tools could increase the motivation of traders to go beyond the existing minimum requirements and control one another’s compliance with the established standards; and
- Consumers’ associations adopt and enforce non-binding certification tools for businesses willing to obtain confirmation of their compliance with the consumer protection best practices. Such certification tools are used by businesses to ensure compliance with new regulations. Certifications can be issued by private consulting firms or consumers’ associations themselves.

Adopting additional non-binding initiatives and tools is justified, given the vulnerability of Georgian consumers as evaluated by this RIA [see Chapter II regarding unfair commercial practices].

3.4. Impact Assessment and Data Collection

This report does not provide impact assessment in Georgia on access to information, considering the limited scope of evaluation. However, for guidance on this matter, we have analyzed the effectiveness of implementation of the Consumer Rights Directive by Member States.
Of 23 consumer associations interviewed for the assessment, 20 evaluated the information requirements for on-premises contracts as having a “very positive” or “positive” impact, while 21 associations gave the same evaluation with regard to the requirements for off-premises contracts. Of 38 national competent authorities, 29 have responded that information requirements for on-premises contracts had a “very positive” or “positive” impact, while 34 thought the same concerning the information requirements for off-premises contracts. As to the problems related to the implementation of information requirements by national legislation, only four national authorities identified significant problems in the process. More information on specific difficulties was also provided in relation to pre-contractual information and the exceptions from both the pre-contractual information requirements and the right of withdrawal. Some stakeholders pointed out that different obligations for different type of contracts (on-premises and off-premises and distance contracts) can raise uncertainty.

Stakeholders were asked about the factors hindering the effectiveness of the Consumer Rights Directive. Over 60 percent of consumer and trade associations indicated that they were aware of factors hindering the effectiveness of the Consumer Rights Directive. The most recurrent factors highlighted to be hindering the effectiveness of the Consumer Rights Directive include: lack of awareness and understanding among consumers and traders about consumer rights and obligations; issues of compliance by traders, particularly regarding certain provisions; and issues related to enforcement, particularly cross-border enforcement.

The Consumer Rights Directive Implementation Study also placed particular emphasis on the evaluation of awareness of consumers about particular provisions of the Consumer Rights Directive. In relation to information rights, all of the interviewed consumer associations evaluated the level of awareness from low to medium. Of the 23 trade associations who were asked the same question, the majority reported high or medium awareness (15 in respect of on-premises contracts, 19 in respect of off-premises contracts).

The study also evaluated the frequency of lodging complaints by consumers per provision of the Consumer Rights Directive as one of the compliance indicators in relation to cross-border sales. Of the 28 responses, only one evaluated the number of filing complaints as “often”; 17 as “rarely”; and ten as never had a complaint about the supply of pre-contractual information in the context of contracts entered into. However, for off-premises contracts, 11 have evaluated the frequency of complaints as “often”; 16 as “rarely”; and one mentioned that did not have complaint.

In order to assess compliance with different information requirements, the online survey asked consumers how much information they receive about the different topics covered in Articles 5 and 6 of the Consumer Rights Directive. Of the consumers responding to the

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128 Ibid., p. 57.
online survey, 38 percent stated that they did not receive much information about a trader. This was also found through mystery shopping where information on how to contact a trader was on average not readily available. The survey also found incomplete or unclear details about traders in 34 percent of websites that were checked. Consumers did not receive much information about accessing out-of-court complaint and redress mechanisms either.\textsuperscript{134}

Overall, the Consumer Rights Directive Implementation Study has concluded that there are still problems regarding the implementation and effectiveness of the Consumer Rights Directive due to the lack of awareness of traders and consumers about aspects related to pre-contractual information requirements. Consequently, the study suggested that particular emphasis and focus to be made on campaigns for raising awareness in this regard.

In terms of the efficiency of the provisions of the Consumer Rights Directive, around 40 percent of the interviewed national enforcement authorities reported that there was a positive or a very positive feedback from consumers regarding benefits generated by information requirements.\textsuperscript{135}

Regarding the increase in cost for traders, caused by ensuring compliance with information requirements, 13-16 percent reported a “great increase in cost”; 34-51 percent an “increase in costs”; 32-20 percent “no impact”; and 10-3 percent “reduced costs” (for on-premises and off-premises contracts, respectively).\textsuperscript{136}

Some interviewees expressed the view that the pre-contractual information requirements were imposing an unnecessary burden on traders. This view was put forth by traders and industry associations wanting to simplify the list of information requirements. Moreover, the study revealed that the amount of information is sometimes excessive in relation to the value of the product. This was pointed out for instance by distance selling associations and their member companies, particularly with respect to low-value consumer goods.\textsuperscript{137}

In the absence of any general obligation to provide information in Georgia, an increased burden of compliance for traders is likely as a consequence of improve consumer rights protection.

\textsuperscript{134} Study on Implementation of the Directive 2011/83/EU, p 84.
\textsuperscript{137} Study on Implementation of the Directive 2011/83/EU, p 120.
CHAPTER IV.
THE RIGHT OF WITHDRAWAL

4.1. Introduction

The right of withdrawal in the consumer relationship derives from the so-called “examine and test” principle, which the European Court of Justice, in the Messner case, found to be an essential right of the consumer. The right of withdrawal is held to be a substantial tool for balancing the bargaining positions in consumer contracts, in view of the “temporary madness” that consumers suffer while purchasing goods or services. In distance and off-premises contracts, consumers can experience surprise, when the bell rings and the salesman stands at the doorstep.

The right of withdrawal is considered to be particularly important for contracts concluded online or off-premises. In online transactions, consumers are deprived of the opportunity to physically examine the goods and test them before deciding to purchase. Consequently, the right of withdrawal for no cause is a balancing tool available for consumers choosing to trade online or off-premises.

It has been argued that the right of withdrawal has several purposes, namely, protection of consumers from aggressive sales tactics [find Chapter II of this report on unfair commercial practices], encouraging consumers to enter into distance contracts and using the internet for purchases, and enabling consumers to comprehend complex contracts. In addition to the clear motivations behind legalization of the right of withdrawal, it is also greatly connected to the right of access to information required in the context of making an informed choice: consumers entering into online contracts are not able to examine products physically and, based on this examination, take an informed decision.

4.2. Definition of Problem

There is no right of withdrawal from online contracts in Georgia. The only counterpart to this right can be found in Article 336 of the Civil Code of Georgia, which provides that contracts concluded on the street, at the doorstep or similar places between the consumer and the entity trading at its own premises are only valid if the consumer does not reject the contract in writing within a week. However, this clause applies only to contracts with traders who have their own trading premises and does not extend to distant contracts concluded with

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138 ECJ Case C-489/07 2009 I-07315.
141 Ibid, p. 5.
online traders. Since transactions that take place on the street are usually low value and the parties are not so sophisticated in enforcing their rights, there is no relevant case law from Georgian courts elaborating the rights and obligations of consumers and traders who are parties to this type of transaction.

The significance of the right of withdrawal should be evaluated in light of the position of consumers in online and off-premises purchases. In addition, unless internet use by households and general access of the population to the internet is significant, the need for protection of consumers trading online cannot be adequately evaluated. To demonstrate the role of the internet in Georgia, the RIA report relies on a study by the National Statistics Office of Georgia, conducted over a three-month period ending in July 2018.

**Table No 14.** Percentage of Households with Internet Connection

<table>
<thead>
<tr>
<th></th>
<th>Georgia</th>
<th>City</th>
<th>Village</th>
<th>Kakheti</th>
<th>Tbilisi</th>
<th>Shida Kartli</th>
<th>Ajara</th>
<th>Samegrelo</th>
<th>Imereti</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2016</td>
<td>70.1</td>
<td>79.7</td>
<td>57.4</td>
<td>55.9</td>
<td>84.8</td>
<td>58.2</td>
<td>75.7</td>
<td>64.1</td>
<td>60.9</td>
<td>63.7</td>
</tr>
<tr>
<td>June 2017</td>
<td>70.7</td>
<td>81.8</td>
<td>56.2</td>
<td>53.2</td>
<td>84.6</td>
<td>60.2</td>
<td>85.3</td>
<td>62.2</td>
<td>61.8</td>
<td>66.2</td>
</tr>
<tr>
<td>July 2018</td>
<td>69.5</td>
<td>83.0</td>
<td>51.9</td>
<td>55.8</td>
<td>85.5</td>
<td>61.0</td>
<td>80.3</td>
<td>66.0</td>
<td>62.8</td>
<td>57.5</td>
</tr>
</tbody>
</table>

**Table No 15.** Percentage of Households with Computers

<table>
<thead>
<tr>
<th></th>
<th>Georgia</th>
<th>City</th>
<th>Village</th>
<th>Kakheti</th>
<th>Tbilisi</th>
<th>Shida Kartli</th>
<th>Ajara</th>
<th>Samegrelo</th>
<th>Imereti</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2016</td>
<td>63.8</td>
<td>76.7</td>
<td>47.0</td>
<td>43.9</td>
<td>82.9</td>
<td>51.6</td>
<td>64.6</td>
<td>50.7</td>
<td>55.1</td>
<td>57.7</td>
</tr>
<tr>
<td>June 2017</td>
<td>64.2</td>
<td>77.9</td>
<td>46.2</td>
<td>45.4</td>
<td>81.9</td>
<td>56.5</td>
<td>76.5</td>
<td>49.6</td>
<td>55.1</td>
<td>57.0</td>
</tr>
<tr>
<td>July 2018</td>
<td>62.1</td>
<td>78.3</td>
<td>40.9</td>
<td>46.8</td>
<td>80.1</td>
<td>53.8</td>
<td>70.0</td>
<td>55.9</td>
<td>54.2</td>
<td>50.9</td>
</tr>
</tbody>
</table>

**Table No 16.** Percentage of 15-Years and Older Population who Purchased or Ordered Goods/Services via the Internet

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Man</th>
<th>Woman</th>
<th>City</th>
<th>Village</th>
<th>15-29 year</th>
<th>30-59 year</th>
<th>60 and older</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2016</td>
<td>18.6</td>
<td>18.2</td>
<td>18.9</td>
<td>23.8</td>
<td>7.6</td>
<td>24.8</td>
<td>15.7</td>
<td>5.3</td>
</tr>
<tr>
<td>June 2017</td>
<td>16.7</td>
<td>18.3</td>
<td>15.2</td>
<td>21.3</td>
<td>7.8</td>
<td>21.8</td>
<td>15.3</td>
<td>2.7</td>
</tr>
<tr>
<td>July 2018</td>
<td>20.6</td>
<td>19.3</td>
<td>21.8</td>
<td>25.8</td>
<td>9.8</td>
<td>31.8</td>
<td>17.1</td>
<td>5.4</td>
</tr>
</tbody>
</table>

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Based on the statistical data, we can demonstrate that the number of population purchasing/ordering goods online has been increasing for the past three years.

There is a global trend of increasing online purchases by consumers. In March 2018, Periscope by McKinsey surveyed more than 2,500 consumers around the world (including 1,000 in the US) to find out how consumers are researching and purchasing consumer packaged goods online. In all of the markets surveyed by McKinsey, the findings revealed that at least 70 percent of respondents were doing some form of online shopping. Despite the perception of that the US is the most tech savvy country, French (40 percent) and British (39 percent) consumers exhibited the greatest rate of multichannel shopping preferences, followed by German (33 percent) and the US (32 percent) shoppers. In Georgia, the study of Georgian Statistics Service demonstrates that the total share of the population that ordered or purchased goods online increased from 16.7 percent in 2017 to 20.6 percent in 2018. The trend of increasing consumer reliance on internet by consumers is observable in Georgia as well.

According to the Consumer Attitude Study of 2015,144 Georgian consumers cited defective goods or delivery of goods different from those purchased online as examples of illegal actions by traders. Not being allowed to return defective products was indicated to be one of the major reasons for consumers’ dissatisfaction. The study also demonstrated that one of the determining factors for consumers decisions to purchase electronic goods is the warranty period. The possibility to return unwanted products appears to be an important issue for Georgian consumers.

There is no uniform return policy approach in Georgia, as can be illustrated by various examples. The hypermarket Domino has a 14-day period for returning goods, with exceptions. Under the terms for online sales of furniture and household goods of the retail chain JYSK, return of products after receiving the product and signing a delivery slip is not allowed. The online shop www.wishlist.ge allows only the possibility of replacement of goods in those cases where defects are found upon receipt of the goods in the presence of a courier. The Online shop www.shop.ge grants 48 hours to consumers to return goods.

It can be observed from the above information that the return policies of even the largest online retailers greatly differ in setting the time-periods and conditions for returning products purchased online.

A 14-day withdrawal period and an unconditional right of withdrawal are actively discussed by stakeholders. Interviews conducted the RIA Team with various stakeholders highlight attitudes regarding the issue and potential dangers that might arise from legislative changes. Vakhtang Kobaladze, coordinator of consumer protection programs at the Caucasus Strategic Research and Development Center, observed in a 27 July 2018 interview that establishing down an unconditional right of withdrawal within 14-days would be ideal for the protection of consumer rights. On the other hand, a representative of Business Association of Georgia, Nikoloz Nanuashvili, in a 16 August 2018 interview, maintained that the possibility of return would entail costs and logistical problems, with a negative impact on sellers, especially small companies. Mr. Nanuashvili further stated that such a right would encourage

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irresponsible behavior on the part of consumers. Approximation with EU standards could accordingly give a competitive advantage to European investors, to detriment of purely domestic Georgian companies.

One of the questions posed to consumers in the Consumers Attitude Study was to identify their reaction to cases of unfair treatment or dissatisfaction due to traders’ behavior in different scenarios. In cases of purchases of electronics, the majority of consumers, more than 64 percent of the interviewed consumers, responded that they had not undertaken any action in response to these concerns. The response rate for the gas station sector was even higher: more than 80 percent of the consumers had not undertaken any action. The rate of inactivity or lack of reaction is also high with regard to food sector, where more than 60 percent of consumers responded that they had not taken any action against traders’ behavior.

The 2018 Attitude Study has demonstrated the significance of regulatory intervention in the field. Only 20 percent of consumers have tried to return non-defective, items that were adequate to the deal to street sellers. The main reasons for returning are: wrong size (72 percent); inadequate information on the purchased item received from sellers (17 percent); and quickly damaged item (14 percent). Interestingly, majority of the return attempts (79 percent) were successful and street sellers met with their customers’ request to return the goods.

The number of attempts to return goods purchased through distance selling is lower, due to the nature of such deals. In particular, only 7 percent of customers of online sellers have tried to return purchased goods (due to wrong size, wrong information received from sellers, quickly damaged, etc.). In these cases, majority of the return claims (75 percent) were resolved successfully, since online sellers usually meet their clients’ requests.

Table № 17. Experience of Returning Non-Defective Goods / Goods Adequate to the Deal

<table>
<thead>
<tr>
<th>Experience with online vendors</th>
<th>Experience with street vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was always returned</td>
<td>41%</td>
</tr>
<tr>
<td>Was never returned</td>
<td>21%</td>
</tr>
<tr>
<td>Was rarely returned</td>
<td>20%</td>
</tr>
<tr>
<td>Was often returned</td>
<td>18%</td>
</tr>
</tbody>
</table>

Items returned to street and online sellers are mostly non-defective clothing/footwear/accessories (84 percent and 67 percent, respectively) or electronic devices (19 percent and 33 percent, respectively). It should be noted that the average value of items returned by customers to street and online sellers is 162 GEL and 143 GEL, respectively. Per annum, most frequently, customers return 1-3 items to street sellers (88 percent) and to online sellers (76 percent). The average number of days for returning ranges between two and five days. It has been established that, with online purchases, customers tend to need slightly more time to decide about returning an item and to actually return it.
Table No. 18. Number of Days Required to Return Non-Defective Goods/Goods that are Adequate to the Deal

<table>
<thead>
<tr>
<th></th>
<th>Experience with online vendors</th>
<th>Experience with street vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have decided to return</td>
<td>2%</td>
<td>4%</td>
</tr>
<tr>
<td>Have returned</td>
<td>3%</td>
<td>4%</td>
</tr>
<tr>
<td>Was refunded</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

According to consumers, they are fully refunded for returning non-defective goods more from online sellers (45 percent) than from street sellers (33 percent). Respondents think that when attempting to return non-defective items, street sellers tend to agree more to replacing them (62 percent), whereas the same indicator for online sellers is 38 percent.

Table No. 19. Refund for Non-Defective Goods

<table>
<thead>
<tr>
<th></th>
<th>Experience with online vendors</th>
<th>Experience with street vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was fully refunded</td>
<td>33%</td>
<td>45%</td>
</tr>
<tr>
<td>Was partially refunded</td>
<td>3%</td>
<td>14%</td>
</tr>
<tr>
<td>Exchanged</td>
<td>62%</td>
<td>38%</td>
</tr>
<tr>
<td>Difficult to answer</td>
<td>3%</td>
<td>2%</td>
</tr>
<tr>
<td>Other</td>
<td>3%</td>
<td>2%</td>
</tr>
</tbody>
</table>

The following main reasons have been identified for refusing to return non-defective/adequate to the purchase deal items: absence of sales receipt; absence of label; item used or damaged; return policy does not cover the given price segment; inability to return an item purchased on sale; and return attempt past the return policy time frame. Cases have been revealed both for street selling (9 percent) and online purchases (7 percent) in which sellers did not clarify to the customer the reason for refusing to grant a return.

The study showed that street traders return more non-defective goods than online traders. Number of returns is different for different traders. But most often, up to 1-10 items of non-defective goods/ goods that are adequate to the deal are returned by street and online retailers (47 percent).

Considering the above-described results, we can assume that consumers in Georgia are not encouraged or willing to react to violations of their rights by traders. One of the major reasons for such results is the overall vulnerability of Georgian consumers, as explained in Chapter II of this report. It can be assumed that in majority of cases, consumers are dissat-
isfied with their purchases and that the economic effect on consumers is significant. If we look at the problem from the perspective of online traders, it can be assumed that, in the absence of appropriate reaction to consumers’ complaints or dysfunctional return policies, consumers are not encouraged to actively engage in online purchases.

Table № 20. Number of Returned Goods in a Year

<table>
<thead>
<tr>
<th></th>
<th>1-10 items</th>
<th>11-30 items</th>
<th>31-50 items</th>
<th>None</th>
<th>Difficult to answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online vendors</td>
<td>50%</td>
<td>6%</td>
<td>6%</td>
<td>44%</td>
<td>28%</td>
</tr>
<tr>
<td>Street vendors</td>
<td>44%</td>
<td>16%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
</tr>
</tbody>
</table>

4.3. Existing Legal Framework and Alternatives

4.3.1. Georgia’s Experience

As discussed above, the issue of off-premises contracts is not regulated under the special law in Georgia at all. The only regulation in the Civil Code of Georgia related to such contracts is given in Article 336, which determines that the contracts concluded at street, in front of house and same places between the consumer and the entity trading at its own premises is valid only if the consumer does not reject the contract in writing within one week. However, this clause is related only to the contracts with traders who have their own trading premises and therefore does not extend to distant online traders.

4.3.2. Comparative Experience in Member States

The adoption of the Consumer Rights Directive has greatly affected the withdrawal periods in the Member States. Some countries used to have the period fixed between seven and ten days (Austria, Belgium, Spain, France, Hungary, UK, Slovakia, Netherlands, Luxemburg, Lithuania and Ireland). It was only Germany and Malta that have 30 and 15 days, respectively. After implementation of the Directive, the 30-day refund period has been reduced to 14 days in different Member States\textsuperscript{145}

Before the implementation of the Consumer Rights Directive, the most common time frame for a reimbursement following the right of withdrawal was 30 days, which has been reduced to 14 days. In Austria, the legislation did not specify the refund period for traders to comply with. In Poland, the duration for the refund period was already 14 days and in Latvia and Slovakia the equivalent period was within 15 days of the consumer giving notice.\textsuperscript{146}


\textsuperscript{146} The 2011/83/EU Directive Implementation Study, p. 28.
The Consumer Rights Directive resulted in the time for reimbursement decreased from standard 30 days in the Member States to the required 14 days. 12 Member States (Cyprus, Denmark, Germany, Estonia, Greece, Finland, Latvia, Lithuania, Malta, Poland, Slovenia and Serbia) have opted for excluding off-premises contracts from the application of the Consumer Rights Directive when the value of contract does not exceed €50 as specifically allowed under Article 3.4 of the directive.

4.3.3. EU Requirements

Under the EU law, the period for consumers to pull out of any distance purchase (e.g. something bought online) or off-premises purchase (such as when a seller visits the consumer’s home) is extended from the previous minimum seven days to a uniform 14 days across the EU. These 14 days start from the day the consumer receives the goods and the consumer has the right to cancel the purchase for any reason.

When a seller has not clearly informed the consumer about the right to cancel purchases, the return period will be extended to a year. Traders must refund consumers within 14 days of cancellation, including standard delivery costs. Regarding goods, the trader can postpone the reimbursement until the goods are returned by the consumer or the consumer provides evidence that these goods have been sent to the trader. Traders wanting consumers to pay for the return of goods after cancellation have the obligation to warn the customer about the expected cost of return.

Under Article 9.1 of the Consumer Rights Directive, “the consumer shall have a period of 14 days to withdraw from a distance or off-premises contract, without giving any reason, and without incurring any costs other than those provided for...” Under Article 11, right of withdrawal is duly exercised if the consumer sends the notice before the expiration of the withdrawal period. If the right is exercised, the rights and obligations arising out of the contract are terminated automatically. From German doctrine, this leads to an unwinding of the contract. Parties have to give back each other what they delivered and paid. Legally speaking, it is a specific relationship that is triggered through termination. The Consumer Rights Directive sets mutual obligations on the parties in case of withdrawal; on the trader, to reimburse all payments within 14 days after the receipt of the notice; and on the consumer, to send the goods to the trader before expiration of the 14-day period after communicating the withdrawal.147

The Consumer Rights Directive determines the exemption list in which the right of withdrawal shall not be granted:

- service contracts after the service has been fully performed if the performance has begun with the consumer’s prior express consent, and with the acknowledgement that he/she will lose the right of withdrawal once the contract has been fully performed by the trader;
- the supply of product for which the price is dependent on fluctuations in the financial market which cannot be controlled by the trader and which might occur within the withdrawal period;
- the supply of goods made to the consumer’s specifications or clearly personalized;
- the supply of goods which are liable to deteriorate or expire rapidly;
- the supply of sealed goods which are not suitable for return due to health or hygiene reasons and were unsealed after delivery;

147 Articles 13 and 14, Directive 2011/83/EU.
• the supply of goods which are, after delivery, according to their nature, inseparably mixed with other items;
• the supply of alcoholic beverages, the price of which has been agreed upon at the time of the conclusion of the sales contract, the delivery of which can only take place after 30 days and the actual value of which is dependent on fluctuations in the market which cannot be controlled by the trader;
• contracts where the consumer has specifically requested a visit from the trader for the purpose of carrying out urgent repairs or maintenance. If, on the occasion of such visit, the trader provides services in addition to those specifically requested by the consumer or goods other than replacement parts necessarily used in carrying out the maintenance or in making the repairs, the right of withdrawal shall apply to those additional services or goods;
• the supply of sealed audio or sealed video recordings or sealed computer software which were unsealed after delivery;
• the supply of a newspaper, periodical or magazine with the exception of subscription contracts for the supply of such publications;
• contracts concluded at a public auction;
• the provision of accommodation other than for residential purpose, transport of goods, car rental services, catering or services related to leisure activities if the contract provides for a specific date or period of performance; and
• the supply of digital content which is not supplied on a tangible medium if the performance/use has begun with the consumer’s prior express consent and the acknowledgment that he/she thereby loses the right of withdrawal.

Now that we have set out the requirements of EU law regarding the regulation of the withdrawal period, the following section will analyze the right to withdraw from a contract in Georgia.

4.3.4. Proposed Alternatives
4.3.4.1. Draft Law Proposal
The Draft Law envisages a 14-day period for the right of withdrawal from a contract concluded off-premises or distance.

Article 7.1 of the Draft Law defines “off-premises" contracts as any contract that is concluded:
• outside of the premises of a trader and requires the physical presence of the parties at the same time and place;
• is concluded in the trader’s premises or by using any form of distant communication immediately after the offer was made to the consumer outside of premises; or
• is concluded at the time of travel organized by the trader for promoting product sales.

Under Article 7.2 of the Draft Law, a “distance” contract is defined as the contract concluded by using one or several forms of distant communication only and does not require the presence of parties at the same time and place.

Under Article 11 of the Draft Law, the consumer may withdraw from distance or off-premises contract without indicating any cause within 14 calendar days after the receipt of the
product or concluding a service contract. Moreover, the consumer shall not incur any cost, except in cases when the consumer opted for a more expensive delivery method or the price of the product has been decreased due to usage that is not related to its nature, characteristics or testing of its functionality. Exercising such a right shall immediately result in avoidance of the contract and restitution. Withdrawal notice must be sent within the 14-days period.

The Draft Law provides the following list of exemptions from the right to withdrawal, which are essentially similar to those determined in the Consumer Rights Directive:

- The service agreed by the contract has been fully provided if the trader started to provide services with the prior consent of the consumer and the consumer knew that he/she would lose the right of withdrawal in case of full provision of the service;
- The price of the supplied product depends on changes in the financial sector which are outside the control of the trader and the price difference might arise within the period determined for withdrawing from the contract under the law;
- The supplied product is manufactured as per the individual order of the consumer or is obviously tailored to the consumer’s personal needs;
- The supplied product is perishable, has short expiry period or has special storing conditions;
- The product supplied is sealed and the seal is broken after the delivery and return of this product is not possible based on health or hygiene norms;
- The supplied product has been inseparably merged with another product during the delivery;
- The trader was called by the consumer for the performance of an emergency service in accordance with the contract;
- A sealed audio or video record or computer program was provided and its seal was broken after the delivery;
- Journals, newspapers or other types of periodic publications were provided except for the cases when the delivery is made based on a subscription contract;
- The contract is concluded through a public auction;
- The contract is for product shipment, transportation renting, catering and other similar agreements, if the contract determines an exact date and period of performance; and
- The contract concerns digital content was not provided on a material medium if the performance had been conducted with the prior consent of the consumer and if the consumer knew that such performance would result in the loss of the right of withdrawal.

The Draft Law determines the result of withdrawal similar to the rules provided in the directive. Article 12 requires the trader to reimburse the payments to the consumer within 14 days after the receipt of the notice. The trader has the right to refuse reimbursement until he/she receives the product or proof of dispatching the product from consumer in case of consumer sales. The consumer has the obligation to dispatch the product within 14 calendar days after dispatching the notice of withdrawal.

The Draft Law also introduces a standard form for sending notice of exercising a withdrawal right from a contract. Moreover, in case of failure of a trader to provide information about the right to return a product, the return period is then be determined to be 12 months from the moment of receipt of the product by the consumer. If the trader provides information about the right to return a product within 12 months after the delivery of a product, the 14-days return period will commence from the moment when the consumer receives such notice.
The following section of this report will analyze the impact of the right to withdraw in light of foreign experience and Georgian reality.

4.3.4.2. Alternative Options

The requirement of the directive to grant consumers 14 days for making decision on withdrawing from a distance or off-premises contract, in addition with 14 days for returning the goods, combines for a total at least 28 days from the moment of delivery until the trader receives the goods from consumer. Taking into account the right to dispatch the goods before expiry of the 14 days’ period, the trader may receive returned goods even after expiry of 28 days considering the form of delivery that the consumer chooses. Granting consumers 14 days for withdrawing from a contract is considered to be sufficient time for the consumer to make informed decision as to whether it needs the goods purchased. The additional 14 days for return are related to logistics for the return, i.e., the effort the consumer has to undergo to dispatching the goods back to the trader.

At this point, the difference between the EU law and Georgian situation should be further analyzed. As demonstrated above, one of the goals of the EU regulations is to support trade throughout the Union, which envisions consumers making online purchases from traders located in different Member States. By contrast, the Draft Law is not designed to facilitate cross-border trade. Unlike the EU, distant online purchases by Georgian consumers abroad does not fall within the scope of application of the Draft Law as it applies to consumers and traders located in Georgia. In other words, the goal of the EU legislation to support and promote establishment of internal market does not apply in Georgia. Consequently, the period for the return of goods in Georgia should be determined based on the logistical issues that a Georgian consumer might need to overcome while dispatching the goods back to the trader.

We have analyzed the standard delivery terms of Georgian Post, the cheapest operator of shipping services in the country. In order to dispatch a package, consumer has to visit one of the service centers of Georgian Post, which are located in every municipality.148 According to standard delivery terms, intra-country delivery of packages takes a maximum three working days.149 Consequently, the RIA Team suggests the 14+14-day return period to be replaced by 14+7-day period.

4.4. Impact Assessment and Data Collection

4.4.1. Impact assessment on the Example of Other Countries

Before moving to impact assessment of the right of withdrawal in Georgia, we provide the results of the impact assessment carried out by the EU after the implementation of the Consumer Rights Directive. In a fitness check of the Consumer Rights Directive, consumers, traders and national authorities were asked questions to measure the impact of the Consumer Rights Directive on consumers and traders and to evaluate the overall effectiveness of the Consumer Rights Directive.

Impact on Consumers

Most consumers and consumer associations participating in the survey felt that the level of protection was moderate or high when buying goods and services as a result of the implementation of the Consumer Rights Directive. The report noted that 37 percent of respondents felt that consumer confidence in online shopping had increased since June 2014 and 31 percent believed that confidence had increased when buying from abroad.

47 percent of national competent authorities responding received positive feedback on the benefits of the Consumer Rights Directive in general. The harmonized right of withdrawal across the EU and the implementation of a common set of pre-contractual information requirements for distance and off-premises contracts are among the most highly rated provisions. Conversely, 3 percent of competent authorities received very negative feedback on the exceptions about the right of withdrawal whilst a further 10 percent received negative feedback on this same issue.

The survey also asked consumers about the frequency with which they exercised the withdrawal right. The results show that over 40 percent of consumers reported having done so. 21 percent of these have not experienced any problems, with the rest noticing problems when exercising their right of withdrawal, particularly on contacting the trader. Nearly half of this latter group, however, had received a full refund for their product.150

Impact on Traders

The UK Department for Business Innovation and Skills conducted an impact assessment on EU Consumer Rights Directive: Information Requirements and Right to Withdraw for Distance Contracts.151 The impact assessment notes that, in view of the existing 7-day period set by legislation, increasing the period to 14 days should not have a substantially negative impact on businesses and should not cause major increase in withdrawals.

As a result of implementing the Consumer Rights Directive, examples of the types of costs for traders in complying with the directive are as follows: human resource costs, costs to get familiar with the legislation, management time to ensure compliance, the cost of updating website text and costs related to the update of internal processes and procedures, e.g., delivery, duration for returns and right of withdrawal.

The direct monetary costs include getting external legal advice on compliance, engaging a web designer to redesign parts of websites to comply with requirements of the Consumer Rights Directive and other technical work, such as incorporating payment methods on a home page or early in the transaction process, adding a box in relation to the obligation to pay, etc.

The estimated administrative costs imposed by EU consumer rights law to businesses selling only domestically were €5,526; for traders selling to other Member States – €9,276.

Data on the percentage of returns was regarded as commercially sensitive by traders and their representative organizations. A small proportion of traders pointed to the increased

cost of realizing withdrawal rights as a result of the implementation of the Consumer Rights Directive. The largest percentage (67 percent) agreed that pre-contractual information requirements had either greatly increased or just increased their costs, followed by formal requirements (55 percent) and reimbursement policies stemming from the right of withdrawal (44 percent). Stakeholders were eager to point out that, ultimately, any additional costs borne by traders would be passed on to consumers in the form of higher prices. In the short term, however, traders would have to absorb the costs. 152 30 percent of traders did not identify there being any benefits, but a greater percentage thought that consumers whose rights are respected come back and shop again with the same trader (35 percent) and recruit or attract other consumers (39 percent).

According to the most recent annual survey, online purchases by internet users in 2016 increased by 16 percentage points compared to 2007 and by 3 percent since 2014, when the directive was implemented. The proportion of e-shoppers varied considerably across Member States, ranging in Romania /153

Small and medium-sized enterprises (SMEs) interviewed emphasized the importance of costs associated with returns, such as include credit card and shipping costs. These stakeholders were particularly concerned about the negative impact of an increase in returns. Working with low profit margins in online retail puts micro and small firms at greater financial risk resulting from consumers exercising their right of withdrawal and stemming from the return of used goods. The main costs for an SME from the implementation of the Consumer Rights Directive are linked to an increase in economic losses stemming from returns. 154

The Consumer Rights Directive has affected contracts of online retailers more than other types of contract covered by the directive, since some of the new provisions are explicitly aimed at online purchases. 155

4.4.2. Impact Assessment of Georgia’s Example

When assessing a 14-day withdrawal period, the impact of this right on the economy and businesses should be analyzed. In particular, one must assess the effect this provision of the Draft Law will have on different categories of traders. The analysis of such impact is particularly important so as to assess out whether granting the right of withdrawal to the consumer may be substantially detrimental to the activities of newly established or relatively small traders in the market and consequently stifle competition.

Option 1 – Baseline

Costs

In absence of new regulation of the field, consumer contracts will be subject to the standards established by the Civil Code of Georgia, and obligations of the producers and distributors regarding provision of information are based on specific legislation regulating certain fields.

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152 Ibid pp. 108-111.
153 Ibid., p.120.
154 Ibid., p.128.
Costs to consumers in case of maintenance of status quo will be related to economic loss suffered by the consumers, i.e., purchasing household goods online without having the ability to return non-defective goods. Moreover, without the statutory provisions determining the burden of proof, in cases of failure to provide legally required information, costs associated with litigation in civil courts in case of defective products will also be borne by consumers.

Costs to be borne by traders in relation to information requirements or the return period will not be changed as no new regulation will be enacted. However, the costs of businesses because of the declining trend of online purchases due to absence of a return period could become significant over a period of time.

**Benefits**

The major benefit for consumers in case of maintaining the status quo could be avoiding increase in prices of goods sold online or other products available for selling on-premises as the traders are not required to provide additional information or do not have the obligation to return the price paid for returned goods.

In absence of new regulations in this field, the entry rate of new smaller players in the market could be higher and therefore competition might increase in the market that would positively affect consumers in terms of lower prices and over quality of products offered.

**Option 2 – Draft Law Solution**

The 2018 Sociological Study evaluated the attitude of consumers and traders towards the proposition of the Draft Law, which establishes a 14+14 day return period. Opinions of consumers and business representatives (street sellers about the planned changes are considerably different from each other. Half of street vendors disagree with this legislative change, while 77 percent of the population support the extension of seven to 14 days for rejecting contracts made with street sellers.

**Table No 21. Assessment of the Planned Regulations**

<table>
<thead>
<tr>
<th>Opinion</th>
<th>Consumers</th>
<th>Vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>77%</td>
<td>35%</td>
</tr>
<tr>
<td>Neither agree, nor disagree</td>
<td>10%</td>
<td>15%</td>
</tr>
<tr>
<td>Disagree</td>
<td>13%</td>
<td>50%</td>
</tr>
</tbody>
</table>

As for the legislative changes planned for remote shopping, every second one of the surveyed online vendors (48 percent) also disagree with this change, while 76 percent of the population are in favor of the offered 14-day period to terminate online contracts and another 14 days for returning the item. It should be noted that 80 percent of the customers
think that the 14+14-day period is quite sufficient for returning the product and 5 percent thinks that the number of days is excessive.

**Table № 22.** Assessment of the Planned Regulations

<table>
<thead>
<tr>
<th></th>
<th>Consumers opinion</th>
<th>Vendors opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>76%</td>
<td>33%</td>
</tr>
<tr>
<td>Neither agree, nor disagree</td>
<td>16%</td>
<td>19%</td>
</tr>
<tr>
<td>Disagree</td>
<td>8%</td>
<td>48%</td>
</tr>
</tbody>
</table>

**Costs**

In case of introduction of the Draft Law, returning any products purchased online or off-premises without reasoning, it may increase the possibility for consumers to make decisions without due analysis or justification. Costs related to such cases for consumers would be the undue investment of the available funds for the period of return and transportation costs for returning the products.

Both, customers and business representatives have certain expectations about the changes in the regulations. Almost every third customer thinks that, if the regulations are enforced in the proposed manner, the rate of attempts to return non-defective/adequate to the contract goods will increase for street sellers (36 percent) and online traders (27 percent). 44 percent of sellers also share the same opinion. Customers and businesses have different views about the change of purchasing behavior, namely, every third customer believes that enforcing these regulations in the given manner will stimulate them to increase purchases on the street (31 percent) and from online sellers (30 percent). However, this opinion is shared only by 20 percent of business representatives. It is important to note that, if the regulations are to become effective, only 15 percent of the businesses think these legislative changes will promote increase in prices, which, in their opinion, in most cases will result from the increase in business expenses or their attempts to secure themselves from potential financial losses. As for the impact of enacting the new regulations might have on the quality of goods, only 17 percent of the businesses think the changes will make a positive impact.

According to business representatives (26 percent), extending the time frame for returning goods will influence business relationships between vendors, distributors and manufacturers. Online sellers tend to expect changes in business relationships, which, according to them, might result in increase in the time frames, obligations and expenses.

Costs to other producers in the market might be associated with the lack of availability of products for purchase during the return period as well as increase in the prices of products by traders willing to balance the increased costs of business due to the return period.
Costs to businesses might also be different for different types of products. The resale price of returned products might in some cases be the same, or in some cases, much lower than the initial price of the products. Possibility of misuse of the right by consumers could cause significant costs for businesses due to increase in returns. In such cases, smaller traders might not be able to enter the market or might need to close or limit operations due to their inability to cope with related cash flow problems. In addition to financial costs, retailers will have to undertake administrative costs due to the increased need for resources to deal with returns.

**Table № 23.** Impact of Planned Regulations on Business Relationships

<table>
<thead>
<tr>
<th></th>
<th>Online vendors</th>
<th>Street vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extension of timeframes will affect business relationships</td>
<td>19%</td>
<td>32%</td>
</tr>
<tr>
<td>Extension of timeframes will not affect business relationships</td>
<td>57%</td>
<td>44%</td>
</tr>
<tr>
<td>Difficult to answer</td>
<td>24%</td>
<td>24%</td>
</tr>
</tbody>
</table>

More than a half of business representatives (54 percent) think that, despite the planned legislative changes, they will not have to introduce changes in their activities. However, 13 percent of sellers think it will become necessary to reconsider current terms and conditions with the suppliers; according to 11 percent, they will have to allocate more funds to satisfy the customers and to review their claims (7 percent); and some also expect that sales prices might need to be raised (4 percent).

One in every three of the surveyed business representatives thinks that their operational costs will increase during the first six months (33 percent), as well as after the six-month period (35 percent). It should also be noted that compared with street sellers, online sellers are more likely to anticipate raising their operational costs.

**Table № 24.** Expected Changes Due to Planned Regulations

<table>
<thead>
<tr>
<th></th>
<th>Online vendors</th>
<th>Street vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>In 6 months after the new regulations, operational costs will increase</td>
<td>43%</td>
<td>24%</td>
</tr>
<tr>
<td>After 6 months of the new regulations operational costs will increase</td>
<td>43%</td>
<td>28%</td>
</tr>
</tbody>
</table>

Overall, 39 percent of sellers assess that the planned legislative changes about the return time frames of non-defective/adequate to the deal goods as negative; and street sellers are more negative (44 percent) in their assessment compared to online sellers (34 percent). It
is noteworthy that only 7 percent of business representatives think that these changes will have a positive impact on their activity.

**Benefits**

Benefit for consumers will be significantly increased since they will not have to bear economic loss due to purchasing products that they do not need. Such benefit will greatly affect the vulnerable groups of consumers who are always targeted by aggressive marketing campaigns. The possibility to return purchased goods will result in increased economic activities by consumers in terms of online buying and therefore overall turnover of online businesses will be increased.

Due to the projected increase in online sales, businesses could also benefit. If online sales become the preferred option for sales, businesses might increase their focus on online sales that limit costs related to on-premises sales and therefore decrease overall business costs.

**Option 3 – The RIA Team’s Alternative**

In the case of the third alternative proposed in this report, i.e reducing the proposed 14-day period of return to seven days, the expected benefits and costs for the business and customers are changed.

Considering the vulnerability of Georgian consumers [refer to Chapter II of this report], the increasing trend in online purchases and the results of 2018 Sociological Study, the RIA Team is of the opinion that adopting the 14-day period for exercising the right of withdrawal is justified in the present circumstances.

The 2018 Sociological Study has also demonstrated that 15 percent of businesses (online traders and street traders) believe that the introduction of return period will cause increase expenses for businesses. Moreover, majority of traders assess the change negatively and hardly see any positive results after the enactment of the new regulations. A major concern of Georgian traders, as demonstrated in the implementation study conducted to assess the impact of the directive, is related to increased operational costs due to increased attempts to return purchased goods. As shown in the 2018 Sociological Study, consumers believe that attempts to return non-defective/adequate to the contract goods will increase for street sellers (36 percent) and for online sellers (27 percent), which is shared by 44 percent of sellers. On the other hand, every third customer believes that enforcing these regulations in the given manner will stimulate them to increase purchases on the street (31 percent) and from online sellers (30 percent). However, this opinion is shared only by 20 percent of business representatives.

The study has shown that consumers expect increase in returns by approximately 31.5 percent (average of 36 percent for street sellers and 27 percent for online sellers) and this expectation is shared by 44 percent of sellers. At the same time, 20 percent of businesses believe that purchases will be increased and only 15 percent of businesses expect raise in prices due to expenses related to new regulations. Considering this result a decrease of 14 day period to seven will decrease operational costs associated with lost opportunity for businesses. On the other hand, the consumers, who have made the decision to return the goods, will have a reasonable opportunity to send the product to the trader within seven days.
5.1. Introduction

Efforts to develop the Draft Law started in 2013; since then, the content of the Draft Law has undergone changes several times. Each new version of the Draft Law is better harmonized with Consumer Sales and Guarantees Directive of the European Parliament and the Council of 25 May 1999 (“Consumer Sales and Guarantees Directive”) on certain aspects of the sale of consumer goods and associated guarantees. Generally, the purpose of directives in consumer sphere is to protect a consumer from unfair commercial risks. This includes imbalance in the consumer market, since the trader, as an economically stronger and better-informed subject, initially, appears to be a stronger part in contractual relations compared to the consumer.\(^1\) In order to avoid the natural imbalance and to encourage competition, Consumer Sales and Guarantees Directive is oriented towards consumer rights protection. However, it also results in increased obligations and liability of a trader/manufacturer. The latter appear to be the main opponents of the Draft Law. Deregulation of consumer rights for a long period prevented the obligation to carry out a consumer-oriented policy and thus strengthened the position of traders and manufacturers in the consumer market. One of the main reasons for opposing it is the two-year legal guarantee period\(^2\) envisaged by the directive. Within the stipulated time frame, a consumer is entitled to pursue a remedy for a defective product/service (request replacement or repair of the product, reduction of the price or a withdrawal from the contract). The trader is liable for delivery of the product that is not in conformity with the contract. Since the final version of the Draft Law actually repeats the wording of the directive in terms of protecting consumer rights and defining trader obligations, it naturally causes contradiction from trader-producers. The vast majority of stakeholders, engaged in the process of conducting this report, point out to the following risks related to a legal guarantee:\(^3\)

- it will restrict and, from a long-term perspective, exclude the possibility to offer for sale goods at low prices and thus will become a strong burden for representatives of small and medium-sized businesses;
- non-existence of regulations on the right to redress payment in accordance with the type of the goods offered for sale will adversely affect small and medium-sized businesses; and
- it will cause increase in prices on different types of consumer goods and thus will be a heavy burden on consumers.

It has to be recalled that Article 5 of Consumer Sales and Guarantees Directive does not clarify the legal nature of the legal guarantee period. All that can be concluded from Article 5 is that it enables Member States to define legal content of the two-year time limit for submitting a claim (in case of defective / non-compliant goods).

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1\(^1\) The EU Private Law, Decisions and Materials, Part I, 2018, Tbilisi.
2\(^2\) In the above-mentioned chapter, legal guarantee is discussed and it does not contain a definition of so-called commercial guarantee, which is regulated by Article 6\(^\text{th}\) of Directive 1999/44/EU.
3\(^3\) Annex No.2 to the report “Consultations with Stakeholders.”
5.2. Definition of Problem

As we mentioned above, absence of a special law on consumer protection and deregulation of this sphere had an impact, on the one hand, on strengthening the position of traders in the Georgian consumer market and weakening of consumer rights on the other hand.

When discussing the right to submit request on consumer goods within two years, we should first consider Georgian users’ status. Sub-paragraph “e” of Article 3 defines the consumer in a consumer relationship and also considers the mid-level consumer. In the context of court practice, the Draft Law also determines the major criteria where the consumer can be considered as vulnerable. More precisely, the consumer can be vulnerable by his/her (1) mental, or (2) physical ability, and/or (3) age. Though Chapter II of the RIA does not divide Georgian consumers into medium and vulnerable users, it justifies that by considering various legal or socio-economic factors. Nowadays, Georgian consumer, in comparison with consumers in EU or former Soviet countries, is a vulnerable user in terms of awareness of user rights or existence of the legal guarantees for the protection of rights. This subsection focuses on the legal guarantee period of two years, during which, based on a purchase of goods or service, the consumer will have the right to claim his/her rights. Same as previous chapters, we think it is worth highlighting the status of the consumer. Accordingly, this chapter looks into the legal guarantee period of two years in relation to the vulnerable consumer. To make this dimension visible, we refer to the survey held in 2015 on consumer attitudes. Chapter IV of the abovementioned survey regards non-food consumer products and gives us an idea on the attitude of Georgian consumer on quality, warranty terms of consumer products and consumer rights.

The survey was held in 2015, covering all of Georgia, in which 1140 respondents participated. Six major categories, which are in high demand, are determined in Chapter IV. These categories are as follows: (1) electrical products; (2) medicines; (3) cosmetics/perfumes; (4) household chemicals; (5) clothes/shoes; and (6) accessories/toys. According to the survey, when choosing the abovementioned goods, consumers pay attention to the following:

<table>
<thead>
<tr>
<th>Table №25.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical products</td>
<td></td>
</tr>
<tr>
<td>Price</td>
<td>26.7%</td>
</tr>
<tr>
<td>Quality</td>
<td>30.1%</td>
</tr>
<tr>
<td>Expiry term of a product</td>
<td>2.5%</td>
</tr>
<tr>
<td>Country of production</td>
<td>12.8%</td>
</tr>
<tr>
<td>Product design</td>
<td>8.1%</td>
</tr>
<tr>
<td>Prestigious product</td>
<td>3.5%</td>
</tr>
<tr>
<td>Guarantee period of a product</td>
<td>14.6%</td>
</tr>
<tr>
<td>Difficult to give an answer</td>
<td>1.8%</td>
</tr>
</tbody>
</table>

159 For detailed information, see Chapter 2, section 2.2.
160 In the framework of the project financed by the European Union, “The impact of Association Agreement with EU on Georgian Consumers and Raising their Awareness”, study held by the Center for Strategic Research and Development of Georgia “Study on Consumer’s Attitude in Urban Centers” 2015y. Georgia.
The tables above demonstrate that the quality of goods, including electric products, is very important for consumers, compared to other characteristics such as price. However, at the same time, only a small part (average 10 percent) of consumers point out the significance of a legal guarantee period.

According to the same survey, 20.5 percent of interviewed consumers have responded that they have been victims of fraudulent treatment or illegal acts (7.3 percent often or sometimes, and 13.2 percent seldom; 72 percent of consumers indicated that they never been victims of illegal conduct). As for concrete allegations of fraudulent treatment or illegal acts, in terms of non-food consumer goods, the following was revealed:
• Brand classification – almost all non-food consumer products, except medications, were named (general indicators, as well as indicators in Tbilisi and western and eastern Georgia, vary approximately within 20-55 percent);
• Prices declared on the goods appeared to be a lie in case of electric goods, household chemicals and clothing/footwear (general indicators, as well as indicators in Tbilisi and western and eastern Georgia, vary approximately within 10-30 percent);
• Consumers were sold expired/spoiled goods in case of medications and cosmetics/perfumes (general indicators, as well as indicators in Tbilisi and western and eastern Georgia, vary approximately within 11-30 percent);
• Products repaired in service centers as a part of guarantee do not work properly in case of electric goods (19.2 percent);
• At the pharmacy, instead of a medication prescribed by the doctor, I was forced to buy a medication, which, was of the same composition, as stated by the sales staff (which was not true) – cited in case of medications (65.8 percent; particularly noted in Tbilisi – 81.8 percent);
• Deception in terms of quality: at the shop counter second hand or repaired goods were offered for sale at market price of new products – cited in connection with cosmetics/perfumes (15.9 percent); and
• Deception in terms of product: a consumer was given/delivered goods other than what he/she has chosen – cited in case of household chemicals (17.6 percent).

All above mentioned allegations of fraud and illegal acts, when a consumer was offered defective goods that were not in conformity with the contract, are covered by Articles 477-505 of the Civil Code of Georgia (“CCG”) on contracts of sale. The Draft Law does not change the CCG. However, it leads to two different sets of rules, namely, (1) one for business to businesses (B2B), and consumers to consumers (C2C), regulated in the CCG; and (2) one for business to consumers in the Draft Law. The CCG does not contain rules on the legal guarantee period. However, the limitation period for contractual requirements set forth in the Civil Code shall be taken into account. However, first sentence of the first part of Article 129 of the CCG fixes the limitation period for contractual claims to three years and contractual requirements for immovable property – six years. The third part of the same code defines that the law can allow different time frames in certain cases. This means that the law can define different time frames for submission of claims. In those cases, where there is no such an agreement Article 129. 1 of the CCG has a so-called universal area of action and gives a 3-year term to any party of the contractual relationship to submit a claim (it can be a claim on replacing, repairing or returning products). This gives rise to a question on the future relationship between the 2-year legal guarantee period in the Draft Law and the limitation period of three years in the CCG. The implications of the mismatch reach beyond the RIA as it would entail a debate on a possible amendment to the GCC. A possible quicker solution could be that the Draft Law clarifies the legal nature of the legal guarantee period. The 1999/44 directive provides Member States with much leeway on how to design as legal guarantee or as a limitation period.

The survey demonstrates that, from the group of respondents who declared that while acquiring non-food consumer goods some kind of fraud/illega act was committed against him/her (total amount 20.5 percent), the vast majority, 68.2 percent, have not taken any responsive measure. Only 16.3 percent of the same group addressed the administration of the shop, pharmacy etc., with a complaint. Only 14 percent required an answer from the personnel in person only after laying a claim/submitting a complaint. It appeared that in
38.4 percent of cases none of the problems was solved in this regard (high indicators are
demonstrated in Tbilisi – 50 percent). All problems were solved in 34.2 percent of cases;
and only some problems were solved for 21.9 percent.

In the presented report, of particular importance is the attitude of 68.2 percent of par-
ticipants who did not submit any kind of claim, against an infringed right for the following
reasons:

### Table No 26.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did not have time</td>
<td>11.3%</td>
</tr>
<tr>
<td>I think that is in vain, since nothing will be changed</td>
<td>43.8%</td>
</tr>
<tr>
<td>I know that a consumer might be harmed again</td>
<td>6.9%</td>
</tr>
<tr>
<td>Difficult to give an answer</td>
<td>10.0%</td>
</tr>
<tr>
<td>I do not find it necessary</td>
<td>15.6%</td>
</tr>
<tr>
<td>It happens sometimes, it is not worth making such noise</td>
<td>11.9%</td>
</tr>
<tr>
<td>I do not know whom to address</td>
<td>%</td>
</tr>
</tbody>
</table>

Thus, while discussing the Georgian experience, which, for the purpose of this chapter, is
restricted to consumers’ attitude on the rights violated on the basis of their own contractual
relations, we can draw the following conclusions: (1) Georgian consumer is poorly informed
or is not informed at all about his/her consumer rights; (2) does not have information on
whom to address in case of infringement of a right; and (3) has no hope that addressing
somebody will have a result.  

### 5.2.1. Restriction to Offer Low Price Goods for Sale

Regardless of what is written in a contract, the requirement of the civil code, that obliges a
trader to transfer a product/article free of defects, remains unchanged. The code applies in
the same way to both low and high-priced goods and obliges a trader to ensure that trans-
ferred goods are in conformity (agreed quality) with the contract, and in case the contract
is not concluded, the goods need to be ensured that they are fit for the purposes they are
normally used. Article 15 of the Draft Law proposes a more detailed definition of the
goods which are in conformity with the contract and the Draft Law does not differentiate
between low and high-priced goods. Thus, if we look at the problem from the consumer’s
perspective, In the case of enactment of the Draft Law, the term of the right to submit a
claim will be reduced from three years to two years, provided the proposed 2-year period is
to be understood as a limitation period. In that case, a two-year protection period proposed
by the Draft Law would worsen the standard of consumer protection, which is established by
the current Civil Code of Georgia. While speaking about consumer standards, it is important
to determine, (1) how Georgian consumers are aware of the legal guarantees established
by Georgian legislation, how he/she is informed regarding his/her consumer’s rights; and 2)

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161 See for details Subsection on vulnerable consumer in the 2nd chapter, 2.2 of this report.
162 The Civil Code of Georgia, Article 488.
163 For more detail see sub-chapter 5.3.4.1 of the above-mentioned chapter.
Whether the consumer exercises the rights granted under the civil code, and, if yes, to what extent does the consumer exercise such rights.\textsuperscript{164}

If we assess the problem from the trader’s perspective, in accordance with the civil code, on the one hand, he/she is obliged to deliver goods/articles which are in conformity with the sales/work contract; on the other hand, he/she is liable for non-performance or inadequate performance of the contract within the three years limitation period from delivery (in case of contract for term, the Civil Code provides for different terms). Respectively, a two-year period, proposed by the Draft Law and understood as a limitation period, lightens the situation of a trader; however, it imposes more liability in terms of quality of goods offered for sale. Considering the latter circumstance, it would be useful to propose a brief review of goods placed in the consumer market in Georgia:

\textbf{Table No. 27.}

<table>
<thead>
<tr>
<th>Year</th>
<th>Wholesale and retail trade; renovation of vehicles and motorcycles</th>
<th>Professional, scientific, and technical activities</th>
<th>Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>4.981,5</td>
<td>1.033,6</td>
<td>8.577,8</td>
</tr>
<tr>
<td>2016</td>
<td>5.633,2</td>
<td>1.121,2</td>
<td>9.245,4</td>
</tr>
<tr>
<td>2017</td>
<td>6.345,4</td>
<td>1.217,2</td>
<td>10.805,0</td>
</tr>
<tr>
<td>2018</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table No. 27 depicts data available on the official website of \textit{Geostat} Georgia, on several types of products produced in Georgia, to which a two-year legal guarantee period could apply (here we should also take into consideration of the goods/services that are being exported).

Together with industry, the total cost of goods imported into Georgia shall be taken into account, which in 2012-2017 is as follows:

\textbf{Table No. 28. Cost of Imported Goods}

<table>
<thead>
<tr>
<th>Year</th>
<th>From Europe</th>
<th>From Former Countries of Soviet Union</th>
<th>Other Countries (including USA, Turkey, China)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>2,431,589.5</td>
<td>2,060,106.4</td>
<td>3,564,683.2</td>
</tr>
<tr>
<td>2016</td>
<td>2,214,866.5</td>
<td>1,981,193.2</td>
<td>3,097,966.9</td>
</tr>
<tr>
<td>2017</td>
<td>2,200,338.4</td>
<td>2,314,212.7</td>
<td>3,424,721.9</td>
</tr>
</tbody>
</table>

It should be noted that Tables No. 27 and 28 reflect information taken from the official website of \textit{Geostat}. Goods produced in Georgia are grouped according to certain types and

\textsuperscript{164} For more details see sub-chapter 5.4.2 of the above-mentioned chapter.
categories of goods. While Geostat holds a detailed list of goods imported into Georgia, it is actually impossible to group these goods according to Table No. 27. Consequently, the possible inconsistency caused by the data provided in Tables No. 27 and 28 should be considered. Table No. 27 covers the information about the type and categories of products produced in Georgia. According to Table No. 28, only the total value of goods imported into Georgia is given. Despite the possible inconsistency, when comparing Tables No. 27 and 28, we need to take into account that, in Table No. 27 just the total value of some types of products produced in Georgia and their value in Lari are provided in Table No. 28, products imported into Georgia are provided along with their value in US Dollars. It is obvious that a large part of goods sold in Georgian consumer market are mostly imported goods. This by itself does not affect the right of a consumer to raise a claim based on the sales contract, which the consumer has, regardless of the origin, country of production and price of goods. Traders are in a different condition in this sense. More precisely, in terms of Tables No. 27 and 28, the vast majority of traders operating in the consumer market are not manufacturers but traders, who mostly operate as resellers in Georgian consumer market. Correspondingly, traders have higher responsibilities while operating in a consumer market. They are responsible for the quality and conformity with the agreement of such products they have not manufactured and often they are twice, thrice or more stages farther in the chain of sales. This should not exclude consumer’s right in any commercial sale to receive products which are in conformity with the agreement. But, on the other hand, it can be burdensome for traders, who are farther down the sales and distribution chain and hence do not have the opportunity to return faulty goods to the manufacturer or direct trader (to be discussed below, in 5.2.2.).

The problem will be more obvious if we split Georgian consumer market into two categories: (1) the first category includes stores, that usually trade with the so-called genuine goods and often offer the guarantee of a manufacturer (commercial guarantee) that includes repair services as well as the possibility to replace a defective product to consumers; and(2) the second category includes market stalls and those traders, who trade in goods with official trademarks whose quality and prices raise a reasonable suspicion about their genuineness. The circumstance indicated by stakeholders engaged in the execution of this report also should be taken into consideration, namely, despite the dubious quality of the products sold in the trading places which fall in the second category (which is obvious in case of a wide range of products, demand for which is still high). The main reason for such demand is the low price of goods, which can be paid by mid-level consumers, taking into consideration of the existing wage rates (see Table No. 29). This gives the possibility to assume that a Georgian consumer who is aware of the low quality of the goods, because of the low price, still prefers such products and does not have expectations for long-term use of such goods. They are focused on short-term satisfaction of need since the existing situation does not give them the luxury of using stable, sustainable and high-quality goods.

How and why large amounts of counterfeit goods are sold in Georgian consumer market is a subject of separate discussion as such a discussion is beyond the framework of this RIA report.

165 Interviews with stakeholders, Annex N2.
166 ACT, 2018, Social Study Report, p. 29. Tbilisi.
167 For more details see sub-chapter 5.4.2 of this chapter.
Table № 29.

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount (GEL)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>900.4</td>
</tr>
<tr>
<td>2016</td>
<td>940.0</td>
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<tr>
<td>2017</td>
<td>999.1</td>
</tr>
</tbody>
</table>

5.2.2. Trader’s Right to Redress

Introduction of a two-year warranty term proposed by the Draft Law could cause problems for the right for redress. Under Article 4 of the directive, where the final seller is liable to the consumer because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain. The Draft Law does not envisage compensation of the damage through enjoyment of the right to redress and leaves unsettled the right of the trader to use right of redress in case of expenses caused by the replacement, repair and return of the goods, which are not in conformity with the agreement. Thus, in case the Draft Law is adopted, a trader who, as it is mentioned in section 5.2.1, trades in the Georgian consumer market mostly with imported goods, in the event of a lack of conformity with the contract, within two years after delivery of goods will be liable because of an act or omission of the producer or a previous trader, since the whole burden of repairing, replacing or reduction of the price will rest with him/her.

Due to the fact that the Draft Law redirects a part of damages to the Civil Code of Georgia and does not provide special norms on damages derived based on consumer relationship, including right of recourse in the event of compensation for damage, in case of adopting the current version of the Draft Law, the cases of claim for damages, including the right of recourse of the trader provided in Article 4 of the directive, relevant norms of the Civil Code of Georgia will be used. Though, in this case the problem to the right of recourse of the trader is not the nonexistence of special norms in the Draft Law, but the actual situation in Georgian consumer market that is already mentioned several times in the process of reviewing this chapter. In the case of certain types of traders (mainly the second category of traders mentioned above), it will be impossible to find the recipient of the recourse claim.

5.2.3. Increase in Prices for Consumer Goods

The above mentioned two interrelated issues can be reflected negatively on the execution of the rights of consumers as well as traders. From this point of view, we think that the threats expressed by the stakeholders are quite realistic. In the Georgian market, most consumer goods are imported. Most of the traders are not manufacturers. Imported goods are not such a big problem for so-called first category traders, who are trading with official trademarks, and they can easily stay in touch with manufacturers. Problems connected to imported goods are more significant, in the case of second category traders, Draft law creates for a trader a bigger responsibility in terms of mandatory examination of the quality of imported goods. Its worth to mention, that Article 15 of Draft Law – “compliance criteria” gives possibilities, to exclude traders responsibility in terms of some types of goods. If we evaluate the issue from a long-term perspective, the policymakers aim to end the sale of low-quality, often unsuitable (counterfeit) products and to bring Georgian consumer market closer to the EU standards, where Georgian consumer, like the EU consumer, will have the
possibility to buy durable and high-quality products. Though in the short-term perspective, at the initial stage of the execution of the law, the above mentioned will most likely result in increased prices and, based on the example of a wide range of consumers, it can dramatically restrict their ability to purchase certain types and categories of products.

Positive and negative social-economic outcomes of the two-year term of guarantee offered by the Draft Law will be evaluated in section 5.4.2.1 of this chapter.

5.3. Existing Legal Frameworks and Alternatives

In this section, on the one hand, existing Georgian regulations (if they exist) on consumer sales, the associated two-year guarantee period and specific norms of the Draft Law will be discussed. On the other hand, Member States’ experience in this regard and conformity of the Draft Law with the corresponding articles of Consumer Sales and Guarantees Directive will be discussed. We will discuss an alternative option which will be a recommendation to the legislature during the final edition of the Draft Law, as a part of the conclusion.

5.3.1. Georgian Experience

Rights and obligations of a buyer as a consumer and a trader/contractor are fully regulated by the Civil Code of Georgia as a result of deregulation of consumer protection sphere, which in the opinion of many Georgian and international experts is completely logical that civil law provisions shall be revised and brought in compliance with the directive. However, adoption of a special law in the consumer sphere will result in duplication of regulations. According-ly, when discussing alternatives, regulation of the consumer sphere can be regulated by the new law, but also by considering the European experience, the relevant norms of the Civil Code can be improved. Considering the commitments under the Association Agreement, on the one hand, and the political will expressed by the GoG to harmonize Georgian legisla-
tion, on the other hand, in this chapter, we shall try to examine the legal state of consumer rights in detail, under the scenario that a special law does not exist and possible benefits and dangers that might impact consumer and traders in case the law enters into force.

Under Article 487 of the CCG, the seller shall transfer to the buyer a product free of material and legal defects. Under Article 639 of the same code, if the services include the manufacture of some article, then the contractor shall deliver to the client the article (providing service is also included) free of material and legal defects. In case of a defective product, the rights to request a repair of the product, to reduce the price or withdraw from the contract and other consumer rights (in case of a sales contract) are prescribed by Articles 490-494 and (in case of a work contract) Articles 642-648 of the CCG. Taking into account Articles 15 and 16 of the Draft Law, the possibility of duplication of the provisions exist; however, the Draft Law enables to regulate relations related to the purchase of consumer goods/service contract in compliance with the directive. In case of non-performance or inadequate performance of a sales contract, the code does not enact special terms for submitting a claim. In

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169 Idem.
case a claim is submitted on the ground of a sales contract, general statute of (period of) limitations applies. Namely, under Article 129 of the code, the statute of (period of) limitations on contractual claims shall be three years. As for the work-contract, special time limits for submitting a claim are prescribed by Articles 653-656. In particular, the claim related to defective fulfillment can be submitted during a year, and a claim related to construction can be submitted during five years after the day of receiving the product. Neither services nor construction contracts are addressed in Directive 99/44/EU on consumer sales.

As for a claim for damages derived from contractual relationship, it is regulated by the relevant article of the Civil Code of Georgia. The origin and compensation of the damage is determined by the composition of the particular relationship. Section three of the same code is on torts. When the damage is a result of unlawful, intentional or negligent behavior of a person, the abovementioned person shall compensate the damage. Chapter two of the same section determines the liability of a manufacturer for the damage caused by a defective product. It provides a definition of product, manufacturer and defective product, though Article 1015 limits claims for damages in cases where damages result from death, bodily injury or disability.

As mentioned above, the Draft Law does not include special norms for damages arising from consumer relations.

When discussing costs and benefits of the two-year guarantee period proposed by the Draft Law, as well as while discussing different alternatives, first we should rely on the relevant provisions of the CCG. By analyzing them, we can determine how far a two-year legal guarantee period, envisaged by the Draft Law, will impact the Georgian consumer market, taking into account that the acting code enables the party of a contract—a buyer/customer—to claim replacement or repair of the goods, reduction of the price or to withdraw from the contract within a three-year period.

5.3.2. Comparative experience on the example of Member States

The Consumer Sales and Guarantees Directive defines minimum standard for consumer sales that only partly covers relations related to tangible products and services in the consumer sphere and leaves open the possibility for Member States to regulate consumer rights protection through national laws. Considering the latter circumstance and that domestic legislation of some Member States go beyond the minimum standard set by the directive, a revision of the directive was placed on the agenda. In 2017, across the Member States, a study was conducted, which covered provisions regulating consumer protection sphere, namely, advertising and marketing sector, distance and online sales, and, among others, the Consumer Sales and Guarantees Directive was revised. The study revealed certain main issues, which, in future, will be changed in favor of a consumer, namely: (1) a two-year legal guarantee period shall be extended or varying guarantee periods of consumer goods by type and value shall be applied; (2) the reasonable time limit set for a trader to repair a product and for a consumer to withdraw from a contract shall be revised; and (3) obligation of a trader to provide a consumer with information about the availability of spares for consumer goods shall be revised.170

Hence, by the time the Draft Law enters into force, a higher standard for consumer rights protection could be introduced by the directive. It has to be emphasized that the study does not clearly distinguish between guarantee periods and limitation periods. The study also does not discuss the difficult relationship between guarantee periods and limitation periods in the Member States. Throughout the text, the emphasis lies on guarantee periods and haphazard reference is made to limitation periods, without clarifying the context. That is why it is plain to assume that the study focuses on guarantee periods alone and this is the way it is presented in the following analysis.

28 Member States of the EU prescribe a two-year period by national law and, in some cases, a longer period for submitting claims in case goods/services is not in conformity with the contract. The same could be noted in terms of a 6-month period set in case a defect in a product is identified, which includes the obligation of a trader to prove that the defect in the product was caused by a consumer within six months from the date it was sold. The reversal of the burden of proof for a 6-month period is prescribed by national legislations of all Member States; there are some countries where the time frame is longer, e.g., one or two years.

Thus, a minimum standard defined by the Consumer Sales Directive applies in all Member States. Moreover, some countries went beyond the minimum standards and enacted higher standards through domestic legislation, namely:

- National legislations of five Member States provide for a guarantee period longer than two years. In Sweden, a legal guarantee period is three years. In the Netherlands and Finland, the legal guarantee period is linked to the lifespan of the goods. In the United Kingdom, a consumer might raise a claim within six years from the date of non-conformity with the contract was discovered (a five-year prescription period applies in Scotland; six years in England, Wales and Northern Ireland);
- Nine Member States define specific time limits for a trader to repair or replace a defective product. In Bulgaria, France and Luxemburg the time limit is one month; in Czech Republic, Portugal and Slovakia – 30 days; Hungary and Romania – 15 days; and Slovenia – eight days;
- National legislations of eight Member States provide the obligation of a trader to ensure availability of spares (France, Greece, Malta, Portugal, Slovenia, Spain and Sweden). In Romania, the mentioned obligation is imposed on the manufacturer but not on the trader; and
- National legislations of three Member States oblige a trader to provide a consumer with information about spares for consumer goods (Slovenia and Italy). In Italy, such a provision is not prescribed by a legal act, but a trader has such an obligation based on the principle of fairness.\(^{171}\)

The study assessed the possible impact of extending a two-year legal guarantee period might cause. The majority of Member States assess this possibility as a shift to a higher level of consumer protection. For instance, a consumer organization in Sweden opines that extending a legal guarantee period promotes more durable consumer products. In Great Britain, a long legal guarantee period is justified by the government and representatives of consumer organizations by enhanced consumer trust and confidence; the possibility to offer products at higher prices results in improvement of the quality of consumer products.

The majority of Member States agree that extension of a two-year legal guarantee period is justified considering environmental impacts and it will result in production of better-quality goods, promotes more durable and sustainable goods, reduce waste and have a positive impact on the environment.

In addition, the study has demonstrated the need to take into account the attitude of representatives of businesses, who almost unanimously pointed out to the possible dangers that extending a two-year guarantee period might cause,\footnote{Study on the costs and benefits of extending certain rights under the Consumer Sales and Guarantees Directive 1999/94/EC Executive Summary \url{http://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=59332}.} namely, (1) shall unconditionally result in increase of costs; (2) shall increase number of consumer disputes that will force a consumer to make a choice between low price goods, which will be impossible to repair and a trader will stay with unused goods; and (3) prices of consumer goods will be increased. Here we shall also note that, as a result of the study, it is not possible to develop an evidence-based reasoning about what will be the concrete reasons for price increase and the issue of the volume of price increase is also left open. One issue is clear that extending the legal guarantee period will positively impact the development of a competitive market and in any case will result in improvement of the quality of goods.

In parallel to the abovementioned study, a Eurobarometer Survey\footnote{Idem.} showed that 66 percent of consumers would be willing to pay more for a product, if the guarantee period is extended up to 5 years. 22 percent of the respondents stated that together with consumer products, they are purchasing guarantees in addition. According to the survey, extending of a guarantee period will cause in average a 7 percent increase in prices.

Extending the legal guarantee period might have a negative impact on traders, who offer the consumer paid repair services, for example, after the expiry of two years. Naturally, extending a guarantee period will have an impact on their income.

Dependence of a guarantee period on the type of product is a separate subject of research of the survey. The change could concern 26 Member States, since in Finland and the Netherlands duration of a guarantee period depends on the type of the product. As the study showed, 31 percent of interviewed business representatives, in such case, expect an increase of costs and 30 percent do not have such expectations. 59 percent of the respondents generally presume that the change will not have a positive impact on economy.

As we have mentioned, as a result of the study, the possibility of broadening of consumer rights was also revised, which relates to spares and access to information about them. This change could apply in 21 countries and, hence, 63 percent of traders and 71 percent of consumers. The majority of respondents assesses the possible change positively and thinks that this will increase trust and confidence of consumers towards traders. The same could be extended in terms of access to information about spare parts. Representatives of consumer organizations share opinion that access to information on spares will make contractual relations more transparent and trusted and, thus, will have a positive impact on increasing the trust and confidence of consumers. As for the business sector, the majority of traders think that the change (access to spares) will negatively impact their financial stability, since the burden will not be distributed between a trader and a manufacturer but will
completely rest with a trader. 44 percent of the interviewed traders assess that the creation of the obligation to provide access to information on spares negatively; and 46 percent think that this will not have any impact at all.

While discussing the example of the Member States, we should definitely consider the situation existing in Georgia, namely:

- The market share of the goods produced in Georgia and of imported goods;
- The quality of goods produced in Georgia, as well as imported goods;
- Income of an average consumer;
- Minimum living cost; and
- The consumer basket.

Based on these and other data, we have to discuss the possibilities, on the one hand, to implement a minimum standard of the directive, and, on the other hand, to improve standards of its improvement.

This does not imply the deregulation of the field of consumer rights that was taking place in 2012-2018. However, when transferring certain provisions of the directive, it is necessary to make a reasonable decision based on specific data.

5.3.3. The EU Requirements

Consumer Sales and Guarantees Directive of the European Parliament and the Council on certain aspects of the sale of consumer goods and associated guarantees was adopted on 25 May 1999. The directive applies to those tangible movable items and related services, which are subjects of a service contract. The directive prescribes a minimum harmonization standard that does not exclude the possibility to enact higher standards by national laws.

The directive applies to any tangible movable item and related services, with the exception of:
- goods sold by way of execution or otherwise by an authority of law;
- water and gas where they are not offered for sale in a limited volume or set quantity; and
- electricity.

The directive mainly focuses on consumer rights and defines the obligations of a trader. Here, we should mention that issues related to compensation of damages are not covered under the directive.

The article by article review of the directive together with the relevant provisions of the Draft Law will be conducted through the method of comparative analysis, in the next subchapter (5.3.4.1).

5.3.4. Proposed Alternatives

5.3.4.1. Draft Law Proposal

The third version of the Draft Law on Consumer Rights Protection (July 2018) based on which the research was conducted\textsuperscript{174} is a substantially revised version of the initial Draft Law and

\textsuperscript{174} The 3\textsuperscript{rd} version of the draft law, was reviewed in the implementation process of the present RIA report. Reviewed parts of the draft law from January 2019 on sale/service contracts are included in sub-chapter 5.3.4.1.
factually repeats many provisions of the directive. Consumer sales/service contracts and related services are consolidated in Articles 15-21 of Chapter V of the Draft Law.

Article 15 of Chapter V establishes the obligations of the trader during a consumer sale. Paragraphs 1 and 2 of Article 15 of the Draft Law comprehensively cover paragraphs 1 and 2 of Article 2 of Consumer Sales and Guarantees Directive and distinguish the four conditions that goods delivered by the trader to the consumer shall:

1. Comply with the description given by the trader to the consumer and possess qualities of the goods which the trader has offered to the consumer as a sample; the sub-paragraph puts emphasis on (a) description of the goods that the trader is obliged to deliver to the consumer under Article 5 of the Draft Law (reference to Chapter III of the present RIA Report); (b) a sample model, which within the previous contractual relations was or should be available for the consumer (CSG Articles 2 and 2.a);

2. Be fit for the purposes for which goods of the same type are normally used (CSG Articles 2 and 2.c);

3. Be fit for the consumer goals to which trader agreed at the time of concluding the contract with the consumer; which includes those within the scope of previous contractual relations, namely, (a) the consumer had an opportunity to become aware of the goal of the product and (b) the possibility to use the product for the goal is proved by a trader (CSG Articles 2 and 2.b); and

4. Demonstrate the quality and performance which are usual for the same type of goods and the consumer can reasonably expect, given the nature of goods and taking into account any express statements on the characteristics of the goods made by a trader, manufacturer or other person responsible for the product’s presence in the market, including advertising and labeling (CSG Articles 2 and 2.d). This formulation is linked to the relations regulated by Unfair Commercial Practices Directive, which are depicted in Chapter II of this report.

Article 15.4) of the Draft Law repeats Article 2.5 of Consumer Sales and Guarantees Directive and clarifies that any lack of conformity resulting from incorrect installation of consumer goods by the trader or under his/her responsibility by a third party, shall be deemed to be equivalent to lack of conformity of the goods if installation forms part of the contract of sale of the goods. This shall apply equally if the product, intended to be assembled or installed and if the incorrect installation is due to a shortcoming in the installation instructions (CSG Article 2.5.).

Paragraphs 4 and 5 of Article 15 of the Draft Law also repeat Paragraphs 3 and 4 of Article 2 of the directive and define that goods shall not be presumed not-conforming with the contract if (1) the consumer was aware or could not reasonably be unaware of the lack of conformity at the time of concluding the contract; or (2) if the lack of conformity has its origin in the materials supplied by the consumer. (CSG Article 2.3). Pursuant to paragraph 5 of the same article, the trader is not limited to the public statement ("sub paragraph “d” of Article 15 (2) is implied here) if he/she can (1) prove that he/she was not aware and it was impossible to be aware about the public statement; (2) prove that at the time of concluding the contract, the public statement was changed; and (3) prove that the public statement could not have an impact on the consumer while purchasing it (CSG Article 2.4).
Article 16 of the Draft Law addresses the rights of consumers in the contracts. Article 16 (1) is in line with Paragraphs 1 and 2 of Article 3 of the directive. It determines that, in case the product turns out to be not compliant with the conditions of contract, a consumer is entitled to request from a trader (1) to bring the goods in compliance with the contract, which means repair or replacement of goods free of charge; (2) to request reduction of the price; or (3) to terminate the contract (CSG Article 3.2). In comparison to the Draft Law, Article 3 (1) of the directive clarifies that the seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered (CSG Article 3.1).

Article 16 (2) of the Draft Law is compliant with Article 3.3 of Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees ("Consumer Sales Directive"). The right to repair or replace a product on the ground of the consumer sales contract belongs to the first rights and a consumer may exercise the right to request reduction in the price or withdrawal from the contract, only if it is impossible to repair or replace a product or if, because of the nature of the product, it might cause unjustified expenses.

Article 16 (3) is again in compliance with Consumer Sales and Guarantees Directive and defines that goods shall be repaired or replaced within a reasonable time and in a manner that does not create significant confusion to the consumer. Similarly, it specifies that, while repairing or replacing a product, the nature of a product as well as its goal for which the consumer needed this product, shall be taken into account (CSG Article 3. 3). The term “free of charge” is defined homogenously both in Article 16.4 of the Draft Law and Article 3.4 of the directive, namely, repair or replacement of the product free of charge refers to all necessary costs incurred to bring the goods into conformity, particularly the cost of post, labor and materials (CSG Article 3.4).

Article 16.5 of the Draft Law, similar to Article 3.5 of the Consumer Sales Directive, determines the right of the consumer to request a reduction in the price of consumer goods or the right of withdrawal from the contract. A consumer is entitled to this right, in case, (1) he/she does not have the right to request repair or replacement of the goods pursuant to Paragraph 3 of Article 16; (2) the trader has not repaired or replaced the goods within a reasonable time and a consumer has lost interest in the fulfillment; and (3) repair or replacement of goods by the trader will cause a significant inconvenience to the consumer (CSG Articles 3, 5). Besides, under Article 16.7 of the Draft Law, a consumer is not entitled to withdraw from the contract in case of a minor lack of conformity (CSG Articles 3, 6).

Article 16 (6) of the Draft Law defines the right of the consumer in case of withdrawal from the contract to request reimbursement of harm caused due to failure to fulfill the contract in accordance with Georgian legislation, whereas reimbursement of the harm is not foreseen by the Consumer Sales Directive.

Article 16 (8) of the Draft Law defines that the trader is obliged to satisfy the consumers’ requirements specified in this article if he/she fails to prove that the inconsistency with the terms of the contract occurred due to improper use of a product by a consumer.

Similar to section 2 of Article 3 (3) of the 1999/44 directive, Article 16 (9) of the Draft Law determines the criteria for defining inadequate or inappropriately large expenses. Namely,
the following shall be taken into consideration: (1) whether the price of the product was in conformity with contract conditions; (2) the level of non-conformity; and (3) alternatives to repair without creating additional inconvenience to the consumer (CSG Article 3.3).

Article 4 of the directive defines where the final seller is liable to the consumer, because of a lack of conformity resulting from an act or omission by the producer, a previous seller in the same chain of contracts or any other intermediary, the final seller shall be entitled to pursue remedies against the person or persons liable in the contractual chain. The directive elaborates further that the person or persons liable against whom the final seller may pursue remedies, together with relevant actions and conditions, shall be determined by national law. The current version of the Draft Law says nothing about the possibility to obtain compensation for damage through redress and factually leaves open one of the main rights of a seller. We assume that absence of relevant provisions in the Draft Law is mainly determined by products offered for sale in Georgia, where the product falls into the hands of a seller not via two or even three stages through the contractual chain, but often it is impossible to identify a person liable for non-conformity with the contract.

Article 17 of the Draft Law fully reiterates Article 6 of the directive and determines the conditions of a commercial guarantee. More precisely, under Article 17 (1) and (2), the trader is obliged to comply with the conditions of the commercial guarantee, including conditions announced during advertisement (CSG Article 6.1). The Commercial guarantee should include the following: (1) information that a commercial guarantee does not limit the conditions of the legal guarantee; and (2) clear warranty conditions and key/important information for appealing, such as the limitation period, the guarantor’s name and address (CSG Article 6.2). Under paragraphs 3 and 4 of the same article, upon the request of the consumer, a commercial guarantee must be delivered in writing or other information medium (CSG Article 6.3). If the guarantee does not comply with the requirements under paragraphs 1, 2 and 3 of Article 17, this will not be able to influence the validity of a commercial guarantee (CSG Article 6.5).

The statute of limitations is prescribed by Article 18 of the Draft Law, which is an altered version of Article 5 of the directive. Under Article 18.1, if the consumer detects the lack of conformity of goods with the contract within six months after acquiring physical possession of the product, the burden of proof is borne by the trader (CSG Article 5.3). It is presumed that the defect of the product existed at the time of sale of the product. Respectively, where the goods that are not in conformity with the contract are delivered, within the first six months, the burden of proof is reversed for the seller. Paragraph 2 of the same article defines that a consumer is entitled to enjoy rights envisaged by Articles 15 and 16, in case of discovery of a lack of conformity, within two years after the delivery of the goods to the consumer; and in case of a commercial guarantee, within the guarantee period (CSG Article 5.1). The trader is under an obligation to comply with the conditions foreseen by Article 16 (8). Through the same article, the directive enables Member States to prescribe by national legislations the obligation of the consumer to inform the trader about the lack of conformity within a period of two months from the date on which the lack of conformity was detected. As mentioned above, a two-month notification period is enacted by the majority of Member States. As for the Georgian legislature, such a provision is not envisaged in the proposed Draft Law (CSG Article 5.2).
Article 18 (2) determines that the conditions of a contract or guarantee is void (including the guarantee issued for less than two years), which deteriorates the conditions of the consumer.

Article 19 of the Draft Law regulates results of violation of service obligations and related legal guarantees. It should be mentioned that the directive does not set separate regulations for relations linked to services. Article 20 regulates the relationships connected with the risk of accidental damage or destruction of the product, and Article 21 regulates the issues of performance and delivery. As we mentioned above, this issue is not covered by the Consumer Sales Directive.

As section 5.3.4.1 reveals, the proposed provisions in the Draft Law on consumer sales and associated legal guarantee period for two years are fully harmonized with Consumer Sales and Guarantees Directive and provides consumers with a minimum level of protection for their rights as in Member States. We should mention here about the trader’s right for redress as an exception, which is not regulated by the Draft Law.

The following subsection details alternatives offered by the Draft Law to the two-year guarantee period. In addition, we can discuss, based on the research on consumer attitudes, in terms of consumer rights protection, weak legislation and practical enforcement of these rights. Therefore, taking into consideration of legal and social impact, instead of elaborating alternative provisions on a two-year legal guarantee period, it will be more helpful to elaborate specific recommendations that will help in the implementation of the provisions offered by the Draft Law in short and long-term perspectives.

5.3.4.2. Alternative Options

The present report is focused on the issues of the Draft Law which were selected in advance. While each issue or problem in the report is considered as an independent object of research, it is possible to unite the basic characteristics that are common to all the above-discussed problems as explained below:

From the perspective of the consumer, (1) the Georgian user is a vulnerable user in relation to any problem; (2) the average Georgian consumer does not even have information on the minimum legislative guarantees that are based on various legislative acts; and (3) considering various socio-economic factors, Georgian consumers are vulnerable consumers who do not fight for their rights.

From the traders’ perspective (traders meant here are those mainly operating in fairs and informal shops); (1) they are less interested in consumer rights; (2) pay less attention to the quality of goods for sale; and (3) they consider it unlikely that they will have to reimburse any kind, including replace / repair /return, of fees for goods that are not in conformity with the contract. As for traders from the first category, the deregulation of consumer sphere, and a large number of uninformed and vulnerable consumers, is having a negative effect on their activities as well. This in its turn shows the low quality of competition and does not

175 For more details see “Social Research Report” ACT, 2018, Tbilisi, within the framework of the EU funded project “Impact of Association Agreement with the European Union and Their Consciousness” – Georgia’s Strategic Research and Development Center “Consumer Relations Research in the Urban Centers of Georgia” 2015 Georgia.
push traders to enrich the consumer market with higher quality, durable and sustainable and, thus, pricier consumer goods. The three-year limitation period provided by Article 129 of the Civil Code of Georgia for contractual claims does not ensure the protection of consumers’ interests during sale of consumer products. The main reason is low awareness of Georgian consumers, not only regarding the right to submit a contractual claim, but also regarding other rights, which in turn are not limited to relations originated in the contractual sphere. 

After the enactment of a two-year warranty period proposed by the Draft Law, the three-year general limitation of Article 129 of the Civil Code will be reduced, (if the Draft Law is understood as a limitation period and not as a legal guarantee period). At the same time, the special law establishes a stable, European standard of submitting a claim for Georgian consumers and the information campaign carried out after the adoption of the law provides the consumers with increased awareness.

Considering the above-mentioned factors, which are based on the circumstances revealed during the implementation of this report, we do not think it is advisable to develop an alternative option regarding consumer sales and the associated two-year legal guarantee period, which differs from the Draft Law. Even though the implementation of several clauses, including norms regarding the two-year legal guarantee period, can have issues (especially, with regard to the second category traders discussed in this section), we do not consider it fair to envisage certain preferences or exceptions. The legislature shall envisage the possible threats that will be accompanied by the implementation of the Draft Law and, at the initial stage, will exclude by itself the desire as well as the ability of certain types of traders to execute it. However, in the long run, this change will make Georgian traders to manufacture according to the European standards and pay more attention to the quality of produced and imported products. This will facilitate the growth of competition between traders and the development of Georgian consumer market. In addition, the suggested amendment forces traders to feel more responsible regarding consumer’s rights and their enforcement mechanisms.

The concerns expressed by various stakeholders are quite realistic that, at the initial stage of the execution of the Draft Law, prices on consumer goods could be increased and natural expulsion of certain types of traders from the consumer market could take place. If we look at the problem, through the obligations assumed from the EU, on the one hand, and, on the other hand, through consumer rights protection, none of the above-mentioned threats will not and could not outweigh the benefits, that will develop Georgian consumer market in the long run and will create durable guarantees for consumer rights protection.

5.4. Impact Assessment and Data Collection

5.4.1. Impact assessment of other countries

The chapter below goes back to the research conducted in Member States on consumer sales and Chapter III is devoted to the evaluation of the impact of the benefits and costs, which can be derived from full harmonization with the Consumer Sales Directive.

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176 For details see Social Study Report, ACT, 2018, Tbilisi.
177 Study on the costs and benefits of minimum harmonization under the Consumer Sales and Guarantees Consumer Sales and Guarantees Directive and of potential full harmonisation and alignment of EU rules for different sales channels.
5.4.1.1. The Two-Year Guarantee Period

**Benefit**

According to the study, a wide range of stakeholders – Dutch consumer protection authorities, as well as government authorities, Bulgarian consumer association, representatives of Greek and Croatian government authorities – clearly underline that harmonized rules will lead to higher transparency, will increase trust between consumers. They thus evaluated it positively, as a beneficial event. Despite cultural and ethnic differences between Member States, the majority of stakeholders involved in the consultation process finally agree that the two-year guarantee period supports “fair balance between consumer and business interests”.

**Costs**

Extending the two-year guarantee period equally to all products contradicts German (guarantee period of two years), and Danish (guarantee period of two years) consumer protection association, also the Netherlands (guarantee period depends on type of product), Sweden (guarantee period of three years) and UK (guarantee period of five years). The main reason for this contradiction is related to the types of products. A wide range of products, such as refrigerators and other large household appliances, has to be usable for more than two years. Full harmonization will be especially uncomfortable for UK as, according to national legislation, British consumer can pay price of consumer goods over three years after signing a contract. Accordingly, reducing a guarantee period from five years to two years will affect British consumer rights negatively. Thus, results showed, on the one hand, by the common research in Member States and, on the other hand, internal research conducted in Britain is logical. If 4 percent of consumers interviewed in Europe reported to have discovered faults with products after two years of purchasing them, the average period in which defects are found is within two to six years of purchase in case of UK. Accordingly, in the countries where the guarantee period is more than two years, full harmonization will cause reduction in consumer rights.

Fifteen Member States (58 percent of respondents) state that full harmonization is not going to have a negative impact on businesses, whereas 21 percent state that full harmonization, including harmonization of rules for online and face-to-face sales, will make both types of trade fair. According to 13 percent, full harmonization will entail low costs.

As of 2013, 3.6 million traders were registered in the EU. In case of full harmonization, approximately 360,000 sellers (five-Member States, where the guarantee period is more than two years) will have to take full costs of harmonization. However, from a long-term perspective, this event will still be positive for having uniform, common approaches and standards in all Member States.

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5.4.1.2. Burden of Proof for Six Months

**Benefit**

Full harmonization of consumer sales envisages increasing the burden of proof from six months to two years. Though the survey does not mention the positive effects, which will be possibly caused by the increase in the guarantee term, feedback from responding consumers suggest that they evaluate the change positively. Increasing the term from six months to two years gives consumers the possibility to avoid protracted and time-consuming court disputes, which without having special knowledge and legal support complicates the situation. In countries, where burden of proof is more than six months (Denmark, France and Poland), longer burden of proof results in improvement of quality and provides more durable products in consumer market.

Despite increasing the burden of proof from six months to two years will have a positive impact on consumers; one of the Member State’s association indicates that increasing burden of proof to two years will reduce costs of business as consumer disputes are reduced.

**Costs**

Business representatives are against the increase of burden of proof in favor of the consumer. According to their representative, more often faults are revealed during the 6-month period. In case of harmonization, the consumer will be more indifferent to the goods and will act in an unfair manner. Furthermore, the trader, in most cases, will be obliged to take responsibility unfairly In addition, this change will naturally lead to consumer disputes and rising prices on goods, which will ultimately have a negative impact on consumers.

5.4.2. Impact Assessment on Georgia’s Example

Cost-benefit analysis of the two-year guarantee period, is based on a sociological survey. The goal of the survey was the determination of Georgian consumers’ attitude on problematic issues, including the two-year guarantee period.

5.4.2.1. Consumers’ Attitude on Two-year Guarantee Period Foreseen by the Draft Law

As mentioned in the chapters above, the main finding of the research is that “the awareness rate of consumers, as well as representatives of businesses, is quite low. They do not even have minimum information regarding protection of consumer rights. They are not informed of the existence of provisions in Georgian legislation, which allow returning products that are not in conformity or in conformity with the agreement.” This has not changed regarding the two-year legal guarantee period.

The first part of this research gives us an idea regarding practice on consumer warranty; consumers’ as well as traders’ attitude regarding planned changes are given in the second part.

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The Current Situation

Only 43 percent of the consumers who were surveyed during the research think that they can request from the seller to repair/replace and/or return goods that are not in conformity with the agreement. Furthermore, some consumers think that they are completely unprotected in their relationship with sellers in case of purchasing a defective item or an item that is not in compliance with the agreement. The surveyed consumers also have minimal understanding about the time frames; the majority of them (69 percent) think it is possible to approach the seller regarding faulty goods only within the period of a week.

As for the relationship after purchasing defective goods or goods which are not in compliance with the agreement, the majority of respondents (74 percent) prefer the seller to replace the item with a product similar to the original deal. Only 22 percent say that, in case of getting a product that is inadequate to the deal, they would prefer to return the goods for a full refund. The study also addressed the experience of consumers about purchasing goods that are not in compliance with the agreement. More than half of the consumers, 56 percent, do not have such experience. Out of those, who did experience getting goods inadequate to the deal, 64 percent of them say that they have approached the seller with such claims. Though, after discovering faulty items, 36 percent of the respondents have taken no action in this regard.

The respondents say that appliances are usually the goods that are faulty (54 percent). Requests for replacement, repairs and returns for other goods – clothes/shoes – are relatively low at 45 percent; household appliances 10 percent; and car spares 0.4 percent.

The survey proved that, in case of purchasing products that are not in compliance with the agreement, consumers mostly approach stores and but not online and street sellers.

According to the survey, out of those consumers that have approached sellers, 17 percent were denied the request for repairs; 13 percent have been denied replacement requests; and 19 percent have been denied their request to return purchased goods.

As for the reasons for refusing a request for repairs, the most often cited reason is non-recognition by the seller of the fact that goods are inadequate to the deal; in case of replacement, expiration of the time frame for the service offered by the store is given as the reason; in case of return, absence for appropriate procedures at the place of the vendor is given as the reason.

Most often, when the buyer is approaching the seller with the request to return goods (an item inadequate to the purchase deal), sellers offer replacement of an item and this is the most frequent way of settling such claims (54 percent of cases when returning an item was requested). In the rest of cases, the item is returned either for a full or partial refund (40 percent and 5 percent, respectively). As for the value, average value of the items requested to be returned is GEL400.

On average, the average period of time in which consumers approach sellers with repair/replacement/return requests is nine days. In turn, sellers take relevant actions in one week on average.
The research revealed that the majority of traders are not aware of the three-year term, which is envisaged in the legislation. Regardless of the type of sellers, 70 percent of them think that, according to the Georgian legislation, consumers may approach the seller to repair/replace/return a faulty item within one week of the date of purchase. Accordingly, respondent traders (60 percent) offer the same time frame to the consumers.

According to the majority of those representing sellers of all categories, it is important to make consumers aware of sellers’ repair/replacement/return policy of faulty goods at the time of making the purchase. As for their actual experiences, 12 percent of seller’s state that they do not provide such information to consumers at all, while the most widespread practice is giving such information verbally (67 percent).

According to the respondent traders, majority of the claims about faulty/inadequate to the deal goods are resolved in favor of consumers. 42 percent of seller’s state that consumers’ claims on repair/replacement/return are met in 80 percent-100 percent of cases; only 10 percent of sellers say they do not have the practice of satisfying such claims. It should also be noted that, in case they purchased faulty goods, consumers request their replacement from the vendor. Respondents found it difficult to estimate direct expenses related to the management and administration of consumers’ requests to replace faulty goods. However, the average annual expense recorded was GEL1200.

5.4.2.2. Attitude of Consumers and Businesses

Opinions of consumers and business representatives (stores, street and distance sellers) about the planned changes differ considerably. While a large majority of consumers (81 percent) evaluate the planned changes positively, just 35 percent of traders are in favor of the amendments; 50 percent of traders do not agree with them. It should also be noted that street traders are more critical about the changes, although the general trend is similar in all three segments.

As regards consumers’ attitude to the amendments regarding the burden of proof, it was divided in the following manner:

<table>
<thead>
<tr>
<th></th>
<th>Consumers:</th>
<th>Traders:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>82%</td>
<td>30%</td>
</tr>
<tr>
<td>Neither agree nor disagree</td>
<td>11%</td>
<td>15%</td>
</tr>
<tr>
<td>Disagree</td>
<td>7%</td>
<td>55%</td>
</tr>
</tbody>
</table>

As for the expectations of consumers and traders regarding the changes, 48 percent of responding consumers think that, after enacting changes, the number of their referrals to businesses about repair/replacement/return of purchased goods that are inadequate to the sales deal will increase. 53 percent of sellers also share the same opinion. Changes in the purchasing behavior are viewed differently by the consumers and the businesses as follows:
35 percent of consumers think that enacting these regulations will stimulate them to increase their buying rate, though the same opinion is shared only by 17 percent of the surveyed businesses. It is important to note that if the regulations are enacted this way, 51 percent of consumers expect increase in prices on goods, whereas only 16 percent of the businesses have the expectation that enacting these regulations will result in increased prices. As for the impact of enacting the regulations regarding the quality of goods, 65 percent of consumers think that quality of goods will improve, while only 36 percent of sellers think the change will make a positive impact on the quality of goods.

It should also be mentioned that 83 percent of the consumers think that the planned legislative changes are a positive step towards consumer rights protection. Even though, as it was mentioned above, 51 percent of surveyed consumers expect increase in prices, every second consumer is ready to pay increased prices for better quality goods. It should also be kept in mind that the majority of them (57 percent) knowingly and intentionally purchase low quality goods because of the lower price. Also, every second respondent (53 percent) has admitted that because of low prices, they have purchased counterfeit goods of well-known brands.

The study addressed current business models at the points of sales, in particular, the way sellers get their supplies of goods, either directly from manufacturers or through intermediaries. Interestingly, both business relationship models are almost similarly widespread. However, distributors are a more important source of supply than manufacturers for street sellers. 49 percent of entrepreneurs think that enacting the planned regulations will not affect their business relationships with suppliers. However, a considerably large part (33 percent) expects certain changes in this regard. As for their specific expectations, sellers think that they will have to present higher demands to their suppliers; they will try to improve the quality of the goods to be sold. Also, they expect certain complications during the negotiation process. This study was not aimed at identifying specific negative or positive results that the enactment of the planned changes might bring to the business relationship of sellers and their suppliers. Therefore, the issue needs an in-depth qualitative study.

It should also be mentioned that 52 percent of the surveyed entrepreneurs stated that they do not have direct contacts with manufacturers and are unable to establish the same. Accordingly, for this group of sellers, it will be difficult to contact manufacturers directly in case the customer approaches them with a request to repair/replace/return an item that is inadequate to the deal. The issue becomes of special importance for street sellers as this group mostly relies on distributors for their supplies and has limited access to manufacturers.

69 percent of entrepreneurs do not expect that enacting the changes will considerably impact their business process. However, 17 percent of the surveyed sellers think that they will have to revise their contracts with their suppliers. 8 percent think that they will have to spend more time on reviewing consumers’ claims and 5 percent of sellers think that this will lead to increased expenses.

Though just 5 percent of traders pointed to increased expenses caused by the enactment of new regulations, when the question was posed on operational costs and the impact of the
regulation on them, every third (33 percent) respondent stated that enacting the regulation considerably or somehow will increase operational costs within the first six months and later (30 percent).

As for the general assessment of enacting the regulations in the proposed manner, every second vendor (49 percent) thinks that the changes to be introduced to the rules of repairing/replacing/returning goods inadequate to the sales deal will not have an impact on their business. Despite this, it should be considered that negative expectations prevail over positive attitudes. 34 percent of the surveyed sellers think that enacting the new regulations will have a somewhat negative effect on their business activity, while the share of sellers that hold a positive attitude towards the issue is only 7 percent.

5.4.3. Cost-Benefit Analysis

5.4.3.1. Benefit

Legally, determining the guarantee period of two years by special law highlights the standards of consumer rights protection and it is one of the most important steps towards harmonizing Georgian legislation with EU legislation. In terms of socio-economic impacts, the changes proposed by the Draft Law make traders more responsible for the quality of the goods in the market as well as for giving information to consumers on their suitability.

In addition, the proposed amendment generates the obligations of traders to introduce to the customers the conditions for replacing, repairing and/or returning the goods. This will naturally result in increased consumer awareness and the number of requests to the traders will increase, which in the end will be positively reflected on the traders' business responsibility. The motivation of traders to offer goods of better quality and durability, and higher levels of service to consumers will increase, which in turn will increase competition between traders and will have a positive impact on the development of Georgian consumer market.

5.4.3.2. Costs

Just 35 percent of the surveyed traders are in favor of the proposed legislative change. Despite the fact that the study could not reveal actual expected costs for traders, the respondents hold such expectations.

The proposed changes will have exceptionally negative impact on street and market sellers, for so called the second category of traders, who sell low price and accordingly low-quality goods that are less durable. In case the Draft Law is adopted, the legislature shall take into consideration that the implementation of this law will face more obstacles from such sellers.

The condition of the above-mentioned traders will worsen due to the difficulty in reaching out to the manufacturers of the products stocked by them for sale. As mentioned in the

182 In addition, for the proposed amendment not to be envisaged just in law, but also to have practical use, it is important for the legislature to determine the process of implementation of the law, that there is a concrete information campaign, which provides the consumer with information regarding changes, their rights and enforcement mechanisms.
previous chapter, street and market traders are in most cases dealers that are twice, third or more removed from the manufacturers in the retail chain.

If consumers are evaluating the regulation of guarantees by law as a positive event, business representatives have the opposite approach. Despite the fact that expected indicators of increase in expenses are not listed, the majority of surveyed traders evaluate the planned changes as a negative event and they see consumers’ awareness about the quality of goods, the validity period, as well as possible changes in repair and return policy as an inconvenience.

Despite the fact that, as a result of the survey, consumers evaluate the planned change positively and are ready to pay more for products of better quality and durability, we think that this expresses just their positive attitude and it is possible that it might not be reflected in their purchasing behavior, because, if we again rely on the social survey, a large part of consumers are purchasing intentionally low-quality goods with low price as they cannot afford better quality but pricier goods. Accordingly, restriction of the realization of certain categories and types of goods, which will result due to the adoption of the Draft Law, will have a negative impact on mid-level consumers. The relationship of low-quality products with sustainability is a separate issue. There is definitely a tension between the aim of sustainability requirement for better quality and longer durability, and the needs of vulnerable consumers in particular.

6.1. Introduction

The Association Agreement obliges the GoG to bring Georgian legislation related to the elimination of unfair commercial practices into compliance with European directives. This legislation applies both to the contracts concluded on the street and at a distance. Only a few norms of the EU directives in the field of unfair commercial practice deal with law enforcement in collective disputes.¹⁸⁴ The EU does not define the responsible bodies; these can be either public authorities or/and consumer organizations. Austria and Germany are two countries in which the collective enforcement of consumer law lies in the hand of publicly sponsored consumer organizations.

EU directives usually provide for a general formula that refers to effectiveness and deterrence. The EU uses the language of sanctions, which cannot be equated with fines. Out of the many directives, those that aim at the collective protection of consumers are of particular importance. These are Directive 93/13/EU on unfair terms (“Unfair Terms in Consumer Contracts Directive”) and the Unfair Commercial Practices Directive.

To establish an effective enforcement mechanism, it is crucial to examine the existing enforcement system and practice in Georgia, as well as the EU experience. This chapter of the RIA report focuses on only one part of the enforcement mechanism, namely sanctions. In the various events organized by GIZ, where different ministries and stakeholders participated, it became clear that the amount of fines to be imposed was important. This raises several questions. In order to assess which kind of sanctions are to be used, it is important to assess what kind of fines are used in Member States.

In the EU, the rights of consumers are strengthened by the domestic legislation of the Member States, which is enforced by court or by other enforcement mechanisms.

The EU is not empowered to create a unified enforcement system. However, the EU enacts a legal framework with the purpose that consumer rights are equally protected in Member States. Main principles of equivalence and effectiveness shall be preserved in Member States.¹⁸⁵


¹⁸⁵ The principle of equivalence requires that the rules of EU member states used for enforcement of EU consumer law should not be less favorable than those governing similar situations subject to domestic law. The principle of efficiency means that the national rules of EU member states should not make it impossible in practice or excessively difficult to exercise the rights conferred by EU consumer law. Through the interpretation of the principles of equivalence and effectiveness, the ECJ has substantially shaped and limited procedural autonomy.
Based on the EU legislation, Member States are obliged to establish sanctions for infringement of consumer rights, which shall be adequate and proportional. Member States have the right to choose the type of sanction. 186 While defining sanctions for infringement of consumer rights, the following shall be taken into account:

- nature of the infringement and duration;
- number of consumers that were affected;
- whether a company had taken measures to reduce damage;
- whether the infringement was intentional or unintentional;
- The financial benefits that a company obtained as a result of the infringement, and other factors that determine the subject matter of the case.

The Member States come from different legal traditions and, as a result, national approaches to the enforcement of consumer rights vary. Some EU member countries have fines for violating consumer rights, which are related to turnover, although, in the majority of cases, they also have defined the maximum amount of the fine. According to the one studies, conducted in 2018, the majority of EU consumer associations (88 percent) support defining the maximum percentage of a trader’s turnover as a fine or defining an absolute amount as a fine. 187 As of today, eight Member States, including France, Cyprus, Hungary, Latvia and Lithuania, have fines based on turnover. Except for France, Poland and the Netherlands, the majority of these countries have defined the absolute amount of the fine (from €8,688 to €6.5 million) 188. Below are examples of defining fines:

- In Austria and Germany, the enforcement of collective rights lies in the hands of consumer organizations. They have to go to court to ask for an injunction. Only in case the trader does not comply with the court order, the competent court can impose an administrative fine on the trader. 189
- In Ireland, the court is empowered to impose fines only by the rules of criminal law. For the first infringement, the fine is €3000. Violating the rules on pyramid schemes entails a fine of €150,000 and could also entail imprisonment for up to five years. 190
- In Portugal, imposing fines is allowed only through civil proceedings and only the court is entitled to impose fines. 191
- In Romania, the court can only impose an administrative sanction and the amount depends on a company’s size. 192
- An administrative body authorized in Slovenia shall be entitled to impose a fine up to €3000. The higher sanctions are set up by the court. 193

186 Idem.
188 Idem.
189 Idem.
190 Idem.
191 Idem.
192 Idem.
193 Idem.
• In Sweden, the legislation establishes a fine not exceeding 10 percent of the annual turnover of the trader, and the penalty does not have to exceed €1 million.¹⁹⁴

If the sanctions are effective, proportionate and restrictive, traders will not try to violate consumer rights. An enforcement mechanism, which clearly defines the amount of fine for a violation, is more effective than when the court determines fines.¹⁹⁵

The EU’s existing consumer rights law, including a new regulation on consumer protection cooperation,¹⁹⁶ gives a choice to the Member States to define an authorized entity for imposing fines, either an administrative body or court.

Some EU consumer protection associations support the maximum amount as fines set against the turnover of the trader, however, there are companies that disagree with this method of calculating fines. A strict penalty does not guarantee better protection for consumers. A good example is Poland, which has the highest fine in the EU—more than 10 percent of the annual turnover (the highest imposed fine was €6.7 million, though they have the lowest indicator of enforcement. In contrast, Luxemburg, the United Kingdom and Austria are characterized by the highest enforcement indicator, but fines are significantly lower in these countries.¹⁹⁷

In some of the Member States of the European Union, such as France and Belgium, criminal responsibility for violation of consumer rights is envisaged.¹⁹⁸ Generally, the EU does not oblige Member States to introduce criminal liability. However, the EU approach envisages introduction of public enforcement for consumer rights protection, even though consumer rights protection falls under private law.¹⁹⁹

This means that Georgia is free whom to entrust enforcement of the law, public authorities or civil society organizations. The EU law only requires that such a mechanism be introduced to protect consumer rights, which will stop unfair commercial practices or the use of unfair contractual terms. It is for Georgian government to decide over the appropriate sanctions, including amount of fines, in line with the principles of equivalence and effectiveness.

6.2. Definition of Problem

Enforcement mechanism of consumer rights protection significantly defines enjoyment of consumer rights. Determining the mechanism of protection of rights and ways of enforcement depends on the legal system in place in the country, as well as on the economic and social aspects.

¹⁹⁶ Idem.
¹⁹⁸ Idem.
¹⁹⁹ Idem.
From a legal perspective, it is important to identify the authorized entity that investigates whether consumer rights were infringed; who is responsible for defining that consumers rights were infringed; who has the right to determine liability for breach of consumer rights; What is the amount of sanction?

While setting the amount of a fine, into consideration should be taken existing legal system of the county, as well as scope of liability for the protection of consumer’s rights on other legal grounds. For defining the sanction, it is crucial to examine both the limits of sanctions existing in a specific country and examples of other countries. Because, a country might lose companies active in the market if high sanctions are introduced. From an economic perspective, while determining a sanction, it is important to consider the economic sustainability of the businesses and possible impact on their further operation. It should be taken into consideration, that business perceives the sanction imposed for protection of consumer rights as a threat and that it is a punitive measure.

The complexity of consumer protection mechanisms may lead to consumer inactivity; Thus, awareness and involvement of citizens is important for the enforcement of consumer rights.

6.3. Existing Legal Framework and Alternatives

6.3.1. Basis for the Enforcement of Consumer Rights

According to the law on Consumer’s Rights Protection, acting till 2012, the Anti-Monopoly Agency 200 was authorized to control the enforcement of consumer protection legislation. Under the existing law, consumer’s rights can be protected by applying to the court. It means that the individual consumer has to go to court, garner the energy, money for the enforcement of the rights. Outside the civil code, there are three ways for the collective enforcement of consumer rights. These rights are derived from the 2012 Law on “Product Safety and Free Movement”, from Administrative Violations Code and the Criminal Code of Georgia. Each one is discussed in the following chapters.

**Consumer rights protection through civil law**

In order to provide a deeper insight into how the courts operate, it seems useful to look into individual litigation highly relevant to consumers. This is true even if the emphasis of the chapter lies with collective enforcement.

First, it is important to identify the type of claim that can be submitted by a consumer and the ground. Each legal ground empowers the consumer with a different claim.

The Civil Court examines consumer disputes by the Civil Procedure Code of Georgia. A special procedure for adjudication of consumer disputes does not exist.

The CCG envisages a special rule on the liability for damages caused by a defective product. Under the rule, the manufacturer of a defective product shall be liable for the damages caused by the product, regardless of whether a contract was concluded between the par-

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ties. Under Article 1014 of the CCG, liability for damages extends to damage resulting from death, bodily injury or disability. A legal ground for a consumer’s claim could be a general tort. According to the CCG, imposing liability emerges from torts, where the conduct must be faulty; Article 1009 CCG envisages liability without fault.

Provisions regulating a sales contract empower a consumer with the right to request the replacement of a defective product and reduction in the price. A consumer has the right of withdrawal from the contract under Articles 352 and 405. If it can be proved that the party does not fulfill his/her obligations and would not replace a defective product with another product free from defects, the party may withdraw from the contract under Article 352 of the CCG. Whereas, if one of the parties to the contract withdraws under conditions prescribed by Article 405 of the CCG, then the received performance and benefit shall be returned to the parties. Herewith, in case of withdrawal from the contract (Article 407 of the CCG), the party may claim compensation for damages incurred by him/her because of the non-performance of the contract.

Burden of proof is the necessary pre-condition for requesting compensation for damage. Article 1012 CCG prescribes that the burden of proof shall rest with the damaged party.

The case-law is interesting for the research because it shows how different customers can appeal against the seller under the CCG. According to the case files of June 8, 2018, Case No. 38-38-2018, the plaintiff – the buyer and the defendant – the seller has signed a purchase contract for corn seed material. The buyer stated that the subject matter of the sale did not meet the agreed quality. A similar lawsuit was filed by four plaintiffs. The court heard each plaintiff’s claim independently. The Court of Cassation held that one part of the product (seed material PR35F38) was defective in such a way that it entitled the buyers to withdraw from the agreement. Furthermore, the subject of this sales agreement (the sold goods) did not have the features (defective product) with which to conclude that this agreement was detrimental for the buyer.

The Cassation Chamber satisfied each plaintiff’s claim regarding withdrawal from the sales agreement and reimbursement of the second buyer with the purchase price. The claim for damages, however, was rejected.

**Addressee of the consumer’s claim, manufacturer or seller**

For consumer rights protection, it is important to define the addressee of a claim and determine the liable person, who is accountable to consumers. The major problem is dividing responsibilities between the manufacturer and seller/distributor.

According to the CCG, the manufacturer of the defective product is responsible for the damage. Article 1011 of the CCG defines manufacturer as a person, who manufactured a finished product, the major part or a part of the product. The manufacturer is also every person who, with his/her name, trademark or other distinguishing feature on the product, presents himself/herself as a manufacturer.

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202 Idem.
203 Judgment №ა-38-38-2018, June 8, 2018, of the Chamber of Civil Cases, Supreme Court of Georgia.
Under Article 6 of the Product Safety and Free Movement Code, a manufacturer shall be liable for the damage caused by defective products. The person who placed products in the market is considered as its manufacturer, even in cases when the manufacturer cannot be identified. According to the code, a manufacturer is “a manufacturer of a finished product, raw material or any component of a product, anyone who modifies the product, as well as anyone whose name, trademark or other distinguishing mark is affixed to the product and who presents himself/herself as a manufacturer of the product.”

For the research, it is interesting to analyze court practice regarding the liability of the manufacturer.

The Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia, on 13 March 2007, issued a decision related to the manufacturer of a defective product. According to case materials, a plaintiff purchased in a store a loaf of bread manufactured by LLC “I”. After consuming the product, the plaintiff was poisoned and had to undergo treatment. The plaintiff submitted a complaint against LLC “I”. The defendant did not acknowledge the complaint, based on the reasoning that it was not LLC “I”’s fault that the plaintiff was poisoned, and the LLC should not be liable for compensating the damage.

The Supreme Court has held that under Article 1009 (1) of the CCG, the manufacturer of a defective product is liable for damages caused by that product, whether or not they were in contractual relationship with the victim. The court in its reasoning used rules for liability for damage caused by defective products, which establishes strict liability for damages caused by defective products.

“The Product Safety and Free Movement Code” distinguishes between the manufacturer and the distributor. According to the code, the liability is split between the manufacturer and the distributor. Obligation to warn about the risks related to the product rests with the manufacturer and the distributor is obliged to provide a third person with further information.

Until 2012, the liability of the seller, related to the damage caused by a defective product, was envisaged by the law of Georgia on Consumers’ Rights Protection. An enterprise, organization, institution or a citizen, who sold a product on the basis of a sales agreement, was deemed to be a seller. Under the law, the seller is liable to sell to the consumer a product that meets the standard requirements and is in conformity with the terms of the agreement.

Article 3.1 prescribes that the producer is obliged to ensure the possibility of using the product as intended, which means that the producer is obliged to produce a safe product. Under Article 9, it is defined that, for impairing consumer rights, the seller shall be liable under this law.

**Consumer rights protection under administrative law**

Under the Administrative Code of Georgia, it is possible to invalidate/annul an administrative-legal act through administrative proceedings, which violates consumer rights and

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205 Judgment №ა-751-1118-06, March 13, 2018, of the Chamber of Civil Cases, Supreme Court of Georgia.

206 *Idem.*
the consumer is entitled to request compensation for the damages caused by the above-mentioned act.\textsuperscript{207}

The Courts of Administrative Cases of the General Court of Georgia adjudicates such type of complaints. For example, the Administrative Chamber of the Supreme Court of Georgia analyzed the request of the Georgian National Communications Commission to annul the individual administrative-legal act.

According to the complaint, the National Commission on Communication considered that LLC ‘X’ was providing consumers with mobile services without written agreements between them. The LLC ‘X’ breached paragraph 4 of Article 62 and paragraph 2, sub-paragraph “b” of Article 19 and paragraph 1 of Article 105 of the regulation on the Rules of Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications, which formed the legal ground for imposing administrative liability.\textsuperscript{208}

The Court of Cassation (Supreme Court of Georgia) shares the arguments of the cassation complaint that, in the light of the factual circumstances of the case, X Ltd had provided mobile phone services to customers without written agreements and thus breached paragraph 4 of Article 62 and paragraph 2, sub-paragraph “b” of Article 19 and paragraph 1 of Article 105 of the regulation on the Rules of Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications, which formed the legal ground for imposing administrative liability.\textsuperscript{209}

It should be noted that the Administrative Offences Code prescribes provisions aimed at consumer protection. Under Article 1581 of the code, intentional violation of consumer rights that resulted in property loss shall result in a fine from ten to 100 times of the minimum wage.\textsuperscript{210}

\textbf{Consumer protection mechanisms under the Law of Georgia on Advertisement}

This law regulates legal relations arising in the production, placement and distribution of advertising on the Georgian commodity (work and services) and financial markets (including the securities market). The law aims at developing a fair competition in the field of advertising, protecting public interests, rights of advertising subjects and consumers, preventing and eliminating improper advertising.\textsuperscript{211}

Under Article 17 of the Law of Georgia on Advertisement, local self-government bodies within their competence are entitled to impose an administrative sanction for the violation of the Georgian legislation on advertisement.

Besides the local self-government bodies, this article grants control powers to another body – the Georgian National Communications Commission. Namely, the Georgian National


\textsuperscript{208} Judgment №бс-1073-1067(კ-17), April 19, 2018, of the Chamber of Administrative Cases, Supreme Court of Georgia.

\textsuperscript{209} Idem.


Communications Commission is responsible for controlling the timing, placement and means of broadcast advertising as well as the compliance of broadcast advertisement distributor with the restrictions in broadcast advertising specified in the Laws of Georgia on Broadcasting and on Advertisement and other legislative acts, which within the scope of its competence:
(a) decides on partial or full suspension of improper advertising and carrying out counter-advertising;
(b) authorized to impose sanctions on violators as provided by the legislation;
(c) authorized to appeal to relevant bodies to file a criminal case.

Protection of consumer rights under criminal law

Under Article 201 of the Criminal Code of Georgia, criminal liability is imposed for false advertising\(^{212}\). The article prevents unfair competition and protects the interests of consumers\(^{213}\).

False advertising is one of the forms of unfair competition. The direct object is a relationship, which regulates healthy competition between entrepreneurs.

Criminal liability for false advertising is found only if it caused significant damage. Damage is found to have been caused to consumers, service customers and different economic agents if false advertising damaged their business reputation, decreased demand for their products, services, etc. False advertisements are those that are misleading in material respect. Offenders are persons who ordered advertising, producers of an advertisement and distributors\(^{214}\).

Article 219 of the Criminal Code of Georgia enacts liability for the deception of consumers. The code envisages the means of deceiving the consumer, namely, deceiving the consumer in the size, weight or calculation, or misleading the consumer about the characteristics or quality of goods. The place of conviction of the crime is the premises of those organizations which offer goods for sale and provide services to the population, other places where these organizations offer services to consumers, as well as places for individual entrepreneurial activities in trade and service sector\(^{215}\).

A crime could be committed by employees of organizations, who offer goods for sale or provide services to the population, as well as individual entrepreneurs in trade or service sectors, or persons employed at such organizations by contract, namely, sellers, drivers, etc\(^{216}\).

The above-mentioned crime is punishable by a fine, in-house arrest or imprisonment up to two years\(^{217}\).

Article 251 of the Criminal Code envisages liability for production or sale of goods of low quality or not conforming to safety requirements or delivery of low-quality services. In particular, the following are considered criminal offenses: production or sale of low-quality goods, delivery of low-quality services, illegal issuance or use of official documents that confirm compliance of goods, work or services with relevant safety requirements.


\(^{213}\) Idem.


\(^{215}\) Idem.

\(^{216}\) Idem.

\(^{217}\) Idem.
A mandatory characteristic of the objective part is the harm that is inflicted to human health. Therefore, it is necessary that causal link between the actions envisaged by the law and the inflicted damage exists.\textsuperscript{218}

According to the Code, a citizen, a foreigner or a non-citizen could commit the crime, who manufactures or sells low-quality goods that do not conform to safety requirements. As for the issuer of official documents confirming compliance of goods with quality requirements, he/she could be only an employee of the certification body, who is authorized to conduct certification and issue a certificate.

Such an action is punished by imposing a fine, in-house arrest from six months up to one year or imprisonment up to two years.\textsuperscript{219}

False advertising is not in the category of crimes, according to the information provided by the Ministry of Internal Affairs and the National Statistics Office.\textsuperscript{220}

Analysis of the norms prescribed by the legislation of Georgia shows that the way for the enforcement of consumer rights is to address the court. By the subject matter of the case, a consumer has the right to address civil, administrative or criminal courts. Alternative dispute resolution mechanism could also be used for resolving consumer disputes. The Civil Procedures Code of Georgia envisages the possibility of dispute resolution through court mediation.

**The Competition Agency**

The Competition Agency was established under the Law of Georgia on Competition, in 2014. The Competition Agency is independent legal entity of public law, headed by the Chairman appointed by the Prime Minister of Georgia.

The Competition Agency is accountable to the Prime Minister of Georgia and the general public.\textsuperscript{221} The main functions of the Competition Agency are as follows: monitoring and analyzing the goods and services markets to detect distortion of competition and unfair competition; the Competition Agency is authorized to start an investigation on the basis of appeals and/or complaints submitted to it or its own initiative.\textsuperscript{222}

After examining a case, the Competition Agency takes a decision, which can be appealed by parties. The decision of the Competition Agency can be appealed at the court according to administrative proceedings.

The Competition Agency, in case of violation Georgian competition law, is authorized to impose sanctions on economic agents. On the other hand, the Competition Agency is entitled to raise the issue with relevant authorities about the liability of the manager who has violated the legislation of Georgia.

\textsuperscript{218} Idem.
\textsuperscript{219} Idem.
\textsuperscript{221} Law of Georgia on Competition, Article 4. Available at: \url{https://matsne.gov.ge/ka/document/view/1659450?publication=6}.
\textsuperscript{222} Idem.
6.3.2. Comparative Analysis of Enforcement Mechanisms for Consumer Rights Protection

**Comparative experience on the example of Member States**

When establishing a mechanism for the enforcement of consumer rights, it should be taken into consideration that consumers must have effective mechanisms in place. On the other hand, it is crucial that consumer rights enforcement mechanisms shall not transform into mechanisms detrimental to business. To achieve this balance, it is important to assess what rights administrative bodies in the field of consumer rights will have. This chapter examines the functions and mechanisms of administrative authorities overseeing the protection of consumer rights on the example of different countries.

In the sphere of consumer rights protection, administrative institutions vary regarding independence from the government, nature and objectives of enforcement mechanisms and the ways the institutions could offer for resolving a consumer dispute.

There could be one institution that shall be responsible for supervising consumer rights protection, or there could be several consumer rights protection administrative bodies in specific sectors. The functions of the administrative body could include not only supervision but also the function of protection of consumer interests.

It should be noted that agencies may have the right to address the relevant authorities and request elimination of the violation, without harm to be caused. Such rights can be granted to non-governmental organizations and consumer unions.

For the protection of consumers, can also be elaborated self-regulation mechanisms. Allowing self-regulation does not preclude the consumer from using other enforcement mechanisms.

Regarding effective use of enforcement mechanisms by an administrative body, the grounds shall be defined, which enable the body to initiate an action. It is also important to define whether the institution is empowered to determine the degree of the sanction. (For example in the USA, federal regulatory agencies, for instance the Federal Trade Commission and Product Safety Commission, control the market and are empowered with direct enforcement mechanisms to ensure consumer protection.

In Japan, consumer rights protection mechanisms are not concentrated within one concrete administrative institution. This function is distributed among specialized agencies active in various sectors.

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225 Idem.

226 Idem.


229 Idem.
Supervisory agencies on consumer rights are entitled to define the degree of sanctions in Bulgaria, China, France, Hungary, Italy, Serbia, Spain, the Netherlands and Turkey.

Regardless of whether an agency is entitled to impose a sanction, a sanction can be appealed in the court. Within the European Union, it is mandatory that administrative decisions taken by administrative bodies are subject to appeal.230

The following table shows enforcement mechanisms in different countries.231

Table № 31.

<table>
<thead>
<tr>
<th>Country</th>
<th>Enforcement mechanism</th>
<th>Assessment</th>
<th>Weaknesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>The UK</td>
<td>Financial fines are imposed by the Competition Agency through addressing criminal courts.</td>
<td>Generally, is effective, however, requires an administrative recourse.</td>
<td>Fines defined by criminal courts are low and are not effective enough.</td>
</tr>
<tr>
<td>Australia</td>
<td>Imposing civil liability by the Competition Agency through addressing civil courts.</td>
<td>Frequently, effective regarding limiting illegal actions.</td>
<td>Except for grave cases, a financial fine is not imposed.</td>
</tr>
<tr>
<td>Belgium</td>
<td>Financial fines are imposed by Consumer Protection Agencies. Criminal liability is also prescribed.</td>
<td>Simple and a low budget financial sanction</td>
<td>Limited resources</td>
</tr>
</tbody>
</table>

According to Consumer Analyst’s opinion232 the use of penalties and other strict forms of breach of consumer rights is justified if it is obvious that the business is deliberately trying to deceive consumers. In the execution of rights, businesses’ opinion should be taken into consideration and business production capacity must be studied.233

The fact that a certain country can enact several enforcement mechanisms should be taken into account. There is a big difference among legal systems as well. New Zealand, for instance, envisages the possibility of imposing civil fines, on the one hand, and imprisonment as well as administrative enforcement mechanisms, on the other hand. South Korea, for example, does not have any of the above-mentioned mechanisms.234

The table below depicts existing sanctions. The most broadly used sanction is an order (90 percent). The majority of countries envisage civil penalties (60 percent) and criminal fines (57 percent).235

---

231 Idem.
232 Idem.
233 Idem.
### Table № 32.

<table>
<thead>
<tr>
<th>Types of sanctions</th>
<th>Orders</th>
<th>Civil penalties</th>
<th>Criminal fines</th>
<th>Consumer award</th>
<th>Conf.</th>
</tr>
</thead>
<tbody>
<tr>
<td>90%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>60%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>57%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>50%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 6.3.3. EU Requirements

Both enforcement structures and sanctions vary in the Member States. Various sanctions have been imposed for the infringement of the rights provided by the Unfair Commercial Practices Directive. for the infringement of

Sanctions vary from € 9000 (Lithuania) to €65 million (Hungary). Eight Member States define a fine based on the annual income of the seller; in Lithuania – 3 percent of annual income; and 10 percent of annual income in France, Poland the Netherlands, Latvia and Sweden. In some countries, the maximum ceiling for sanctions is set. Imposed fines, according to countries, are demonstrated below:

### Table № 33. Imposed fines in the Member States

<table>
<thead>
<tr>
<th>Country</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovakia</td>
<td>€ 3 000</td>
</tr>
<tr>
<td>Romania</td>
<td>€ 11 000</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>€ 25 000</td>
</tr>
<tr>
<td>Portugal</td>
<td>€ 25 000</td>
</tr>
<tr>
<td>Lithuania</td>
<td>€ 34 754</td>
</tr>
<tr>
<td>Latvia</td>
<td>€ 50 000</td>
</tr>
<tr>
<td>The Czech Republic</td>
<td>76 701</td>
</tr>
<tr>
<td>Denmark</td>
<td>€ 135 000</td>
</tr>
<tr>
<td>Malta</td>
<td>€ 195 000</td>
</tr>
<tr>
<td>Sweden</td>
<td>€ 200 000</td>
</tr>
<tr>
<td>The Netherlands</td>
<td>€ 300 000</td>
</tr>
<tr>
<td>France</td>
<td>€ 500 000</td>
</tr>
<tr>
<td>Italy</td>
<td>€ 5 000 000</td>
</tr>
<tr>
<td>Poland</td>
<td>€ 6 708 619</td>
</tr>
</tbody>
</table>

The highest fine is imposed because of the violation of the Unfair Commercial Practices Directive. The amount of the fine was €5 million, which was imposed by the Competition and Consumer Protection Agency of Italy on Volkswagen. It is worth mentioning that the US also imposed a fine of €4 billion on Volkswagen that is 800 times more than the amount of the fine imposed by Italy.

This data proves that, while determining a fine, both the existing system in a country and the systems that are used by other countries should be taken into account.

6.3.4. Proposed Alternatives

6.3.4.1. Draft Law Proposal

According to the Draft Law, protection of consumers' rights and legal interests on the territory of Georgia, prevention of violations of rights and promotion of restoration of violated rights, revealing violations and reacting according to the law to the violations is the responsibility of the Competition Agency, the independent legal entity of public law237 (which, as noted above, will in future probably will be renamed the Competition and Consumer Rights Protection Agency).

According to the Draft Law, the Competition Agency has some authorities, including, to react accordingly, based on the examination of the application. In case the Competition Agency has information that a specific person/group of persons could be violating the rights of a group of consumers, it has the right to examine such possible violations.

Rights of both individual consumers as well as groups of consumers can be violated. Under the Draft Law, cases of collective breach of rights can be reviewed and enforced. This does not exclude an individual person from appealing against damage involving a group of consumers.

After reviewing cases of infringement of consumers’ rights, reasons which caused or could lead to infringement of the rights of a consumer group, the Competition Agency takes its decision and defines the time frame for the trader, requests the restoration of infringed rights and the suspension of actions that are considered to infringe consumer rights, and/or are prohibited under this act. When defining the time frame, nature, severity and duration of the breach should be taken into account.

The trader is responsible, within five working days from the defined date, to inform the Competition Agency regarding the restoration of the rights breached by him/her or on activities about the discontinuation of the actions that breached consumer rights. The Competition Agency also monitors the decisions taken by the traders.

In case of not fulfilling the Competition Agency’s notice on time or in case of inadequate performance the Competition Agency will impose the fine on the trader. To be precise, a fine will be imposed on the trader, which does not have to exceed a certain percentage of the annual turnover of the trader during the previous financial year. At this stage, the percentage is not defined, which obviously cannot be considered as an adequate sanction.

237 Draft law “Article 27 – The Authority of Competition Agency in the Field of Consumer Rights”.
In case of repeat violations within 12 months, the trader shall be penalized, the amount of which shall not exceed a certain percentage of the annual turnover of the trader during the previous financial year, which is not defined in this case either.  

Due to the importance of the proportionality of the sanction against an infringement, it is necessary to correctly define the turnover of a trader in case of sanctions. However, due to the bilateral interests, it should not be disproportionately high or low.

Apart from the fine, the trader will be obliged to comply with the Competition Agency’s decision/warning.

6.3.4.2. Alternative Offer

It stems from the Law of Georgia on Consumer Rights Protection that a trader will be fined in case of non-fulfillment of the Competition Agency’s decisions or in case of inadequate fulfillment in the time frame set by the Competition Agency. The amount must be at least 4 percent of the annual turnover of the trader during the previous financial year.

The above-mentioned alternative is based on the proposal of the European Commission, which discusses how consumer rights are enforced in the Member States. According to the European Commission, it is recommended to prescribe 4 percent of a trader’s annual turnover as a sanction for the violation of consumers’ rights. Member states are entitled to impose sanctions higher than 4 percent.

Under Article 33 of the Law of Georgia on Competition, a sanction is defined as follows: “In cases provided in Articles 6 and 7 of this law on the economic agent (except for economic agents in the regulated sphere of economy), a fine shall not exceed 5 percent of the annual turnover during the previous financial year.”

Under the EU directive, sanctions envisaged in the Law of Georgia on Competition Law and according to the ACT study results, the amount of proposed alternative sanction is as follows:

In case of non-compliance with the Competition Agency’s decisions or in case of improper fulfillment within the time frame defined by the Competition Agency, the trader should be fined and the fine shall not exceed the following percentages of annual turnover of the trader during the previous financial year:

- 4 percent – in case of small businesses;
- 5 percent – in case of medium businesses; and
- 6 percent – in case of large businesses.

238 Article 31. Sanctions of the draft law. (1) In case of non-fulfillment of the Agency’s decisions or in case of inadequate fulfillment in the time frame defined by the Agency, the trader should be fined, the amount of which does not have to exceed a certain percent of the annual turnover of the trader during the previous financial year. (2) In case of repeat violations within 12 months, the seller shall be fined, the amount of which shall not exceed a certain percent of the annual turnover of the trader during the previous financial year. (3) Imposed fine does not relieve the trader from the responsibility to fulfill the Agency’s decisions.


240 Idem.

In case of repeated violations within 12 months, the trader shall be penalized, the amount
of which shall not exceed the following percentages of annual turnover of the trader during
the previous financial year:
• 8 percent – in case of small businesses;
• 10 percent – in case of medium businesses; and
• 12 percent – in case of large businesses.

6.4. Impact Assessment and Data Collection

From the ACT Attitude Survey, it is clear that consumers, business representatives, and
experts have different views on sanctioning business entities.

The formation of a supervisory body that deals with complaints from consumers and the
right to sanction a company is agreed on by the majority of consumers. Entrepreneurs are
more critical of creating a control body of this kind; it should be noted that street sellers are
the most vocal among them.

In the qualitative component of the research, critical attitudes were revealed about the cre-
ation of a controlling body. The existing Competition Agency believes that the formation of
a new body is cost-related and not justified as the existing agency can combine these func-
tions by changing its liability and enforcement mechanism. Note that the current model of
the draft regulation envisages granting additional competence to the existing Competition
Agency and at the moment does not contemplate the creation of a new body.

There are different positions among state agencies and the non-governmental sector on the
confidentiality of the cases discussed by the Monitoring Agency. The position of the Ministry
of Economics and Sustainable Development is that the content of complaints and relevant
decisions should not be made public because, due to the sensitivity of the issue, businesses
can be adversely affected. The NGO sector, whose representatives believe that the publicity
of information will facilitate the enforcement of standards and help the parties to adapt to a
new reality, takes the opposite position.

About the source of financing of the controlling body, the state and companies share the
view that the financing of the controller cannot be linked to the fines, as this can be the
basis for corruption and tensions between business and the state. Different opinions on the
basis for fines have been noted. While consumers and sellers agree about a verbal/written
warning being issued before a trader is sanctioned, consumers are more critical and believe
that a cash fine should be imposed on a second violation of consumer rights. Traders be-
lieve that a fine should be imposed only in case of a third violation. Also, consumers approve
of doubling the fine in case of repeat violations, which business representatives oppose.

The traders agree on diversified sanctions where the amount of a fine depends on the busi-
ness category. They also agree more closely that the fine should be applied to annual profits
rather than to annual turnover or the fine should be a fixed amount. Interesting opinions
on this subject have been observed in the qualitative part of the research; the office of the
Business Ombudsman believes that the amount of the fine corresponds to the category of
violations. They believe it is wrong to attach the fine to annual turnover or to impose a fixed
fine for all types of infringements. The state structure shares the same opinion and they believe that the amount of the fine should be determined by the court, within the limits provided by the law, based on the category of violations.

With regard to the sanctioning process, the attitude of consumers and entrepreneurs is similar. The majority (79 percent and 80 percent, respectively) think that, in case of violation of consumer rights, there should be a written/verbal warning before a monetary sanction. 48 percent of consumers think that a monetary penalty should be placed on the second case of violation of consumer rights. According to the business representatives themselves, a financial sanction should be placed on the third case of violation of consumer rights (42 percent).

The table below shows the assessment of the activities of the state controlling body.

### Table № 34

<table>
<thead>
<tr>
<th></th>
<th>Consumers’ opinion</th>
<th>Buisnesses’ opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agree</td>
<td>82%</td>
<td>36%</td>
</tr>
<tr>
<td>Neither agree nor disagree</td>
<td>13%</td>
<td>19%</td>
</tr>
<tr>
<td>Disagree</td>
<td>45%</td>
<td>5%</td>
</tr>
</tbody>
</table>

The table below shows the necessity of warning before a financial sanction:

### Table № 35

<table>
<thead>
<tr>
<th>A monetary sanction should be proceeded with a written/verbal warning</th>
<th>79%</th>
<th>80%</th>
</tr>
</thead>
<tbody>
<tr>
<td>It is desirable to have a written/verbal warning before a monetary sanction</td>
<td>13%</td>
<td>4%</td>
</tr>
<tr>
<td>It is not necessary to have a written/verbal warning before a monetary sanction</td>
<td>5%</td>
<td>10%</td>
</tr>
<tr>
<td>Hard to answer/don't know</td>
<td>3%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Regarding the scheme of financial sanction, it is obvious, that consumers have more critical demands. The table below shows the sanction scheme. As the table shows, 63 percent of surveyed consumers think that in case of repeated violation of consumer rights, a financial penalty should be determined by doubling the amount of the first fine, while only 25 per-
percent of entrepreneurs favor the introduction of such a policy. In addition, the vast majority (80 percent) of consumers thinks that in case of violation of consumer rights, the penalty amount must be increased according to the category of business (small, medium, large); The same position is supported by every second entrepreneur (50 percent).

Table No 36.

<table>
<thead>
<tr>
<th>In case of repeat violation of consumer rights by businesses penalty should be double the amount of the first sanction</th>
<th>In case of violation of consumer rights the penalty amount must be increased according to the category of business (small, medium, large)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumers’ opinion</td>
<td>Buisnesses’ opinion</td>
</tr>
<tr>
<td>63%</td>
<td>81%</td>
</tr>
<tr>
<td>25%</td>
<td>50%</td>
</tr>
</tbody>
</table>

Entrepreneurs’ opinions of the details of the sanction scheme were further studied. It is noteworthy that businesses require a diversified approach in case of regulation. Specifically, most of the entrepreneurs (77 percent) think that small, medium and large businesses should be sanctioned differently. Entrepreneurs in general believe that the amount of financial sanctions should not be tied to a business’ turnover rate and it is more appropriate if it is based on annual profit.

The table below shows the attitudes towards the rule of defining financial sanctions:

Table No 37.

<table>
<thead>
<tr>
<th>A percentage share of a sanction should be different for small, medium and large businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Buisnesses’ opinion</td>
</tr>
<tr>
<td>A business should pay a monetary sanction based on its annual profit</td>
</tr>
<tr>
<td>A sanction should be predetermined amount of money</td>
</tr>
<tr>
<td>A business should pay a monetary sanction based on its annual turnover</td>
</tr>
<tr>
<td>A business should pay a monetary sanction of 5% if its annual turnover</td>
</tr>
</tbody>
</table>

The study of consumer protection enforcement mechanisms revealed that it is important to determine the liability of traders in the event of collective harm to consumers. However, imposing a fine on the trader in the event of collective harm to consumers is justified by the Competition Agency and is in compliance with the practice of the countries within the European Union.
It is better for the Draft Law to distinguish between the amount of the fine for small and large traders. By imposing an equal penalty, the purpose of the Draft Law may be fulfilled only for small traders, but for a large trader, the amount of the fine may be negligible and not cause the changes, which are the purpose of imposing the fine.
CHAPTER VII.
LINKING PROBLEMS DISCUSSED IN THIS REPORT WITH THE PRINCIPLES OF THE 2030 AGENDA

7.1. Introduction
The introduction of the report bridges the Draft Law with the goals of the 2030 Agenda. The RIA Team found no direct link or links between selected problematic parts of the Draft Law and specific goal (goals) of sustainable development. However, taking into consideration that the 2030 Agenda is more than just putting together 17 goals, in essence it aims at the principle\textsuperscript{242} of sustainable development, the following chapter is dedicated to identifying at least some connections between problems and principles. Also, this chapter describes the links between the same problems and the issues of sustainable consumption.

7.2. The Principles of the 2030 Agenda
The principles of the 2030 Agenda are as follows:
• The principle of \textit{universality}: The agenda highlights the responsibility of each state in the process of its implementation, which means sustainable planning of political processes, sustainable use of resources and capabilities, and equally applies to all countries, regardless of their development status;
• The principle of \textit{“leaving no one behind”}: For the effective implementation of the 2030 Agenda, special attention should be paid to so called vulnerable and the most marginalized groups. This is natural that vulnerability criteria of each state have to be defined based on concrete factors and conditions, as well as with regard to particular problems;
• The principle of following an \textit{integrated approach}: The implementation of the 2030 Agenda is impossible if specific goals of sustainable development are tackled separately. The agenda is inseparable, that eliminates reaching of one goal, at the expense of another. The consideration of the principles of the agenda must establish a new standard of policy planning, where social, economic or environmental impacts will be equally evaluated and analyzed;
• The principle of \textit{shared responsibility}: the successful implementation of the 2030 Agenda depends on the participation of all counterparts, i.e., apart from government and its institutions, civil society, academic sector and each citizen should contribute in its per-

formance. Transformation requires not only the expenditure of state resources but also emphasizes the importance of activating civil society and private sector; and

- The principle of **accountability**: With the 2030 Agenda, governments commit to being accountable first and foremost to their citizens or people. Apart from the intrinsic value of accountability, accountability also makes it more likely that people support a policy and trust the government.

### 7.3. The Principles of the 2030 Agenda and Problematic Issues as Identified in the RIA Report

In practice, while discussing compliance of concrete political decisions (for example, Draft Law, concept, etc.) with the principles of 2030 Agenda, not all the principles might have equal relevance. Different weighting and consideration of the principles should be adequately explained and justified.

For the purpose of this RIA, the RIA Team has placed special emphasis on most principles of the 2030 Agenda. The table below outlines the links between the problematic issues developed in the RIA and the principles, with a view to illustrate the extent to which the Draft Law of Georgia on Consumer Rights Protection contributes to meeting the SDGs in Georgia.

<table>
<thead>
<tr>
<th>Principles of the 2030 Agenda</th>
<th>Approaches of the Draft Law</th>
<th>Current Situation/Findings of RIA report</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Universality</strong></td>
<td>The Draft Law on Consumer Rights protection embeds the international dimension, since it was elaborated in full consideration of relevant EU directives governing the consumer sphere. The Draft Law is a result of the Association Agreement between Georgia and the EU.</td>
<td>Both with regard to the issue that it highlights and the findings it presents, the RIA report draws from and relies on not only the policy and legal instruments but also the practice and experience currently developed at the EU level and in Member States. Consequently, the findings of RIA the report can be exemplary for other countries with the same or similar linkages and obligations that Georgia currently has with the EU.</td>
</tr>
<tr>
<td><strong>Leaving No One Behind</strong></td>
<td>Subparagraph “e” of Article 3 of the Draft Law defines the consumer as the average consumer. In unfair commercial practice, however, the Draft Law distinguishes between the average and the vulnerable consumer. However, in the context of unfair commercial practices, the Draft Law also sets out the basic criteria for consumer vulnerability. Vulnerability is based on (1) mental condition or (2) physical ability and/or (3) age (Article 22).</td>
<td>In the process of implementation of the abovementioned report, we came to the conclusion that the separation of the Georgian consumer into average and vulnerable consumer is (a) crucial and (b) that the Georgian consumer is vulnerable in the entire consumption sphere; therefore, the vulnerable consumer standard should guide the Draft Law’s approach to unfair commercial practice (Chapter II), access to information on product (Chapter III), repudiating a contract (Chapter IV) and the right to use a two-year</td>
</tr>
<tr>
<td>Principles of the 2030 Agenda</td>
<td>Approaches of the Draft Law</td>
<td>Current Situation/Findings of RIA report</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-----------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>guaranty period (Chapter V). In each chapter the problem is examined from the perspective of the vulnerable consumer. By doing so, the RIA report accounts for the need to consider and implement the “leave no one behind” principle. For the process of implementation of the law, the second category traders can be considered as groups that are left behind. (see sub-chapters 5.2 and 5.3 of Chapter V).</td>
</tr>
<tr>
<td>Integrated Approach</td>
<td>The goal of the Draft Law is to guarantee a high level of consumer protection. The Draft Law aims at protecting the economic interests of consumers. The Draft Law does not address social aspects (e.g. health and safety) or environmental protection. The scope of the Draft Law is not the management of such risks; rather, the scope is on trade and commercial relations.</td>
<td>Chapter II of RIA report reports on unfair commercial practices from the perspective of vulnerable consumer. The problem is analyzed in light of the legal and socio-economic possible impacts. Expected social economic impacts are equally assessed in Chapters IV and V of the RIA report. However, the environmental impacts are not detailed in this RIA report, although some explanations are provided in Section 7.4 of this chapter.</td>
</tr>
<tr>
<td>Shared Responsibility</td>
<td>The Draft Law defines the responsible body for the enforcement; it will be the Competition Agency. The rights and responsibilities of the competition authority, including responsibility of reporting are spelled out.</td>
<td>The RIA report does not assess whether and to what extent the Draft Law respects the shared responsibility principle. The RIA Team recommends carrying out a retrospective assessment (ex-post evaluation) on this issue.</td>
</tr>
<tr>
<td>Accountability</td>
<td>Under Article 36 of the Draft Law, the Competition Agency is obliged to submit to the Parliament an annual report on the activities carried out in the field of consumer rights, which is public and is published on its website.</td>
<td>The RIA report does not assess whether and to what extent the Draft Law respects the accountability principle. The RIA Team recommends carrying out a retrospective assessment (ex-post evaluation) on this issue.</td>
</tr>
</tbody>
</table>

### 7.4. The Link between Problematic Issues and Sustainable Consumption

**Unfair Commercial Practices and Access to Information**

Advertising is usually used to encourage more consumption, the purchase of more products and services; however, advertising also plays an important role in promoting responsible...
consumption. Advertising can be used to provide consumers with information about environmental, social and/or ethical issues related to the product or service.

Though the Unfair Commercial Practices Directive does not directly address issues of sustainable consumption, it is contemplated that such regulations may be added to the Draft Law regarding provision of important information on sustainable consumption, such as, for example, information regarding environmental, social, or ethical aspects of product production, use or waste disposal.

By adding such regulations to the Draft Law, Georgia will take steps to fulfill Task 12.8 of SDG 12; This task commits Georgia, by 2030, to provide relevant information and knowledge to people living in Georgia on sustainable development and a lifestyle in harmony with nature.

The Right of Withdrawal from the Contract

As noted in Chapter 4 of this report, consumers who purchase products at a distance and online have no opportunity to physically inspect products, and to make an informed decision as a result of such an inspection. Accordingly, the right of withdrawal from the contract, without indicating any reason is considered necessary to balancing the rights of the consumer in online sales.

However, in the context of sustainable consumption, the environmental impacts of the right to withdraw from the contract – the cost associated with the return – will be taken into consideration. The producer and seller are aware of these costs, but consumers are usually not.

In case of return, the sold product has to be shipped to the seller; this means extra exhaust of harmful substances in the air (which would not have occurred if the customer had not return the product). With regard to the environmental impact of the returned product, it is worth noting that the returned product (for example, clothes) are often not re-sold and the seller destroys them. This means that, on one hand, materials and energy are wasted to produce the returned product and, on the other hand, the amount of waste in landfills is increasing. If the returned product is destroyed, it must be inspected, repaired and returned to the market; this means the consumption of additional energy and materials.

With regard to the negative impact on the environment of product returns, it is desirable that relevant governmental agencies, organizations working in the field of consumer rights and other stakeholders to conduct consumer awareness campaigns so that consumers understand the environmental consequences of returning a product (“hidden costs of return”), make an informed choice and engage in responsible, reasonable behavior.

Legal Guarantees

In section 5.3.2 of Chapter 5 of this report is provided an experience of Member States based on the example of a 2017 EU-wide consumer regulatory survey. As mentioned in section 5.3.2, one of the reasons for conducting the research was the increase of the so called minimum standard and review of the examples of countries (Sweden, UK, Ireland, Scotland) that go beyond the minimum standard of protection and offer higher standards to the consumers. According to the survey, one of the reasons for which the majority of Member
States agree on an extension of the two year guarantee period, is the reduction of harmful impacts on the environment, as manufacturing of longer-lasting consumer products, will increase the price of the product, but at the same time is directly linked to more efficient use of natural resources, with less waste generation and, in the end, supporting one of the important elements of sustainability, environmental protection.

In the framework of this regulatory survey on consumer sales and the two-year guarantee period, one of the subjects addressed is the term for repair of goods. The survey discusses reasonable terms (one month, 30 day, 15 day, etc.) based on examples from the Member States, within which the consumer is entitled to request repair of an item and the trader has the obligation to repair it. It should be noted that this survey deals only with the legal aspects of the repair/correction timeframe and disregards the impact the repair/correction has or will have on reducing harmful impacts on the environment. We believe that, in line with the principles of the 2030 Agenda, while focusing on the realization of the right to repair goods, more emphasis should be placed on encouraging sustainable consumption.
8.1. Cross-Cutting Issues

The most important findings of the current RIA report can be broken down into four major issues: (a) the Soviet legacy; (b) the existence of two markets; (c) the existence of two types of traders and consumers operating in the respective markets; and (d) the impact of such a divided market on the Georgian society and economy. This concluding section shortly elaborates on these considerations.

Georgia shares the Soviet legacy with a number of the new Member States of the EU. For many years, the state-run economy to a large extent remained in contrast to the concept of a sovereign consumer who is guided by his/her freedom to choose from competing products in the market. Georgian history differs, however, in that the process of adapting to a market-based society was interrupted by a political process which explicitly favored economic efficiency to the detriment of consumer protection, on one hand, and, on the other, which resulted in comparatively advantageous conditions mainly for foreign non-Georgian traders over domestic ones. In the course of this political process, in 2012, the new Georgian consumer law was abolished; consumer awareness was not fostered; and civil society did not develop the possibility to “speak with one voice”. Those developments delayed the process of transforming the society and the economy in which consumer policy and consumer law could have been integral parts of the broad process of democratization. To date, the Soviet legacy helps explain the passive role of the consumer, rather than being an active market citizen, and the distrust (more than deference) of the legal system, the judiciary and the law in general.

The Soviet legacy dictated Georgia’s special path of bringing it to a divided market. On one hand, there is the market of mainly imported consumer goods, which Georgian consumers can buy very much like any other consumer elsewhere in the world (we are referring to common consumption products like cars or iPhones). Commercials tell Georgian consumers the same stories as everywhere in today’s interconnected world, which is natural. On the other hand is the local market where Georgian traders offer their products to domestic consumers. Arguably, a great proportion of such products are counterfeited. They bear labels of famous brands, but in fact they suffer from substandard quality. Both traders and consumers are more or less aware of the substandard quality, but both need this “second” market, though from different perspectives: traders to survive in the economy, and consumers to buy affordable products.

Framed in legal categories, and more specifically in the legal categories of European consumer law, the two markets reflected two corresponding types of traders and consumers.
In the first glamorous market for big brands and internationally known labels, the two parties of the typical economic transaction can be largely associated with the model type of the average trader and the average consumer. Consumer law language uses the notion of “average” to refer to traders and consumers who are well informed, circumspect and responsible. These types of traders and consumers relate to and are able and allegedly willing to comply with the ideal the European consumer law has in mind as the standard model that Member States are expected to comply with. By contrast, a different type of the trader and the consumer dominates the second market. In the EU language, this consumer is more “vulnerable”, not only because he/she is handicapped, underage or elderly, but because he/she lacks the capacities and training to handle the demands of a market society based on competition and choice. The Georgian local traders too, because of the abovementioned characteristics, can be considered as vulnerable; exactly these characteristics reduces their competitiveness when they have to face the hard reality of competition in Georgia and in particular with foreign traders and products not made in Georgia.

The present RIA report clearly identifies tension between the two markets and the two types of traders and consumers throughout the analysis. This tension affects both the economy and the society. Promoting the average consumer as the dominant image in the legal system could lead to the perverse consequence that the segmentation between the two markets and the two societies is deepened. The present report relies on statistical data on the economic and social situation of consumers in Georgia. It shows that a new consumer law can only meet the requirement of effectiveness, if it takes the vulnerable consumer as the normative image.

In sum, the major challenge of the Draft Law on Consumer Rights Protection is to find the balance out the tension between these two paradigms, namely, (1) not to lose the “vulnerable” by orienting a whole new regime around the “average” trader and consumer, and (2) at the same time avoiding overprotection and paternalism, which would stifle competition and, eventually, economic growth. The difficulty is mirrored in the two types of traders who will be the addressees of the enforcement activities. Much will depend on the way in which the future enforcement authority, the Competition Agency, in its new incarnation as the Competition and Consumer Protection Agency, will handle conflicts. The Georgian government is encouraged to accompany the implementation process of the new law and its anchoring in the economy and society through targeted campaigns which take the two markets, the two traders and the two consumers fully into consideration. This is very much consistent with implementing the principles of Agenda 2030.

8.2. Conclusions and Recommendations Chapter by Chapter

8.2.1. Unfair Commercial Practices

The Draft Law proposes a separate chapter for the regulation of unfair commercial practices. This chapter contains several articles regarding the prohibition of unfair, misleading and aggressive commercial practices. The Draft Law identifies vulnerable consumers based on their physical, mental and age status, and thus excludes social and economic characteristics. Accordingly, the Draft Law does not consider the vulnerable consumers as the overall benchmark, but is designed with average consumers in mind.
An analysis of legal, social and economic factors shows that the consumer in Georgia is vulnerable and less able than the average consumer to protect and represent his/her interests. This conclusion is documented by studies such as the consumer price index. Average monthly earnings and the usage of the internet in Georgia are low, there is relatively high self-employment in agriculture, and a relatively high number of citizens receive social support, have linguistic barriers and/or are IDPs. Apart from that, PISA results show that Georgia is in 62nd place out of 70 countries in reading and financial literacy results.

The current Draft Law, which makes “average” consumer as a benchmark of its application does not take the vulnerable nature of Georgian consumers into account, especially in the context of aggressive commercial practices.

The RIA Team believes that the benchmark for the Draft Law should be the vulnerable, rather than average, consumer.

8.2.2. Access to Information

Chapter III analyzed pre-contractual information rights in respect of contracts concluded on-premises as well as off-premises and distance contracts. One of the goals of the Draft Law is to ensure better protection of consumers through access to relevant information. The research conducted has shown that, while purchasing products or services, access to adequate information is necessary for consumers to make informed choices. In order to test the adequacy of information, this report used a five-criteria test, namely, that information should be truthful, intelligible, relevant, complete and timely.

The Draft Law is compatible with the Consumer Rights Directive in terms of the content and the mode in which information is to be provided by traders to consumers. However, neither the Consumer Rights Directive nor the Draft Law was found to be adequate. While they require provision of true, intelligible and complete information, neither the Consumer Rights Directive nor the Draft Law addresses relevance and timeliness of the pre- or post-contractual relationship.

In relation to the criteria for timeliness and relevance of information, while the target is the average and not the vulnerable consumer (which in turn may be considered a legislative gap), traders’ interests must also be considered. Additional legislative interference may place a heavy burden on the trader. Implementation of the Consumer Rights Directive – having the better informed consumer – is possible by introducing non-binding instruments, rather than legislative intervention.

8.2.3. Right of Withdrawal

Chapter IV provides an analysis of the right of withdrawal for consumers purchasing goods or services online or off-premises. In the absence of the unconditional right of withdrawal in distance contracts, introduction of this right is controversial in Georgia.

For the purposes of identifying the problem, we relied on past and current sociological studies conducted to observe the vulnerability of consumers in online sales. Considering the growing trend for internet sales and the lack of the legal right to return non-defective
goods, we found that the absence of such a right gives rise to problems that require legislative interference.

The impact analysis shows that Georgian consumers will benefit from the adoption of the Draft Law by saving on costs related to the purchase of unwanted goods and services. However, a negative effect on traders is also expected, due to costs associated with an increased number of returns, making funds available for refunds and related administrative issues. It is expected that the right of withdrawal will have a negative impact on relatively new entrants and smaller traders who can be more sensitive to cash flow.

As an alternative to the Draft Law, the report gives recommends decreasing the 14-day period for dispatching goods to the trader to seven days. This would decrease the negative effect on traders, while still guaranteeing sufficient protection of consumers.

8.2.4. Legal Guarantees

Chapter V discusses the Draft Law’s guarantee period of two years, which will give the opportunity to consumers to claim replacement, repair and/or return of defective goods or goods that are not in conformity with the contract.

The envisaged change is important and reasonable in light of legal and socio-economic considerations. The findings are based on surveys carried out in 2015 and 2018, which showed that:

- The establishment of consumer rights in respect of defective products, in particular a two-year guarantee period, is a step forward for Georgia as a future Member State;
- By adopting the Draft Law, Georgia will fulfill its obligations under the Association Agreement;
- The Draft Law will make up for the legislative shortcomings that resulted from the repeal of the Law of Georgia on Consumer Rights Protection in 2012; and
- The Draft Law will create new opportunities for Georgian consumers and will positively affect the behavior of the traders. It will enhance their competitiveness and motivation and orient their activities towards consumer rights and their own interests.

The cost-benefit analysis demonstrates that enacting the Draft Law could have negative implications on traders’ activities and, in the short term, might even limit and exclude certain types of trading operations (second category sellers), as well as the availability of certain types of products (counterfeit goods).

In the long term, the adoption of the Draft Law will have a positive impact on consumers. Specific provisions regarding protection of consumer rights will significantly decrease the sale of fake and non-sustainable goods. The rise of consumer awareness will positively impact traders’ behavior. Proper planning of the implementation process of the Draft Law,

\[243\] In the framework of the project financed by the European Union, The Impact of Association Agreement with EU on Georgian Consumers and Raising their Awareness*, study held by the Center for Strategic Research and Development of Georgia, “Study on Consumers’ Attitude in Urban Centers”, 2015, Georgia.

\[244\] Social Study Report, ACT, 2018, Tbilisi.

\[245\] Although more than 700 traders were involved in a social study, it was not possible to specify, or even estimate, the cost of expenditure in specific figures.
a reasonable and consistent information campaign, as well as regular monitoring and surveillance of goals and tasks will offer new and better opportunities for both consumers and traders.

8.2.5. Enforcement Mechanism

Chapter VI examined the collective enforcement of consumer rights, notably the type of sanction to be used against a trader when the collective rights of a group of consumers have been violated. The chapter analyzes existing collective enforcement mechanisms, EU experience in this area and the challenges countries face when imposing sanctions on traders. The chapter also studies the opinions of consumers and traders in response to the imposition of a sanction to protect the collective interests of consumers.

Under the Draft Law, the Competition Agency must review infringements. The Agency takes its decisions and determines time frame for the trader, and mandates restoration of infringed rights and suspension of acts that have been determined to infringe consumer rights and/or are illegal.

The Draft Law envisages sanctions in case of failure to fulfill the Agency’s instructions on time or in case of improper fulfillment. A fine will be imposed on the trader which should not exceed a certain percentage of the annual turnover of the trader during the previous financial year.

While examining the enforcement mechanism for consumer rights, the chapter outlines the importance of defining traders’ liability, in case of damage resulting from a violation of the rights of a consumer group. Imposing a fine on a trader in case of damage to the group of consumers is justified and follows EU member states’ practice. The Draft Law will improve the opportunities to protect consumer rights in Georgia and will positively change the attitude of traders towards consumers. From a long-term perspective, the Draft Law will promote awareness about consumer rights and accelerate Georgia’s integration into the European Union.

However, it must be taken into consideration that the Draft Law does not set out a mechanism for imposing proportional fines on traders/businesses of various sizes. This raises questions as to the fine’s effectiveness. If the fine is the same for small and large businesses, it is highly likely that small businesses will be much more affected, and for bigger traders the amount of the fine may be negligible and not sufficient to cause the intended changes.

Chapter VI proposes a mechanism for imposing fines that is linked to the size of trader/enterprise. Such an approach will help to protect consumers’ and traders’ interests through effective and appropriate sanctions.
CHAPTER IX.
MONITORING AND EVALUATION

This chapter presents recommendations regarding monitoring and evaluation arrangements. Carrying out these recommendations is important to evaluating the effectiveness of enforcement of the Draft Law. Besides, monitoring and evaluation will enable regulators to identify and eliminate possible shortcomings in policies, legislation and measures to support implementation in the field (including communication strategies).

9.1. Unfair Commercial Practices

Since the benchmark used in the Draft Law is not the vulnerable, but the average consumer, the RIA Team considers that a crucial part of monitoring is the need to develop a strategy for vulnerable consumers, companies and market sectors, including online markets, the mortgage market; securities; health; supermarkets; markets for electronics and home appliances; pension funds; the financial sector, including banks; insurance companies; energy companies; natural monopolies (for example, railway companies, public transport and others); and government service providers. The Agency is encouraged to set up a strategy document based on the principle of “comply or explain”. This initiative can be a part of monitoring the implementation to be done by the Agency under the slogan “name and praise”.

9.2. Access to Information

Chapter III of the RIA is related to access to adequate information for consumers. As one of the major guarantees of due protection of consumers’ rights, it is necessary to monitor compliance with the Draft Law by traders by gathering relevant information as required.

For the purpose of monitoring the implementation of the Draft Law and achievement of the regulatory goals, it is recommended to carry out the following activities at the end of first, third and fifth year after enacting the Draft Law:

• Check the websites of selected traders;
• Conduct mystery shopping and secret purchases from selected traders;
• Monitor court decisions; and
• Monitor consumer complaints filed with the authorities.

9.3. Right of Withdrawal

Chapter IV addresses the right of withdrawal from distance and off-premises contracts. In the long-term perspective, this right is expected to increase the number of online purchases
and decrease the number of online traders in the short term. It is recommended to carry out the following actions at the end of the first, third and fifth years after enacting the Draft Law:

- Collect and study the number of internet and street purchases;
- Collect and study the number of online/street traders and analysis of the changes;
- Monitor the court decisions; and
- Monitor complaints filed with the enforcement authority.

9.4. Legal Guarantees

Chapter IV provides for a legal guarantee period of two years, during which the consumer is entitled to submit a claim to the trader (for exchange, repair and/or return). Possible threats raised during the RIA process are: (1) reduced and limited sale of low-priced goods; (2) delay or exclusion of the exercise of traders’ right to recourse; and (3) increase in prices of consumer goods. After the Draft Law is enacted, when planning its implementation, the agency responsible for the assessment and monitoring – the Agency – will have to pay attention to the dynamics of the above-mentioned threats. The following areas should in particular be subject to monitoring:

1) the second category market for low-price and low-quality goods, defined in the Chapter V of this report; and
2) consumers who, because of the low price, knowingly buy low-quality, unsustainable goods.

9.5. Enforcement Mechanism

Chapter VI refers to the enforcement of collective rights and studies the responsibility of the trader in case of infringements. According to the Draft Law, in case of infringement of the rights of a group of consumers, failure to comply with the notice issued by the Competition and Consumer Protection Agency will result in a fine.

When enforcing the law, it is important to study (1) how potential fines could impact traders; (2) if and how prices change after the law enters into force; (3) whether the consumer protection level is improving; and (4) the working process of the Competition and Consumer Right Protection Agency, to ensure the fine is not used as a punishment. At the same time, systematic monitoring is necessary to ensure that the functions assigned to the Competition and Consumer Protection Agency do not become a source of corruption.

9.6. General Recommendation

The overarching recommendation that ties the different parts of the RIA sections together is to regularly assess the effectiveness and the efficiency of the new consumer laws. Therefore, during the first three years, an annual report should be prepared and published.

Because the provisions currently envisaged in the Draft Law that cover the issues addressed in this report might prove inadequate, further to the Monitoring and Evaluation activities suggested above, the RIA Team recommends introducing relevant review clauses in the text of the Draft Law, for instance, after five years upon entering into force.
Definition of the framework for research and data collection

The table below illustrates the critical issues identified during the initial phase of RIA and the plan for exploring those issues. To determine the frame of the study, specific problems were identified under each critical area; furthermore, for each area RIA team defined: objectives to be achieved, possible ways of reaching those objectives (options), types of information to be collected and possible sources of information.

### 1. Enforcement

<table>
<thead>
<tr>
<th>Problems</th>
<th>Objectives</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Need for capacity and capability building of the executive body/bodies</td>
<td>• Trust building and proportionality of administrative actions</td>
<td>• Role of non-governmental organizations</td>
</tr>
<tr>
<td>1.2 Access to justice</td>
<td>• Functions (overlap)</td>
<td>• Board composition</td>
</tr>
<tr>
<td>1.3 Individual complaints</td>
<td>• Financing and costs</td>
<td>• Self-financing / co-financing</td>
</tr>
<tr>
<td></td>
<td>• Action plan and accountability</td>
<td>• Corporate culture of cooperation</td>
</tr>
<tr>
<td></td>
<td>• Compliance with EU Directives and SDGs</td>
<td>• Minor VS major infringements</td>
</tr>
</tbody>
</table>

**Type of information**

- How Competition Agency is currently financed?
- Data from Competition Agency on complaints. The agency will most probably copy the existing practice; therefore, it is important to understand:
  - Criteria for selection of complaints;
  - What are the actions taken by the agency? How does it investigate complaints?
  - Whom the agency consults with?
  - Does the agency use those who complain as a material, or trusted source?
  - Corporate social responsibility? Administrative culture?
- Is it possible to complain online? Should identity be disclosed?
- Should complain be supported by evidence? If yes, then what kind of evidence?
- What does the agency monitor and how?
- What kind of reports the agency discloses to the public?
- Sanctions: what kind of cases, problems behind.

Similar data can be obtained from the Food Safety Agency.

**Sources of information**

- Competition Agency
- Food Safety Agency
2. Legal guarantee

<table>
<thead>
<tr>
<th>Problems</th>
<th>Objectives</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Lack of information of economic effects of proposed mechanisms</td>
<td>• Assessment of transaction costs and benefits for stakeholders (e.g. consumers, SMEs, large companies)</td>
<td>• Correlation between price and guarantee</td>
</tr>
<tr>
<td>2.2 Difficulties of consumers in understanding the difference between legal and commercial guarantees</td>
<td>• Compliance with EU Directives and SDGs</td>
<td>• Tax implications</td>
</tr>
<tr>
<td>2.3 Imported goods vs. local goods</td>
<td>• Empowering consumers</td>
<td>• Effects of setting monetary thresholds for vulnerable consumers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Reorganization, liquidation and market exit related consequences</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Correlation of commercial and legal guarantees in the light of established practices on imported goods</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Delay between adoption and enactment – setting transitional timeframe</td>
</tr>
</tbody>
</table>

**Type of information**

- Share of products/services in gross income;
- Does the business (the Georgian companies) exclude legal guarantees in standard terms?
- Is there a difference between the practices of transnational and the local companies?
- Explore at least ten standard terms in the internet; What do they say about legal guarantees?
- Are there cases when businesses exclude legal guarantee and instead suggest commercial guarantee?
- Is commercial guarantee free? If not, how much it is?
- Are consumers using guarantee? Are they satisfied or not?
- Ministry of Economy and Sustainable Development is a sort of protective of companies; what are the companies (small, medium and large companies) ministry wants to protect?

**Sources of information**

- Companies
- Chamber of commerce
- Business organizations
- The Ministry of Economy and Sustainable Development

3. Obligations with respect to information & 4. Withdrawal

<table>
<thead>
<tr>
<th>Problems</th>
<th>Objectives</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Mismatch between pre-contractual rights and obligations by law and post-contractual consumer needs</td>
<td>• What type of information for what type of consumer?</td>
<td>• Rebalancing the focus between pre-contractual rights (overload) and post-contractual needs</td>
</tr>
<tr>
<td>3.2 Adequacy and complexity of the information to be provided / transparency and comprehensibility</td>
<td>• When (pre/post) and in what form (paper/digital) to be provided?</td>
<td>• Differentiation of withdrawal periods according to type of contract</td>
</tr>
<tr>
<td>3.3 Standard withdrawal period (14 days issue)</td>
<td>• Reducing, mitigating and avoiding complexities</td>
<td>• Relation between the law on commercial practices and contract law</td>
</tr>
<tr>
<td></td>
<td>• Compliance with EU Directives and SDGs</td>
<td></td>
</tr>
</tbody>
</table>
### Type of information

- Data on withdrawals: what kind of products/services? Or type of business?
- Withdrawal – voluntary or must? Why are they doing this on voluntary bases? What are the costs? When are consumers using it?
- Question to business & consumers: what do they think of the usefulness of the information provided to consumers?
- Question to consumers: what kind of information would they appreciate? e.g. would they appreciate health – related information?
- Question to consumers: When would they prefer to receive information – prior to contract or after the contract?
- Costs of information for business: would companies engage lawyers to comply with new regulations? What are the costs of compliance?
- What would companies do as a next step to the adoption of the law?

### Sources of information

- Companies
- Chamber of commerce
- Business organizations
- Law firms
- Consumers
- NGOs

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### 5. Unfair commercial practices

<table>
<thead>
<tr>
<th>Problems</th>
<th>Objectives</th>
<th>Options</th>
</tr>
</thead>
</table>
| 4.1 Scope of unfair commercial practices (what type of advertising? where are the problems in Georgia?) | • How to raise awareness on unfair commercial practices  
• Study of unfair commercial practices of Georgia  
• Compliance with EU Directives and SDGs | • Individual right of consumer to fight against personalized advertising  
• Special legislation for vulnerable consumers  
• Creating respective platform and database on unfair commercial practices to empower consumers |
| 4.2 Relationship/correlation between the draft law and the existing law on advertising  
4.3 Personalized advertising in the internet | | |

### Type of information

- Information on Georgian National Communications Commission (GNCC): annual reports, statistics, power, judgments;
- Investigate the role and powers of local authorities;
- What is happening in practice? Consider two examples: local authority of the capital city and another one in the region;
- Explore complaints.
- Explore court cases, if any.
- Explore procedures in practice.
- Is there a monitoring system in place and how does it work?
- What is market for advertising? Who are the major players, both international and local? Figures, market shares, etc. Is this affecting consumers in any way?
- What is the market share of multinationals (such as Apple, Amazon, etc.)? Is Georgian market ‘annex’ to Russian market for multinationals or is it considered independent?

### Sources of information

- GNCC
- Courts, judges
- Local authorities
- Multinational companies
- NGOs
Quantitative data that should be collected for all the ‘problems’ (‘problem’-specifics are indicated above):

- Who is collecting data (statistics office, business (chambers of commerce, business organizations, law firms), consumer organizations, ombudsman, universities, political scientists, international institutions [about Georgia] – EU, Eurostat, OECD, WB, IMF), what type of data and what format?
- Who are the major ‘Georgian’ (meaning – local, as opposed to international/transnational) entrepreneurs? What do they produce?
- Who are the major international companies present in Georgia?
- What kind of products and services consumers are spending on money – by age, status (old, young, marriage status)?
- Number of litigations, in general, and in consumers rights (to understand what kind of rights the consumers are ready to fight for in the courts);
- Share of products and share services in gross income;
- Income per household.

For the qualitative data following stakeholders should be interviewed:

Companies, business organizations, relevant agencies, parliamentarians, judges, ombudsman, NGOs, Chamber of Commerce, business association for exporters & importers (if there are such), church and its businesses (church could be considered as one of the major stakeholders, since they are also producing products and provide services). Possible questions to start with: what kind consumer problems did they encounter? what do they do to solve it? whom do they trust? Consumers should also be interviewed.
Stakeholder consultation

For stakeholder analysis was used approach, which made possible the identification of stakeholders, their classification and selection of the method of consultation. A matrix has been elaborated, in order to classify the parties according to the degree of the impact by the issue (in this particular case – regulation of the consumer sphere) and capacity of the stakeholder to effect on the issue. Using the matrix reflecting this interaction, the stakeholders were classified into four groups: (1) Parties whose interests are weakly affected by the issue, with little capacity to affect the issue; (2) Parties whose interests are strongly affected by the issue, but with little capacity to affect the issue; (3) Parties whose interests are weakly affected by the issue, but with big capacity to affect the issue; and (4) Parties whose interests are strongly affected by the issue, with big capacity to affect the issue (see table below).

<table>
<thead>
<tr>
<th>The party whose interest is weakly affected by the issue</th>
<th>The party has little capacity to affect the issue</th>
<th>The party has big capacity to affect the issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Non-Governmental Organizations</td>
<td>(3) Ministry of Economy and Sustainable Development</td>
<td></td>
</tr>
<tr>
<td>(3) Competition Agency</td>
<td>(3) Competition Agency</td>
<td></td>
</tr>
<tr>
<td>(2) Consumers</td>
<td>(4) Companies</td>
<td></td>
</tr>
<tr>
<td>(4) Business associations</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Following stakeholder identification and classification, methods of consultation with groups were selected. For example, in some cases face-to-face interviews and sometimes group meetings were used. Unlike organized groups (ministry, company, business association, NGO’s), it is much more difficult to get feedback from a disorganized group – consumers (from the citizens of all Georgia) in a short period of time. At the same time, this is exactly the group, on which the draft law (new regulatory norms), in case of adoption, will have a significant impact; However, this group has little capacity to affect the drafting process. An interview method was selected toconsult with this large group; similarly, an interview method was used to the second large group – companies.

The following table provides information on stakeholder consultations in groups 1, 3 and 4: Identity, method of consultation, date and summary of issues discussed. As for consumers and companies, in order to get feedback from these groups, in November-December 2018, Global Research-Consulting Company – ACT – Analysis and Consulting Team conducted a survey, which was commissioned by the GIZ Legal Program. For the purposes of the survey 797 consumers and 101 traders (registered, street and online retailers) have been interviewed in Tbilisi, Batumi and Kutaisi. The full survey can be found in Annex 3 of this report.
Stakeholder Method of consultation and date

Center for Strategic Research and Development of Georgia
Vakhtang Kobaladze
Consumer Rights Protection Program Coordinator

Interview
July 27, 2018

Summary of issues discussed:

1. The scope of the draft law
The draft law deals just with the property damage; it has to deal with damage to life and health, as well as to moral damages. Most of the products in Georgia are not tested for the threat to health; they are not regulated at all. As for moral damages, the center is often addressed by consumers dissatisfied with the entrepreneur’s actions (when entrepreneurs express aggression).
From consumer products, today is regulated: food, medicines, lighters. It is not regulated today, and nor it is intended to regulate the products that people have daily contact with; These are: furniture, hygiene, cosmetics, utensils, toys, household chemistry. The regulation of construction materials regulation will start in 2018, but only for reinforcement and cement.

2. Obligation to inform
If the business wants to be competitive, locally as well as on an international market it has to follow common rules of the game.

3. The right of the withdrawal from the contract
The previous version of the draft law envisaged the possibility of returning or replacing the products, which do not have defects, this caused a great passion. As a result of the reduction, only replacement for a functionally similar product of the same value was allowed; However, the consumer was limited to 7 days and the amount (limit of the sum). This was not, however, a desirable condition at the time, but the current draft law does not envisage such an approach at all. It would be ideal to have 14 days unconditional deadline for return and replacement.

4. Unfair commercial practice
There are a number of requirements in the Prohibited (Unfair) Commercial Practices Directive of the European Union, that are not included in the draft law. The directive has the list of such practices; A lot is omitted in the draft law from this list. The reason for this is not explained.

5. Enforcement, Authorized Body and its Functions
According to the draft law, the Competition Agency is responsible for the enforcement, and it is logical. As for the functions of the agency, according to the draft law, the competition the Agency will only be able to respond to collective cases. Shall it be defined, what collective cases mean? When will the case be considered as collective? How should a consumer determine whether a case is collective or not? The agency should also be responsible to respond to any individual case.
Problematic cases can be grouped by any means. For example, the Center for Strategic Research and Development is most often addressed in cases when the consumer has purchased the item, which is not in conformity with their expectations, and the entrepreneur is not returning; or offering repair, but cannot be repaired. Other cases: The consumer wants to replace the good and the trader does not replace it; or taking too long to repair. Usually, such cases apply to expensive items, such as equipment, furniture. If the Competition Agency receives such cases, it is easy to classify complaints by any means.
About the expected number of the complaints: In general, consumers are not active in Georgia. Therefore, it is likely that there will be many complaints, or that the complaints will not be ‘real’. In addition, when the business sector sees that the state is responding, it will reduce infringements, will try to resolve the dispute with the consumer.
Nowadays, the Food Agency receives individual complaints regarding the food, but this does not apply to reimbursement of damages. It is about responding to certain types of infringements, for
example – overdue product on the shelf. The consumer can call on the hotline and inform regarding the fact. While the hotline exists for several years, and the information has been disseminated by both food agency, and the center, The largest number of referrals was last year – a total of 700. This is the simplest case of the complaint – it is only necessary to identify and state the location on the incident. The Agency is obliged to respond to relatively even more difficult cases; for example, when the purchased product turned out to be spoiled or impacted health. In practice, the Agency is known to respond to such cases, but statistics are unknown (it is unknown, whether all cases has been responded or not).

Publicity of the Agency decisions: Today the Competition Agency is not fully publishing its decisions. In the sphere of the competition, this may be justified, but if the functions offered by the draft law are granted, the Agency’s decisions must be fully published (including definitions, recommendations). This is important, as all stakeholders (consumers, non-governmental organizations, and entrepreneur) to consider them in their activities.

6. Sanctions
Calculation of fines based on the annual turnover of the trader for the previous year – is the right approach and is welcome. It is desirable that the financial scale of the breach to be added to the formula; For example, the value of the product being sold that proved to be unsuitable. The fine should be such, as it was not worthy for trader to pay it, to go for the infringement. In such a case administration will be hard, but a defective products, in any case must be revoked from the market and recorded. Such a mechanism can also be a source of corruption, but at the same time, it should be taken into consideration, that the damage caused by the unfair behavior is much higher.

7. Non-resident trader
The issue is not clear – How consumer rights should be protected? e.g consumer purchased the products in China online.

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<tr>
<td>Business Association of Georgia</td>
<td>Interview</td>
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<tr>
<td>Nikoloz Nanuashvili</td>
<td>Interview</td>
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<tr>
<td>Legal Analyst, The Manager of Analytical Direction</td>
<td>August 16, 2018</td>
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Summary of issues discussed:

1. The need for the law and the scope
Nikoloz Nanuashvili questioned the need for the adoption of the draft law. He considers that it is possible to integrate the requirements of EU directives into existing, acting normative acts (e.g Civil Code, in the Law on Advertising, in the Law on Food Safety and Quality and so on). Adoption of the draft law, submitted for consideration, he considers as political decision and refers it to “low quality social populism”.

Mr. Nanuashvili considers it as a matter of principle, Georgia ‘not to go beyond’ EU Directives (not to impose more requirements, than we are supposed). In this respect, he focuses on EU Directive 2011/83 / EU, which sets out the rules of precedence between this draft law and other laws. In particular, if specific regulatory acts set out rules other than the general one, specific acts shall prevail. Contrary to this norm of the EU Directive, Article 2 (2) of the draft law takes precedence over a special law that provides for a higher standard of consumer protection.

Mr. Nanuashvili believes that the Georgian legal system is put upside down by such a provision. However, the Court is entitled to a broad discretion – to decide whether a special law sets a higher standard; if the court decides that the special law does not set a higher standard, the court may grant this draft law precedence. In such a case, the main principle of Law on Normative Acts, the principle of precedence is breached. As the case law in Georgia is not uniform, we will face legal
chaos. In addition, businesses cannot foresee a judge’s decision (a judge determines which sets a higher standard), which is problematic.

Again, while discussing the need for the adoption of the draft law, Mr. Nanuashvili noted that, the legislative instruments for protecting consumer rights still exist, but the problem is with justice – in the absence of a prompt and effective justice mechanism. This is problematic for consumers, and for companies – especially.

2. Legal Guarantee
According to Mr. Nanuashvili, the two-year legal guarantee requirement hurts both consumers and businesses alike. He thinks that by introducing a two-year legal guarantee, poorer people will no longer be able to buy cheap products because such products will simply not exist on the market. According to Mr. Nanuashvili, there are things that are not meant to be used for two years and the consumer usually knows that, for example, after a year or so, a cheap item will no longer be good. Mr. Nanuashvili is questioning: Why should a manufacturer / seller of such items is obliged to provide two-year guarantee?!

3. Withdrawal from contract
According to Mr. Nanuashvili, his organization does not consider it too problematic withdrawal from the contract, that is, a 14-day return period for the product, since the companies affiliated with the association does not trade in distance, while this requirement will affect remote traders. The respondent believes that these requirements of the draft law will kill the newly established local practices and system of distance trade.

Mr. Nanuashvili considers, that returning of the purchased products increases company costs (return costs, costs of checking returned products, tax administration expenses, refund costs). It is hard to foresee these costs, and the companies will have different costs.

According to the respondent, the ability to return a product generally encourages irresponsible customer behavior.

4. The costs of the business for ensuring compliance with the law
Mr. Nanuashvili did not answer the question, regarding the estimated costs for the companies, to ensure compliance with the law, in case of its adoption. According to him, the expected cost typology is not possible, but, at the same time, these costs should be calculated in detail.

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<td>Competition Agency</td>
<td>Interview</td>
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<tr>
<td>Slava Petelava Head of Department for Protection of Economic Competition</td>
<td>August 15, 2018</td>
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Summary of issues discussed:

1. Regarding the draft law
Slava Petelava supports the codification of the norms in the consumer sphere. In his opinion, the Code would include all the issues related to the consumer sphere, which the draft law does not currently cover (list of exceptions listed in Article 2 of the draft law). The codification would make it easier for consumers, as they would not have to look for regulatory acts regarding different products/services, in case of problem. In case of codification, the code would envisage general rules of regulation for all consumer spheres, however, enforcement functions could, if necessary, be shared between several executive bodies.

2. Providing the Agency with resources, in the context of adding functions related to the consumer sphere
Nowadays, the Agency is located on #154 Agmashenebeli avenue on the two floors of the building (other organizations share the rest of the floors of the building). After imposing rights and
responsibilities in the consumer rights protection sphere, the agency most likely will be moved to another building. While working on the budget for 2019, along with other related costs, the costs associated with building will be taken into account. In addition to the building, it is important to provide technical assistance, such as computer equipment and [increased] transportation costs. Currently the agency has 46 employees, whose salary ranges from 1600 to 2100 GEL. There are often cases, when employees of the agency, who are upgrading their qualification, while working in the agency (including via short term or long term training programs), are leaving the agency and are moving to the highly paid jobs in the companies (sometimes even in the companies, with which the agency had dispute in the past) and other governmental agencies; keeping employees is very problematic and requires implementation of a mechanism to prevent outflow of qualified employees.

3. On the possibility of partially financing the Agency’s activities from the funds received from fines
The Law on Advertising envisaged for the possibility of funding from the following source: 30 percent of the recovered penalty was credited to the Antitrust Service; the same practice was used by other executive agencies. Later, the government has changed this common approach and penalties are fully directed to the state budget.

According to Mr. Slava Petelava, the controlling agency should not be interested in fines. In case of applying fines for the financing of the activities of the Agency, for the sake of improving the well-being of the work, such interest may arise, this means, penalties can be encouraged. However, such a funding mechanism can still be considered, provided that this way of raising money does not have to be a major source of agency’s income.

Unlike competition sphere, in the sphere of the consumer protection, in the event of a breach, the agency must first notify the infringer and only after not improving the situation, the agency will be entitled to fine the infringer. On such a scheme of notification-penalizing, an agreement has already been reached between the parties working on the draft law. If the entrepreneur is warned, he or she will be interested in avoiding penalties and thus seek to remedy the situation. This in turn means that there will be no need for penalties.

4. The existing practice of reviewing the complaints and expected amount of the complaints after adding functions related to the consumer protection sphere
Nowadays, the agency starts proceedings on the basis of the applications and complaints, or on its own initiative – on the basis of reasonable suspicion. Reasonable suspicion arises from various sources, including information obtained from the media. In case the complaint does not meet the formal requirements, (for example, form is not in compliance, or the justification is not presented properly) prior to commencement of the proceedings, the Ministry is instructing the complainant to remedy these deficiencies (in other words – it does not directly refuse complaint review, but rather assists the applicant in remedying formal deficiencies and is indicating the grounds for leaving the application unaddressed).

In the Antitrust Service (from 1997 to 2005) nationwide was filed average 70-80 complaint per month; the complaint concerned both consumer rights and competition issues, as well as enforcement of the Law on Advertising. There were also complaints and penalties in the sphere of consumer rights protection; the complaints were largely caused by the lack of knowledge regarding legal requirements by entrepreneurs. The fines were mainly imposed on the small entrepreneurs, for whom the penalty was a heavy burden. As to the territorial distribution of the complaints: the complaints regarding competition issues were mainly from Tbilisi; in the regions, complaints were mainly about advertising.

In case of adoption of the draft law, a large number of complaints are likely to be filed in the Agency at the initial stage, as the expectation that the law will solve all the problems in the consumer sphere will be high. It is likely that not all complaints will be received in the proceedings. If the consumers will be informed regarding the possibility to file the complaint and if the residents of the regions will also have the opportunity to effectively defend their rights, then the number of complaints will be high. It is important that consumers neither to develop nihilism nor to have excessive expectations regarding new opportunities. Therefore, a proper information campaign will be needed.
According to Mr. Slava Petelava, it will not take too long for the consumer complaints to be reviewed. It will probably take 3-5 (maximum, seven) days to review one complaint, as the Agency is not going to check the quality of the product/service, but has to conduct documentary inquiry.

In case of adoption of the draft law, there is risk that the Agency with current centralized institutional arrangement is not going to be able to protect interests of consumers nationwide, and not all citizens of Georgia (particularly the ones from regions) will be able to benefit from the advantages that the draft law is introducing. The Competition Agency was entitled to set up regional structural units, but such units have not been created up to date, as there was no need for the enforcement of the legal requirements in the competition sphere. In order to fully perform its functions in the field of consumer rights, some mechanism will necessary to be developed. It is possible, for example to use the same mechanism, as it is provided in the Law on Advertising; that is, the distribution of enforcement functions between the Agency and the self-governing bodies.

Cooperation with non-governmental organizations is of utmost importance in the field of consumer rights protection. For example, the Interagency Council was functioning with the Antitrust Service. The Council was composed of representatives from the relevant Ministries and NGO’s functioning in the field. While discussing on the collaboration mechanisms, this experience can be also shared.

The Agency is entitled, in the cases provided by current legislation, to develop recommendations (recommendations are mandatory for review but not mandatory for implementation). The Agency monitors the state of implementation of the recommendations. Up to date the companies have fulfilled 90 percent of the recommendations; We cannot say the same about state agencies, though they are fulfilling big part too; There are cases when the subjects to whom the recommendations were issued disagree with them and dispute with the Agency in the courts.

### Stakeholder Method of consultation and date

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<tr>
<td>Ministry of Economy and Sustainable Development</td>
<td>General Meeting</td>
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<tr>
<td>Genadi Arveladze, Deputy Minister</td>
<td>September 3, 2018</td>
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<tr>
<td>George Tabagari, Deputy Head of Legal Department</td>
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<tr>
<td>Tea Kunchulia, Foreign Trade Policy Department, Acting Head of Trade Negotiations and Coordination of DCFTA Implementation Division</td>
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**Summary of issues discussed:**

1. **Legal Guarantee**
   Two-year guarantee period is quite long and Ministry is in favor of reducing this term. The position of the Ministry is to determine by law the list of products, on which (a) will not apply at all the requirements of the guarantee; or (b) a certain limit will be imposed. Another alternative is the guarantee period to be determined for 6 month (it is not going to apply to perishable products).

   According to the representatives of the Ministry, two-year guarantee period will increase the price of the product for the intermediaries [of international brands] operating in Georgia. Also into consideration should be taken cases, when the companies offer consumers cheaper products, which may not last two years, but consumer is aware of this. In such cases companies should be entitled to offer the client less than two-year guarantee period. For such cases may be imposed exceptions – has to be determined products, without two-year guarantee period requirement. Such products can be for example small appliances. Generally, in the context of the draft law, the most “problematic” products are [imported] electrical appliances. The financial burden of the suppliers (importers and distributors) will increase, by the guarantee period, offered by the draft law.
2. Withdrawal from the contract
According to the draft law, besides the 14 days, the consumer has additional 14 days to return the product (totally 28 days) after exercising the right to withdraw. The representatives of the Ministry believe that this is long term and has to be reduced. Proposed version is 7+7 days, or totally, for everything 14 days.

Taking into consideration international experience shared by an international expert hired by the Ministry and local specifics the Ministry believes that 14 days should be enough to withdraw from the contract. Suppliers themselves should be able to offer the buyer more than 14 days to withdraw from the contract in case of desire.

3. Enforcement
The Competition Agency should be granted with effective enforcement mechanisms. One of such mechanism is proposed by the draft law: based on certain information, the Agency is entitled to investigate the case and respond further. It is important to clearly identify based on what type of information, on what grounds the Agency should start investigation of the case; eligibility criteria must be established. Effective use of resources is essential for the Agency; not to “respond to all levels of information”, not to give third parties possibility to manipulate.

As for the funding of the Agency: there is an opinion, that the activities of the Agency, partially (at least small amount) should be financed by the funds received from the fines. The representatives of the Ministry oppose this view, as they believe that such an approach involves unjustified risks.

Opinions regarding confidentiality of information: The Agency must protect the confidentiality of commercial and other sensitive information. Also should be determined what type of information the Agency may need for investigation. In case of necessity, the Agency may have access to confidential information for the purposes of the investigation, but the Agency must justify the purpose of accessing the information.

Opinions on the amount of the fine: should be specified how the fine will be calculated. The proposed mechanism- the fine to be based on the certain percent of the companies turnovers – has some difficulties. Since the tax system has moved to the Estonian model, the Revenue Service has been recording taxes differently; Thus, the turnover may no longer be relevant to determine the amount of the fine.

Opinions on the right to fine: the Agency should not be entitled to impose the fine; it should only have the right to subscribe to the protocol (that is, to determine the type of the infringement as a result of the investigation); The court should have the right to impose a fine. The court must be given a time limit, such as 48 hours, to determine the nature and amount of the damage. The amount of the fine may be determined by the law, but the minimum and maximum limits must also be set; The law should offer a ranking based on the nature and severity of the infringement. The gravity of a particular infringement and the amount of the fine to be imposed within the ranking will be discussed by the court. Such an approach would be more effective than the one proposed.

Opinions on the deadline for the agency to review the case: The deadline should be realistic and optimal. Complainants / victims should be able to receive timely response from the Agency (e.g in case of delaying the process, in some cases, compensation for damages can even be overdue).
STUDY REPORT

Project: “Considering the Agenda 2030 Requirements in the Regulations Impact Assessments in Georgia”

Prepared for: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
By Analysis and Consulting Team (ACT)

17 December, 2018
Tbilisi
Georgia
1. Study Background

Aimed at strengthening the Regulation Impact Assessment (RIA) instrument, a law program component of the German International Cooperation Association (GIZ) – Considering the Agenda 2030 Requirements in the Regulations Impact Assessments in Georgia – has been working since 2017. The program also promotes implementation of the Regulation Impact Assessment reports in specific areas.

One of the Regulation Impact Assessment areas currently underway is a draft law of Georgia on Consumer Rights Protections, that has been initiated by the Committee on European Integration of the Parliament of Georgia.

In order to assist the RIA implementation process, decision was made to carry out Consumer Rights Protection Study (hereinafter – the Study) on a number of selected topics. The Study should reveal attitudes of both groups – the vendors and the consumers – about the following issues:

- The timeframes for return policy on the products/services purchased based the contract made at the doorstep or in the street; and
- The right to submit a claim about a defective product/service within 2 years’ period of purchasing it.

2. Summary of the survey results

According to experts, in terms of protection of consumers, Georgian legislation is significantly malfunctioned and, moreover, incompatible with the constitution in which consumer protection law exists. Additionally, the civil code entry on consumers’ rights is not active and can not actually protect the rights of consumers in terms of returning purchased goods, as the norm loses its power when the contract is implemented upon its conclusion.

Key informants of the survey (experts and civil servants) emphasize the necessity of harmonizing the legislation and positively assess the planned activities in this regard, in terms of approximation with the EU standards as well as protection of consumer rights in general; of course there are certain issues, that are mainly related to the fear of business representatives about results of enactment of new regulations.

**The awareness level of consumers and business representatives**

The results of the survey unanimously show that the level of awareness of consumer and business representatives is quite low. They do not have minimal information about the rights of consumers and they do not know that there are norms in Georgian legislation concerning the regulation of returning purchased goods that are adequate or inadequate to the deal. Their view on rules of returning goods is largely based on their experience and not on the normative acts. The right of a consumer is particularly neglected in terms of the return goods that are adequate to the deal, as a large part of street vendors and online / distance vendors generally do not recognize this right.
Experience of consumers and business representatives

It should be noted that, at this stage, Georgian legislation does not contain a record about a return of goods adequate to the deal, and this area is completely unregulated. In general, consumers and businesses have equally low awareness with regard to the return of the non-defective goods, regardless of trading format.

The way consumers experience attempts of returning goods that are adequate to the deal are different in different groups of vendors. In particular, street vendors are more likely to be asked for the return of non-defective products, than online vendors; this is not based on the law, but rather happens due to the form of a transaction – it is much more difficult to reach an online vendor, than a vendor with whom the physical communication is not limited.

In regard to the experience of returning goods that are inadequate to the deal, consumers and vendors are more likely to agree that a consumer has the right to request a vendor to eradicate a product’s defect by repairing, replacing, or returning the product.

An analysis of the behavior of consumers and vendors shows that the most commonly used way to eradicate inadequacy of goods to the purchase deal is returning goods; this is especially relevant when purchasing technology. Repair or return of goods requires additional human resources and, in some cases, requires different competence, so preference is replacing goods. In contrast to attempts to return non-defective goods, attempts to return / replace defective goods are largely solved in favor of consumers.

Conditions for returning goods adequate to the purchase deal and planned changes of them.

According to the Civil Code of Georgia, „A contract concluded in the street, at the doorstep or in like places between a consumer and a person conducting sales within his/her trade shall be valid only if the consumer has not rejected the contract in writing within a week, unless the contract is performed upon its conclusion”.

Georgian Draft Law on the Customer Rights (hereinafter referred to as the Draft Law) states that the timeframe for the customer right to make a decision to return an item/service purchased at the doorstep or in the street is being extended from 7 to 14 days.

Besides, in the case of distance trading, the customer will be granted the right to withdraw him/herself from an online contract within 14 days after purchasing the goods/services. Once the customer makes a decision to withdraw him/herself from the concluded contract and notifies the seller about that, he/she will have additional 14 days to return the delivered item to the seller, and the return related costs shall be covered by the seller. Also, it was depending the liability of consumer informing and the detailed list of exceptions.

As expected, the draft norm in the constitution is welcomed by the majority of consumers, and they are positive about the planned changes. As for the vendors, the results of this segment’s survey show that business representatives have some fears about the the above-mentioned regulation’s entry into the force. Their negative attitudes are based on
the expectation that there will be an increase of requests for returning purchased goods, which will create operational problems for vendors, as well as disturb traditional business models (manufacturer/distributor/vendor). This is especially relevant for street vendors, who usually do not have communication with manufacturers, and get their goods from a mediator.

In this regard, the Business Ombudsman’s Office shares the position of the vendors. According to the agency, in terms of street traders, the case concerns largely unorganized trade, where relationships between the vendor and supplier or manufacturer are not clearly defined; most of the street vendors represent a small type of business where each returned item can be substantially reflected on a business. Additionally, due to the specifics of business, it is probable that, despite the emergence of new liabilities for street trading, street vendors won’t be able to fulfill the procedures for returning goods, which may cause the conflict between vendors and consumers. The latter comes in conflict with the ultimate goal of the draft law- to improve the quality of service and to protect the rights of consumers.

As for the responsibility of returning goods in “14 + 14” day time-frame, the population is positive, and half of the vendors disagree with the necessity of this norm. Views of business, the state and third sectors on this issue differ significantly from each other. This change is negatively perceived by the business sector; in their opinion, online trade is the newly established direction in Georgia and loading it with additional obligations is a threat to the development of this sphere. State favors determining “7 + 7”, or directly accepting 14 days, taking into consideration all the necessary procedures for return.

In the context of expected changes, consumers and vendors expect the share of returned goods to grow; however, the Business Ombudsman Office in the qualitative component of the study does not agree with this; in their opinion, socio-economic status of the country should be considered, which prompts a buyer to purchase goods in accordance with need and understanding. Therefore, even if consumers have a couple more days to return goods, it won’t be enough to change their behavior pattern.

**Warranty conditions of goods that are defective/inadequate to the purchase deal and related planned changes**

By the current legislation, during three years from the purchase date, the consumers have the right to request from the seller to repair a faulty/inadequate to the sales deal item, replace it if the repair is not possible, or return the item and issue a refund if a replacement is also impossible. However, if the vendor sells an item with other terms and conditions and the buyer agrees to those by purchasing the item, the above mentioned rights are no longer applicable to the buyer. The planned legislative changes imply to shortening the above mentioned 3-year period to 2 years. However, the vendor will no longer be able to set forth different conditions during this 2-year period (this is not applicable to goods with a shorter lifetime).

During the three-year period, when the customer may request defending his/her rights through the court, the burden of proof comes down on the customer. After the proposed legislative change, even though the timeframe is being shortened from 3 to 2 years, the
sellers will have to prove that the item was faultless at the sales time if the customer discovers any fault of the item during the first six-months period of the purchase date. In other words, the burden of proof will shift to the vendor.

The restriction of the right to establish different conditions for businesses is largely disagreed by the business establishments, unlike the population who welcomes this legislative change. The business representative’s particular dissatisfaction is caused by the transfer of the burden of proof to the vendor for the first six months after the sale of goods. Although the planned changes are negatively evaluated by all types of vendors, this issue is particularly acutely seen by street vendors.

Negative attitudes towards planned regulation are due to the expectation of the vendors that the regulation will be reflected on their operational side and necessity of additional human and financial resources. Moreover, the vendors think that the regulation will affect their traditional business relationships with suppliers. The part of experts shares opinions of the business representatives and in addition to the disturbance of vendors’ interests, the experts emphasize the possibility of violation of the rights of consumers. Specifically, the regulation may result in a deficit of low-cost products on the market, and therefore leave population with low purchasing capability without a choice. Representatives of the Ministry of Economy and Sustainable Development emphasize the possibility of categorization goods and adjustment of the regulation for each category of goods.

**Regulation administration and business sanction scheme**

Different positions have been observed in relation to the issue of sanctions on business subjects, both from the consumers and business representatives, as well as by the field experts. The formation of a controlling body, which considers the consumer group complaints and the right to sanction a business, is agreed on by the majority of consumers. Entrepreneurs are more critical about creating such a controlling body; It should be noted that street vendors are the most critical among them.

In the qualitative component of the research, the critical attitudes were revealed about the creation of a controlling body. The state’s agency believes that the formation of a new body is related to costs and is not justified, as the existing Competition Agency may be able to combine these functions by modifying its liability and enforcement mechanism. It should also be noted that the working version of the draft law envisages grant of competence to the Competition Agency and does not consider creating a new agency.

There are different positions between state agencies and the non-governmental sector about confidentiality of the cases discussed by the Monitoring Agency. In particular, the position of the Ministry of Economy and Sustainable Development is that the content of complaints and relevant decisions should not be made public because it can be painfully reflected on business’s activity due to the sensitivity of the issue. The opposite position is shared by the non-governmental sector whose representatives believe that information publicity will facilitate the enforcement of norms and will help the parties to adapt to a new reality.

In terms of the source of funding of a controlling body, the state and the business share the opinion that the controller’s financing may be tied to penalties because it becomes a
threat of corruption, as well as tension and pressure between businesses and the state. Different opinions were noted about the origin of a penalty. Although the consumers and vendors agree with a verbal / written warning before sanctioning, the consumers are more critical and think that a cash penalty should be placed on the second case of a violation of consumer rights, while the business considers it to be placed only on the third case. Also, unlike the business representatives, the consumers are encouraged to double the repeated penalty.

The business subjects agree on diversified sanctioning, where the amount of penalty is dependent on the category of business. In addition, they are more closely agreeing with attaching the penalty on annual profits rather than an annual turnover or fixed amount. Interesting opinions regarding this topic were observed in the qualitative part of the research; the Business Ombudsman’s Office believes that the amount of penalty shall be in accordance with the category of violations; they think that it is wrong to attach the penalty to annual turnover or to introduce a fixed penalty for all types of violations alike. The same opinion is shared by the state structure and they think that the amount of penalty should be determined by the law in accordance with the category of violations in the margins.

3. Research Methodology

Based on aims and objectives of the project, the research design was developed, which involved using qualitative and quantitative research methods along with close and active co-operation with the client project group.

Specifically, the research design included working meetings with the German International Cooperation Society (GIZ) and “ACT” project groups in the initial and final stages of the project implementation and using qualitative and quantitative methods of research for collecting and analyzing the baseline information on research tasks.

In particular, the research design included the following components:

a) Qualitative research

Qualitative research was carried out using in-depth interviewing technique. In particular, within this component there were 5 interviews with the key informants and interested persons, who were selected with involvement of GIZ project groups.

Target groups of qualitative component of the research who were selected for in-depth interviews were:
- The project group of German International Cooperation Society (GIZ);
- Georgian business association;
- Ministry of economy and Sustainable Development of Georgia
- Competition Agency of Georgia
- Independent experts and representatives of NGOs involved in the discussion of the draft law;
**b) Quantitative research**

For the purpose of the sample representativeness, various geographical area and socio-economic parameters were taken into account. Specifically, within the scope of the research, 101 trading establishment representatives and 797 customers were interviewed in Tbilisi, Kutaisi and Batumi.

**Shopping establishments’ sampling strategy**

**Sampling strategy of Registered trading establishments/stores:** Registered shopping establishments / stores were selected from the latest enterprise database of the National Statistics Office of Georgia. Specifically, from the NAEC classification base, shopping establishments were filtered for research target locations (Tbilisi, Kutaisi, Batumi). Then, from this list, there was selected a random number of targets (e.g. 35 units in Tbilisi); Additionally, the replacement list was created in cases when it wasn’t possible to survey establishments from the original list.

**Sampling strategy of street vendors:** In order to select street vendors, target locations were divided into sectors based on administrative / geographic division and distribution of targets on sectors. For example, Tbilisi was divided into 10 sectors (according to administrative divisions) and the estimated number of interviews were determined for each sector.

**Sampling strategy of online vendors:** The field department of “ACT” prepared a list of online shopping facilities based on secondary research. Then, the contact information and respondents’ identification data were checked. Herewith, when forming the list, it was taken into consideration that online vendors might have an experience of selling products in Tbilisi and other regions of Georgia.

**Table N 1.** Distribution of shopping establishments

<table>
<thead>
<tr>
<th>Categories of vendors</th>
<th>Tbilisi</th>
<th>Kutaisi</th>
<th>Batumi</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registered shopping establishments, that sell products in special buildings/stores</td>
<td>35</td>
<td>10</td>
<td>10</td>
<td>55</td>
</tr>
<tr>
<td>Street vendors</td>
<td>15</td>
<td>5</td>
<td>5</td>
<td>25</td>
</tr>
<tr>
<td>Online vendors</td>
<td>21</td>
<td></td>
<td></td>
<td>21</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td><strong>71</strong></td>
<td><strong>15</strong></td>
<td><strong>15</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>101</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Sampling strategy of consumers**

Similar to the selection of shopping establishments, when selecting consumers, three directions were taken into account: consumers of stores, street vendors, and online vendors

**Sampling strategy of consumers of stores:** in order to sample consumers of stores, target locations were divided into sectors based on administrative / geographic division and distribution of targets on sectors. For example, Tbilisi was divided into 10 secors (according
to administrative division) and for each sector, the number of interviewers was determined, which were conducted using random walking principle.

**Sampling strategy of consumers of street vendor:** The “snowball” principle was used for selection of street vendors, which involved identifying the starting points on each location by which people who have an experience of buying different categories of goods in the street were identified.

Each location had a number of starting points that did not have more than five people identified within a single chain. For example, in this segment, there were 50 users surveyed in Tbilisi; Accordingly, at least 10 points were identified, from which the “snowball” principal identified persons with an experience of buying goods in the street.

**Sampling strategy of consumers of online vendors:** the “snowball” principle was used for selecting online vendors. There were at least 10 starting points, so that no more than 5 people were surveyed within the chain. Moreover, there was an additional selection criterion – an online trade establishment, to provide at least 10 different online vendors’ consumer in the survey.

**Table No 2.** Distribution of consumers

<table>
<thead>
<tr>
<th></th>
<th>Tbilisi</th>
<th>Kutaisi</th>
<th>Batumi</th>
<th>Subtotal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population with an experience of buying goods in stores</td>
<td>367</td>
<td>175</td>
<td>140</td>
<td>682</td>
</tr>
<tr>
<td>Population with an experience of buying goods from street vendors</td>
<td>272</td>
<td>171</td>
<td>46</td>
<td>489</td>
</tr>
<tr>
<td>Population with an experience of buying goods online</td>
<td>91</td>
<td>52</td>
<td>15</td>
<td>158</td>
</tr>
<tr>
<td>Subtotal</td>
<td>730</td>
<td>398</td>
<td>201</td>
<td>797</td>
</tr>
<tr>
<td>Total</td>
<td>797</td>
<td>797</td>
<td>797</td>
<td>797</td>
</tr>
</tbody>
</table>

4. **Overview of the Study Results**

4.1. **Awareness about the Return Policy of the Purchased Items**

According to Study results, majority of the surveyed population (70%) do not consider themselves to be informed about the terms of return of non-defective goods purchased on the street and from online vendors. However, 83% of those that believe they are aware of the return policy state that their information source on the issue is the vendor itself. Other information sources that were mentioned include: friends / relatives / coworkers (24%), social media (14%) and TV (5%).
Another finding of the Study also indicates to low awareness of both the consumers and the vendors. In particular, 59% of consumers are totally unaware that return of non-defective goods that are purchased on the street or at the market and are adequate to the made deal is regulated by the Georgian Civil Code and, by law, consumers have a week’s period to return the item. Furthermore, 39% of street vendors are unaware of this.

Only a small part of the surveyed respondents think they may return the purchased non-defective, adequate to the deal items to street vendors or online/remote vendors (resp. 18% and 16%). As for the return timeframes, majority of the consumers (67%) think they have only 1 to 3 days in order to return non-defective items that are adequate to the made deal. It should be noted that 54% of vendors share the same opinion about the terms of the return.

As for return policy on the items that are defective / inadequate to the deal, 43% of the consumers think that Georgian legislation allows them to return such items in any case.
Opinion about the timeframe for return of defective / inadequate to the deal items is similar, though incorrect, among the consumers and the vendors. In particular, majority of them (69% of the consumers and 70% of vendors) think buyers have 1-7 days to return items that are defective, inadequate to the deal.

**Chart № 3.** Timeframes for returning defective / inadequate to the deal goods

![Chart](chart.png)

<table>
<thead>
<tr>
<th>Timeframe</th>
<th>Consumers</th>
<th>Vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-7 days</td>
<td>69%</td>
<td>70%</td>
</tr>
<tr>
<td>8-14 days</td>
<td>8%</td>
<td>10%</td>
</tr>
<tr>
<td>1 month</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Determined by the vendor</td>
<td>4%</td>
<td>6%</td>
</tr>
<tr>
<td>Other</td>
<td>16%</td>
<td>11%</td>
</tr>
</tbody>
</table>

*N=797 Consumers   N=101 Vendors

**4.2. Experience of the Consumers and the Vendors about Returning Non-Defective/Adequate to the Deal Items**

Only 20% of consumers have tried to return non-defective, adequate to the deal items to street vendors. Among main reasons for the return are: wrong size (72%), inadequate information on the purchased item received from the vendor (17%), and quick ruining of the item (14%). Interestingly, majority of the return attempts (79%) were successful, and street vendors satisfied their customers’ request to return the goods.

**Chart № 4.** Experience of returning non-defective / adequate to the deal goods

![Chart](chart.png)

<table>
<thead>
<tr>
<th>Experience</th>
<th>Street Vendors</th>
<th>Online Vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was always returned</td>
<td>41%</td>
<td>45%</td>
</tr>
<tr>
<td>Was never returned</td>
<td>21%</td>
<td>21%</td>
</tr>
<tr>
<td>Was rarely returned</td>
<td>20%</td>
<td>21%</td>
</tr>
<tr>
<td>Was often returned</td>
<td>18%</td>
<td>9%</td>
</tr>
</tbody>
</table>

*N=163 Consumers*
As for remote vending, the number of attempts to return purchased goods is lower due to the nature of the deal. In particular, only 7% of customers of online vendors have tried to return purchased goods (due to wrong size, wrong information received from the vendor, quickly damaged, etc.). In these cases, similarly, majority of the return claims (75%) were resolved successfully, since online vendors usually satisfy their clients’ requests.

Items returned to street and online vendors are mostly non-defective clothing/footwear/accessories (84% and 67%, respectively) or electronics (19% and 33%, respectively). It should be noted, that the average value of items returned by customers to street vendors and online vendors is 162 GEL and 143 GEL, respectively. During a year period, most frequently, customers return 1-3 items to street vendors (88%) and to online vendors (76%). The number of days for return mostly ranges between 2-5. As has been revealed, in case of online purchases, customers tend to need slightly more time to make a return decision and to carry out the action.

**Chart № 5.** Return of non-defective goods

<table>
<thead>
<tr>
<th></th>
<th>Experience with street vendors</th>
<th>Experience with online vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have decided to return</td>
<td>2%</td>
<td>3%</td>
</tr>
<tr>
<td>Have returned</td>
<td>4%</td>
<td>4%</td>
</tr>
<tr>
<td>Was refunded</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

*N=180 Consumer*

According to the consumers, they are being fully refunded for returning non-defective goods more from online vendors (45%) than from street sellers (33%). Respondents think that in case of attempting to return non-defective items, street vendors tend to more agree to exchanging them (62%), whereas the same indicator for online vendors in considerably low (38%).

**Chart № 6.** Refunding for non-defective goods

<table>
<thead>
<tr>
<th></th>
<th>Experience with street vendors</th>
<th>Experience with online vendors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was fully refunded</td>
<td>33%</td>
<td>45%</td>
</tr>
<tr>
<td>Was partially refunded</td>
<td>3%</td>
<td>14%</td>
</tr>
<tr>
<td>Exchanged</td>
<td>62%</td>
<td>38%</td>
</tr>
<tr>
<td>Difficult to answer</td>
<td>3%</td>
<td>3%</td>
</tr>
<tr>
<td>Other</td>
<td>2%</td>
<td>2%</td>
</tr>
</tbody>
</table>

*N=128 Consumer*
Following main reasons have been identified for refusing to return non-defective/adequate to the purchase deal items: absence of the sails receipt, absence of the label, the item has been used/damaged, return policy does not cover the given price segment, inability to return an item purchased on sail, return attempt past the policy timeframe. Cases have been revealed both for street vending (9%) and online purchases (7%), when the vendors did not clarify to the customer the reason for refusing the return.

As it has been found, during the year, street vendors have to accept returns of non-defective/adequate to the deal goods more frequently than online vendors. The number of returned items is also mostly different, however, most often, street and online vendors have to return 1-10 non-defective items (47%).

**Chart № 7.** The number of returned goods a year

![Chart](chart.png)

During the entire year, 39% of street and online vendors refund 81-100% of the return requests, 30% of the vendors refund only 1-20%, while 13% of the vendors refund 61-80% of return requests on non-defective items. Yearly refund expenses due to return requests on non-defective/adequate to the deal items are considerably higher for online vendors (355 GEL) than in case of street vendors (75 GEL).

It should be noted, that both the consumers and the vendors give similar reasons on the buyers’ decision to try to return non-defective items. Also, according to them, most often, consumers try to return such items within 1-3 days of the purchase. Almost half (45%) of the vendors thinks that the price segment of the item is not related to the attempt of returning it. However, one third of the sellers (32%) still think that customers more often try to return non-defective items from lower price segments. Average value of the returned non-defective items is 88 GEL. It should also be noted that customers try to return higher value goods (130 GEL) to street vendors, than to online sellers (31 GEL).
4.3. Experience of the Consumers and the Vendors about Purchasing Defective/Inadequate to the Deal Items

Georgian legislation permits the consumers to request repair of defective/inadequate to the purchase deal goods within three years, and, in case the item cannot be repaired, a replacement can be requested. If this is also impossible, the consumer has the right to request return of the item with a full refund. The mentioned regulation is effective during three years, except for the cases when the seller offers other contract conditions to the buyer, and the buyer automatically agrees to those terms by purchasing the item.

As seen on the chart below, only 43% of the consumers think that they can request from the seller to repair / replace / return a defective item. Furthermore, some consumers think that they are completely unprotected in their relationship with the vendor in case of purchasing a defective item. Beside their lack of awareness about the right to repair / replace / return the purchased goods, consumers also have minimal understanding about the timeframes, and majority of them (69%) thinks it is possible to approach the vendor for buying faulty goods only within a week's period of time.

**Chart No 8.** Awareness on the right to repair/replace/return defective/inadequate to the purchase deal goods

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have in any case</td>
<td>43%</td>
</tr>
<tr>
<td>Have in majority of cases</td>
<td>28%</td>
</tr>
<tr>
<td>Sometimes yes, sometimes no</td>
<td>10%</td>
</tr>
<tr>
<td>Do not have in majority of cases</td>
<td>4%</td>
</tr>
<tr>
<td>Have in no case</td>
<td>5%</td>
</tr>
<tr>
<td>Difficult to answer / DK</td>
<td>10%</td>
</tr>
</tbody>
</table>

*Consumers’ opinion

N= 797 Consumer

As for the consumer’s preferences, majority of them (74%) prefer the seller replaces the item with an adequate to the deal similar product of the same category, and only one out of every five respondents (22%) say that in case of getting a product that is inadequate to the deal, they would prefer to return the goods for a full refund.

The Study also addressed consumers experience about purchasing goods that are inadequate to the deal. More than half of the consumers (56%) do not have such experience. Out of those, who did experience getting goods inadequate to the deal, majority of them have approached the vendor with such claims. Regardless of this, after discovering faulty items, majority of the consumers have taken no actions with this regards.
Chart No 9. Behavior after purchasing defective goods:

<table>
<thead>
<tr>
<th>Has approached the seller requesting repair/replace/return</th>
<th>64%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has purchased an item inadequate to the deal, but not contacted the seller</td>
<td>36%</td>
</tr>
</tbody>
</table>

N= 350 Consumer

According to the consumers’ experience, faulty goods are most problematic when purchasing electronic appliances and items. This is the category of products when consumers contact the vendor most often. As a rule, vendors that are approached with claims to repair / replace / return faulty electronic items are mostly retailer stores and not street or online sellers.

Chart No 10. Most frequently purchased goods that are inadequate to the deal

<table>
<thead>
<tr>
<th>Electronics</th>
<th>54%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clothing/footwear/accessories</td>
<td>45%</td>
</tr>
<tr>
<td>Household items</td>
<td>10%</td>
</tr>
<tr>
<td>Car parts</td>
<td>0.4%</td>
</tr>
</tbody>
</table>

N=223 Consumer

17% out of those consumers that have approached the vendors with repair / replace / return requests have been denied the request for repair, 13% have been denied replacement request, and 19% have been denied their request for return. The most often mentioned reasons for refusing the requests are: the seller does not acknowledge inadequacy to the deal (for repair requests); timeframe offered by the store for the action is past due (for replacement requests); absence of appropriate procedures at the vendor (for return requests). Most often, vendors offer replacement of the item in case the consumer approaches them with a request to return an item inadequate to the purchase deal. This is the most frequent way of settling such claims (54% of cases when an item return was requested). In the rest of cases, the item is returned either for a full or partial refund (40% and 5%, resp.). As for the value, average value of the items requested to be returned is 400 GEL.

On the average, consumers approach the vendors with repair / replace / return requests in 9 days’ period of time. In their turn, the vendors take respective actions on the average in one week.
Interestingly, majority of the vendors are unaware of the 3-year period norm determined by the legislation. Regardless of the type of the vendors, 70% of them think that, according to the Georgian legislation, consumers may approach the seller to repair / replace / return a faulty item within one week of the date of purchase. Based on their experience, the same timeframe (one week) is outlined by the sellers in their internal policy standards.

**Chart No 12.** Timeframes for repairing/replacing/returning of defective goods inadequate to the purchase deal: determined by the Legislation, the vendor’s internal policy, the vendors’ experience

<table>
<thead>
<tr>
<th>Timeframe</th>
<th>Legislation (%)</th>
<th>Vendor’s Policy (%)</th>
<th>Vendor’s Experience (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-7 days</td>
<td>70</td>
<td>61</td>
<td>61</td>
</tr>
<tr>
<td>8-14 days</td>
<td>10</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Up to a year</td>
<td>7</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>Determined by the vendor</td>
<td>7</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Do not have policy / no experience</td>
<td>27</td>
<td>27</td>
<td>4</td>
</tr>
<tr>
<td>Difficult to answer / DK</td>
<td>6</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>

*N=101 Vendors*
According to majority of those representing the vendors of all categories, it is important to make the consumers aware of the vendor’s repair / replacement / return policy of faulty goods at the time of making the purchase. As for their real experience, 12% of the vendor’s state that they do not provide such information to the consumers at all, while the most widespread practice is giving such information verbally (67%).

**Chart No 13.** Necessity of making the consumers aware of the repair/replacement/return policy upon purchasing the goods

| Consumer must be informed about repair/replacement/return policy of goods | 78% |
| It’s not a mandatory to inform consumer about repair/replacement/return policy | 11% |
| Neutral Answer | 11% |

**N=101 Vendors**

According to the vendors, majority of the claims about faulty / inadequate to the deal goods is resolved in favor of the consumers: 42% of the vendors state the consumers claims on repair/replacement/return are met in 80%-100% of cases, and only 10% of vendors say they do not have practice of satisfying such claims. It should also be noted that, if purchasing faulty goods, consumers request their replacement from the vendor. Respondents found it difficult to estimate direct expenses related to management and administration of the consumers’ requests, as well as to replacement of the goods. However, average annual expense recorded was 1200 GEL.

### 4.4. Terms and Conditions of Returning Non-Defective/Adequate to the Deal Items and the Related Planned Changes

*According to the Civil Code of Georgia, “A contract concluded in the street, at the doorstep or in like places between a consumer and a person conducting sales within his/her trade shall be valid only if the consumer has not rejected the contract in writing within a week, unless the contract is performed upon its conclusion”.*

*Georgian Draft Law on the Customer Rights (hereinafter referred to as the Draft Law) states that the timeframe for the customer right to make a decision to return an item/service purchased at the doorstep or in the street is being extended from 7 to 14 days.*

*Besides, in case of distance trading, the customer will be granted the right to withdraw him/herself from an online contract within 14 days after purchasing the goods/services. Once the customer makes a decision to withdraw him/herself from the concluded contract and notifies the seller about that, he/she will have additional 14 days to return the delivered item to the seller, and the return related costs shall be covered by the seller. Also, it was defined the liability of consumer informing and the detailed list of exceptions.*
Opinions of the consumers and business representatives (street vendors) about the planned changes are considerably different from each other. Half of street vendors disagree with this legislative change, while 77% of the population support the extension of 7 to 14 days given for rejecting the contract made with street vendors.

**Chart No 14. Assessment of the planned regulations**

<table>
<thead>
<tr>
<th>Agree</th>
<th>Neither agree, nor disagree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>77%</td>
<td>35%</td>
<td>10%</td>
</tr>
<tr>
<td>Consumers opinion</td>
<td>Vendors opinion</td>
<td></td>
</tr>
</tbody>
</table>

*N=25 Vendors   N=797 Consumer*

As for the legislative changes planned for remote shopping, every second one of the surveyed online vendors (48%) also disagree with this change, while 76% of the population are in favor of the offered 14 days’ period to terminate online contracts and another 14 days for returning the item. It should be noted, that 80% of the customers think “14+14” days’ period is absolutely sufficient, and 5% of them even think

**Chart No 15. Assessment of the planned regulations**

<table>
<thead>
<tr>
<th>Agree</th>
<th>Neither agree, nor disagree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>76%</td>
<td>33%</td>
<td>8%</td>
</tr>
<tr>
<td>Consumers opinion</td>
<td>Vendors opinion</td>
<td></td>
</tr>
</tbody>
</table>

*N=25 Vendors   N=797 Consumer*

Both, the customers and business representatives, have certain expectations about the changes of the regulations. Almost every third customer thinks that, if the regulations are enforced in the proposed way, the rate of attempts to return non-defective/adequate to the contract goods will increase for street vendors (36%) and for online vendors (27%). 44% of the vendors also share this same opinion. Customers and the business have different
views about the change of purchasing behavior. Namely, every third customer believes that enforcing these regulations in the given way will stimulate them to increase purchases on the street (31%) and from online vendors (30%). However, this opinion is shared only by 20% of business representatives. It is important to note that, if the regulations are become effective, only 15% of the businesses think these legislative changes will promote increase of the prices, that, in their opinion, in most cases will result from the increase of the expenses for the business or their attempt to secure themselves from potential financial losses. As for the impact that enacting the new regulations might have on the quality of the goods, only 17% of the businesses think the changes will make a positive impact.

According to business representatives’ opinions (26%), extending the timeframe for returning the goods will influence business relationships between the vendors, distributors and manufacturers. Online vendors more tend to expect changes in business relationships, that, according to them, might result in increase of the timeframes, obligations and expenses.

Chart № 16. Impact of the planned regulations on business relationships

<table>
<thead>
<tr>
<th></th>
<th>Extension of timeframes will affect business relationships</th>
<th>Extension of timeframes will not affect business relationships</th>
<th>Difficult to answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Online vendors</td>
<td>19%</td>
<td>44%</td>
<td>24%</td>
</tr>
<tr>
<td>Street vendors</td>
<td>32%</td>
<td>57%</td>
<td>24%</td>
</tr>
</tbody>
</table>

More than a half of business representatives (54%) think that, despite of the planned legislative changes, they will not have to introduce changes in their activities. However, 13% of the vendors think it will become necessary to reconsider current terms and conditions with the suppliers; according to 11%, they will have to allocate more funds to satisfy the customers and to review their claims (7%); and some also presume that sales prices might need to be raised (4%).

One in every three of the surveyed business representatives thinks that their operational costs will increase during the first six months (33%), as well as after the six months’ period (35%). It should also be noted that compared with street sellers, online vendors are more expectant of raising their operational costs.

Overall, 39% of the vendors assess the planned legislative changes about the return timeframes of non-defective/adequate to the deal goods as negative, and street sellers are more negative (44%) in their assessment compared to online vendors (34%). Noteworthy, only 7% of business representatives think that these changes will have a positive impact on their activity.
4.5. Warranty Conditions of Defective Goods/Goods Inadequate to the Purchase Deal, and the Planned Related Legislative Changes

By the current legislation, during three years from the purchase date, the consumers have the right to request from the seller to repair a faulty/inadequate to the sales deal item, replace it if the repair is not possible, or return the item and issue a refund if a replacement is also impossible. However, if the vendor sells an item with other terms and conditions and the buyer agrees to those by purchasing the item, the above mentioned rights are no longer applicable to the buyer. The planned legislative changes imply to shortening the above mentioned 3-year period to 2 years. However, the vendor will no longer be able to set forth different conditions during this 2-year period (this is not applicable to goods with a shorter lifetime).

During the three-year period, when the customer may request defending his/her rights through the court, the burden of proof comes down on the customer. After the proposed legislative change, even though the timeframe is being shortened from 3 to 2 years, the seller will have to proof that the item was faultless at the sales time if the customer discovers any fault of the item during the first six months’ period of the purchase date. In other words, the burden of proof will shift to the vendor.

Opinions of the customers and business representatives (stores, street vendors and online vendors) regarding the planned changes considerably differ from each other. In particular, while a vast majority (81%) of the consumers are positive about the planned changes, only 35% of the vendors share the same view, and every second surveyed business representative (50%) disagrees with the proposed legislative changes. It should also be noted that representatives of street vendors are the most critical about the planned changes, though the general trend is similar across all three study segments.
Chart № 18. Assessment of the planned regulations

As for the changes related to the regulations about the burden of proof, in this case similarly, business is more critical that the consumers – 55% of surveyed businesses are unwilling to take burden of proof about the quality of the sold item during the first six months. At the same time, the fact that the norm will be universal, depriving the business to make their own different terms during the two-year timeframe outlined by the law, causes dissatisfaction of the respondents.

Chart № 19. Assessment of the changes in the burden of proof

Both the consumers as well as the business have certain expectations regarding the changes of the regulations. Every second consumer (48%) thinks that if the regulations are enacted this way, the number of their referrals to the businesses about the repair/replacement/return of purchased goods that are inadequate to the sales deal will increase. 53% of the vendors also share the same opinion. Changes of the purchasing behavior are viewed differently by the consumers and the businesses. Namely, every third consumer (35%) thinks that enacting these regulations will stimulate them to increase their buying rate, though the same opinion is shared only by 17% of the surveyed businesses. It is important to note, that if the regulations are enacted this way, a half of the consumers (51%) expect general raising of sales prices on the goods, whereas, only 16% of the businesses have an expectation that enacting these regulations will result in increased prices. As for the impact of enacting the regulations regarding the quality of goods, consumers have more positive expectations about the issue – majority of them (65%) thinks that quality of the goods will improve, while only a third (36%) of vendors thinks the change will make a positive impact on the quality of the goods.
It should also be mentioned, that a big majority (83%) of the consumers thinks that the planned legislative changes are a positive step towards consumer rights protection.

**Chart No 20.** Expectations regarding the enactment of the regulations

<table>
<thead>
<tr>
<th>Expectations</th>
<th>Consumers opinion</th>
<th>Vendors opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumers requests to repair/replace/return purchased goods will raise</td>
<td>48%</td>
<td>53%</td>
</tr>
<tr>
<td>Consumers will purchase more goods</td>
<td>35%</td>
<td>17%</td>
</tr>
<tr>
<td>Sales prices of the goods will increase</td>
<td>16%</td>
<td>51%</td>
</tr>
<tr>
<td>Quality of the goods will increase</td>
<td>36%</td>
<td>65%</td>
</tr>
</tbody>
</table>

_N=797 Consumer N=101 Vendors_

As majority of the consumers expects that enacting the new regulations will lead to higher quality of the goods and, at the same time, as mentioned above, half of the consumers also expects raise of the sales prices, every second person is ready to pay a higher price for better quality goods. However, despite their declared readiness to pay a higher price for better quality, it should also be kept in mind that, as they also say, majority of them (57%) knowingly and intentionally purchase low quality goods because of the lower price. Also, every second respondent (53%) has admitted, that because of the low price, they have purchased fake goods of well-known brands. Thus, the declared readiness to pay more for better quality goods might only be an expression of their attitude and may not be backed with their buying behavior.

**Chart No 21.** Consumers’ readiness to pay more for increased quality (after enacting the regulations)

<table>
<thead>
<tr>
<th>Readiness to pay more</th>
<th>Consumers opinion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ready to pay more</td>
<td>51%</td>
</tr>
<tr>
<td>Neutral</td>
<td>32%</td>
</tr>
<tr>
<td>Not ready to pay more</td>
<td>17%</td>
</tr>
</tbody>
</table>

_N=797 Consumer_
The Study addressed current business model at the points of sales, in particular – the way vendors get supplied their goods either directly from the manufacturer, or through intermediaries. Interestingly, both business relationship models are almost similarly widespread, however, distributors are a more important source of supply for street vendors, than manufacturers. Half of the businesses (49%) thinks that enacting the planned regulations will not affect their business relationships with suppliers, however, a considerably large part (33%) expects certain changes with this regards. As for their specific expectations, vendors think that they will have to present higher demands to the suppliers, in other words – they will try to improve the quality of the goods to be sold. Also, they expect certain complications during the negotiation process. This Study was not aimed at identifying specific negative or positive results that the enactment of the planned changes might bring to the business relationship of the vendors and their suppliers, so the issue needs an in-depth focused qualitative study.

Chart No 22. Possible impact of the regulations on business relationship between the manufacturer, the distributor and the vendor

It should also be mentioned that 52% of the surveyed entrepreneurs state they do not have and are unable to make direct contacts with manufacturers. Accordingly, for this group of vendors, it will be difficult to contact the manufacturer directly in case the customer approaches them with a request to repair / replace / return an item that is inadequate to the deal. The issue becomes of special importance for street vendors, as this group mostly relies on distributors for their supplies and has a limited access to the manufacturers.

Majority of entrepreneurs (69%) does not expect that enacting the changes in the proposed way will considerably impact their business process. However, 17% of the surveyed vendors think that they will have to revise their contracts with the suppliers, 8% think they will have to spend more time on reviewing the consumers’ claims, and according to 5%, this will lead to increased expenses.

When asked a general question about the expected changes, only 5% of the respondents pointed to increased expenses caused by enacting new regulations. However, when specifically asked about operational costs and what impact the new regulations might have on them, every third respondent (33%) stated that enacting these new regulations will somewhat or considerably increase their operational costs within the first six months as well as afterwards (30%).
As for general assessment of enacting the regulations in the proposed way, every second vendor (49%) thinks that the changes to be introduced to the rules of repairing/replacing/returning goods inadequate to the sales deal will not have an impact on their business. Despite this, it should be considered that negative expectations prevail over positive attitudes: 34% of the surveyed vendors think that enacting the new regulations will have a somewhat negative affect on their business activity, while the share of vendors that have positive attitude towards the issue is only 7%.
5.1. Administration of Regulation and Business Sanction Scheme

It is planned to create a state controlling body that will have the right to sanction a business in case of violation of consumer’s rights. This body should examine complaints of consumer group, based on which the state control body will have the right to examine the business entity.

Consumers positively evaluate and accept the idea of creating a state controlling body, which, in case of need, consumers address to with a group complaint; the same body will have the right to sanction a business in case of violation of consumer group’s rights. In terms of general regulation, surveyed entrepreneurs are critical – 45% of the respondents do not share the idea of creating a controlling body equipped with the above rights. Street vendors are even more sensitive to those regulations.

**Chart No 25.** Assessment of activation of the state controlling body

<table>
<thead>
<tr>
<th>Agree</th>
<th>Neither agree, nor disagree</th>
<th>Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>82%</td>
<td>36%</td>
<td>19%</td>
</tr>
</tbody>
</table>

According to consumers | According to businesses

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With regard to the sanction process, the consumers’ and entrepreneurs’ attitude is similar, the majority (79%, 80% respectively) thinks that in case of violation of consumer rights, there should be a written/verbal warning before a monetary sanction. 48% of consumers think that a monetary penalty should be placed on the second case of violation of consumer rights; According to the business representatives themselves, a financial sanction should be placed on the third case (42%).

Regarding the financial sanction scheme, of course, consumers have more critical demands. 63% of surveyed consumers think that in case of a repeated violation of consumer rights, a financial penalty should be determined by doubling the amount of the first fine, while only 25% of entrepreneurs favor the introduction of such scheme. In addition, the vast majority (80%) of consumers think that in case of violation of consumer rights, the penalty amount must be increased according to the category of business (small, medium, large); The same position is supported by every second entrepreneur (50%).
**Chart №26.** Necessity of warning before a financial sanction

- A monetary sanction should be proceeded with a written/verbal warning
  - According to consumers: 80%
  - According to businesses: 79%

- It is desirable to have a written/verbal warning before a monetary sanction
  - According to consumers: 4%
  - According to businesses: 13%

- It is not necessary to have a written/verbal warning before a monetary sanction
  - According to consumers: 10%
  - According to businesses: 5%

- Hard to answer/don’t know
  - According to consumers: 6%
  - According to businesses: 3%

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**Chart №27.** Sanction scheme

- In case of consumer rights violation business’s repeated penalty should be double the amount of the first sanction
  - According to consumers: 63%
  - According to businesses: 25%

- In case of violation of consumer rights the penalty amount must be increased according to the category of business (small, medium, large)
  - According to consumers: 81%
  - According to businesses: 50%

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In regard to the details of the sanction scheme, entrepreneurs’ opinions were further studied. It is noteworthy that businesses require a diversified approach in case of regulation. Specifically, most of the entrepreneurs (77%) think that small, medium, and large businesses should be sanctioned differently. Generally, entrepreneurs believe that the amount of financial sanctions should not be tied to a business turnover rate and it is more appropriate if it will be based on annual profit.
Chart No 28. Attitudes towards the rule of defining financial sanctions

- A percentage share of a sanction should be different for small, medium and large businesses: 77%
- A business should pay a monetary sanction with the percentage of its annual profit: 42%
- A sanction should be a predetermined amount of money: 37%
- A business should pay a monetary sanction with the percentage of its annual turnover: 16%
- A business should pay a monetary sanction with 5% of its annual turnover: 9%

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